

VOLUME IX

[Chap5701]CHAPTER 57:01

LAND

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7 of 1974

5 of 1976

1 of 1981

22 of 1989

26 of 1988

27 of 1994

19 of 1995

6 of 2004

G.N. 137/1966

An Act to make provision with regard to land in Malawi and for matters incidental thereto

[7TH JUNE 1965]

PART I

PRELIMINARY

[Ch5701s1]1. Short title

This Act may be cited as the Land Act.

[Ch5701s2]2. Interpretation

In this Act, unless the context otherwise requires—

“authorized officer” means an officer in the Public Service duly authorized by the Minister for the purposes of this Act or any part thereof;

“customary land” means all land which is held, occupied or used under customary law, but does not include any public land;

“customary law” means the customary law applicable in the area concerned;

“existing laws” means any law contained in the Schedule or any law which was repealed or replaced by any such law;

“existing Orders” means the Orders in Council specified in Part I of the Schedule; Schedule

“Government land” means all public land other than public roads;

“lease” includes an agreement for a lease, and any reference to a lease shall be construed as a reference to a lease granted under this Act or the existing laws;

“traditional court” means a traditional court established under section 3 of the Traditional Courts Act; Cap. 3:03

“magistrate” means a Resident Magistrate or other grade magistrate exercising jurisdiction of the area concerned;

“magistrate’s court” means any subordinate court constituted under section 54 of the Courts Act; Cap. 3:02

6 of 2004“person who is not a citizen of Malawi” includes a company or other corporate or unincorporate body with majority ownership or control in persons who are not citizens of Malawi;

“private land” means all land which is owned, held or occupied under a freehold title, or a leasehold title, or a Certificate of Claim or which is registered as private land under the Registered Land Act; Cap. 58:01

“public land” means all land which is occupied, used or acquired by the Government and any other land, not being customary land or private land, and includes—

5 of 1976(a) any land held by the Government consequent upon a reversion thereof to the Government on the termination, surrender or falling-in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law; and

(b) notwithstanding the revocation of the existing Orders, any land which was, immediately before the coming into operation of this Act, public land within the meaning of the existing Orders;

“public road” means a public road as defined in and by section 3 of the Public Roads Act; Cap. 69:02

“rules of good husbandry” means, due regard being given to the character and situation of the land in question—

(a) the maintenance of the land (whether arable, woodland or pasture) free from harmful weeds, clean and in a good state of cultivation and fertility and in good condition;

(b) the maintenance and clearing of drains, earthworks and access roads;

(c) the maintenance and proper repair of fences, hedges and field boundaries;

(d) the execution of repairs to any building upon the land; and

(e) such rules of good husbandry as may be prescribed or required under this Act or under any other law.

[Ch5701s3]3. Protection of authorized officer

No suit, prosecution or other legal proceeding shall lie in their personal capacities against any authorized officer, or against any person acting under his authority, for anything in good faith done or omitted or intended to be done under this Act.

## PART II

### GENERAL

[Ch5701s4]4. Powers of corporations to hold land

(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of any body corporate, unless such body corporate is authorized by a licence issued by the President to hold lands in Malawi:

Provided that this section shall not apply to a body corporate incorporated in Malawi in accordance with the Companies Act or a body corporate coming within the terms of section 275 of



the Companies (Consolidation) Act, 1908, of the United Kingdom in its application to Malawi, or a body corporate established by or under a written law which empowers it to hold land. Cap. 46:03, 8 Edw. 7. c.69

(2) A disposition of any estate or interest in land in Malawi to or for the benefit of a body corporate shall, unless such body corporate is authorized in accordance with subsection (1) to hold lands in Malawi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registrable in Malawi.

(3) The Minister may make rules prescribing the particulars to be furnished, the forms to be used and the fees to be paid in relation to applications for and grants of licences for the purposes of subsection (1).

(4) The issue of licences for the purposes of subsection (1) shall be in the absolute discretion of the President and the decision of the President whether or not to issue a licence shall be final and shall not be questioned in any court.

[Ch5701s5]5. Minister's power to dispose of public land or customary land

6 of 2004(1) The Minister may make and execute grants, leases or other dispositions of public or customary land for any such estates, interests or terms, and for such purposes and on such terms and conditions, as he may think fit:

Provided that the Minister shall not make a grant of—

- (a) customary land to any person for an estate greater than a lease of 99 years;
- (b) any public land or, notwithstanding paragraph (a), any customary land to any person who is not a citizen of Malawi for an estate greater than a lease of 50 years, unless the Minister, in relation to a particular case or class of cases, is satisfied that a greater estate is required for the realization of investment.

(2) The Minister shall, in every grant of a lease of public or customary land, reserve a rack-rent in respect thereof:

Provided that—

(a) the Minister may, in his discretion, reserve a rent which is less than a rack-rent in leases granted under this section to local government or public utility bodies, statutory corporations, Chiefs, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertakings;

(b) where, having regard to all the circumstances of the case the Minister is satisfied that it is neither expedient, equitable or necessary to reserve a rack-rent in any lease granted, or to be granted, under this section, he may, in his discretion, reserve in any such lease a rent which is less than a rack-rent.

[Ch5701s5A]5A.Prohibition against disposal of state and official residences

27 of 1994 Notwithstanding section 5 and any other written law, the Minister shall not make or execute grants, leases or other disposition of public land comprising a state residence or an official residence of the President or a Vice-President, or of a Minister or Deputy Minister of the Government, or of the Speaker of the National Assembly, in favour of the President, a Vice-President, a Minister or Deputy Minister, or the Speaker, and no President, any Vice President, Minister or Deputy Minister, and no Speaker, shall acquire, as a personal possession, any such land.

[Ch5701s6]6. Financial penalty for delay in payment of rent

(1) If any moneys due to the Government in respect of any rent payable under any lease or right to occupancy of land or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be increased by a penalty equal to one-tenth of the sum so remaining unpaid, or by a penalty of ten shillings, whichever is the greater, and the penalty imposed under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

(2) The imposition of a penalty under this section shall not affect the powers conferred upon the Minister by section 14 to enforce forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.

(3) The exercise by the Minister of the powers conferred by section 14 to enforce a forfeiture and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).

(4) The Minister may in any case or class of cases, if he considers that the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

[Ch5701s7]7. Minister may appoint duly authorized officers

The Minister may appoint such authorized officers for the administration of this Act as he shall think fit, which officers shall be known by such styles or titles as the Minister may direct, and shall undertake such duties and exercise such powers as are specified in this Act or in any regulations made thereunder.

### PART III

#### PUBLIC LAND

[Ch5701s8]8. Vesting of public land

All public land is vested in perpetuity in the President.

[Ch5701s9]9. Use and occupation of Government land

No right of entry into any Government land shall be implied in favour of any person and the use and occupation of all Government land, other than Government land reserved for the use and occupation of the President, shall be controlled by the Minister.

[Ch5701s10]10. Unlawful use of public land to be an offence

Any person who uses or occupies any public land and is not entitled to such use or occupation by virtue of a valid grant, lease or other disposition made by the Minister under any law for the time being in force at the date of such grant, lease or disposition, shall be liable to a fine of £100 and to imprisonment for six months, and, in the case of a continuing offence, to a further fine of £5 in respect of every day during which the offence continues.

#### PART IV

#### PRIVATE LAND

[Ch5701s11]11. Minister may accept surrenders

The Minister may accept the surrender of any lease made under this Act or the existing laws, or any amendment thereto, on such terms and conditions as he may think fit.

[Ch5701s12]12. Minister may relieve from liability to perform covenants, etc.

The Minister, may, in his discretion, wholly or partially relieve any person from the liability to perform or observe any covenant, condition, agreement or stipulation binding on such person by virtue of any grant, lease or other disposition made under this Act or the existing laws, and may extend the time for the performance or observance of any such covenant, condition, agreement or stipulation.

[Ch5701s13]13. Implied covenants in leases

26 of 1988(1) In every lease granted under this Act there shall be implied such covenants with the Minister by or on behalf of the lessee as may be prescribed to the intent that such covenants shall continue in full force and effect (save where earlier satisfied) throughout the term granted:

26 of 1988Provided that any such implied covenant may, in the Minister's discretion, be expressly excepted from any such lease by the terms thereof, or may be expressly modified or varied thereby to such extent as the Minister may direct.

(2) In every lease granted under this Act there shall be implied a covenant with the Minister by or on behalf of the lessee that the lessee shall not undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Town and Country Planning where such grant is required under the Town and Country Planning Act. Cap. 23:01

[Ch5701s14]14. Minister's power of re-entry

On the breach or non-observance by a lessee of any of the covenants or conditions contained or implied in his lease, and on behalf of the lessee to be performed or observed, or if the lessee shall fail or neglect to comply with any orders, directions or instructions made or given under this Act, or if the lessee, or any one of them if more than one, shall become bankrupt or make any assignment for the benefit of his creditors or enter into an agreement or make any arrangement with his creditors for the liquidation of his debts by composition or otherwise, or shall suffer any execution to be levied on his effects, or, in the case of a lessee being a company, shall go into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory, then and in any of the said cases, the Minister may, without prejudice to any other right which he may have in law or in equity, determine the lease by notice in writing to the lessee or by re-entry on any part of the demised premises in the name of the whole.

[Ch5701s15]15. Exceptions and reservations

1 of 1981(1) Unless otherwise expressly stated in the lease there shall be implied in every lease exceptions and reservations of the following in favour of the Minister—

(a) All mines, royal and base minerals, mineral substances of every description, mineral oil deposits, quarries, gravel, stone, flints, chalk, sand, clay and other valuable earth upon, in or under any part of the demised premises with liberty to the Minister and any duly authorized officer to enter, search for, dig, win, take dress, make merchantable and carry away the same at his or their pleasure and to sink necessary pits and shafts, erect buildings and fix machinery and works they doing no wilful damage and making to the lessee reasonable compensation for any actual damage which he may sustain and a pro rata abatement of rent being allowed in respect of the extent of the surface so occupied or interfered with:

Provided always that the lessee may in accordance with the Mines and Minerals Act take from the demised premises for his own use any limestone and other materials suitable for building, road metalling or agricultural purposes so long as such limestone and other materials or any products manufactured therefrom are not sold for profit. Cap. 61:01

(b) The right, subject to any prior grant, lease or other disposition by the Minister thereof, to control, use or make dispositions of interest or rights in any running or stagnant water, the whole extent of which is not included within the boundaries of the demised premises.

(c) Right of way with or without vehicles or animals across the demised premises to and from any public land or land in the occupation of any lessee, tenant or licensee of the Minister.

(d) A right for any authorized officer with or without others to enter upon the demised premises and every part thereof including buildings thereon at all reasonable times for all reasonable purposes.

(2) Nothing in this section shall prejudice, or be deemed ever to have prejudiced, the vesting of the minerals in the President or a Minister under any law relating to minerals for the time being in force (whether before or after the commencement of the Mines and Minerals Act). Cap. 61:01

[Ch5701s16]16. Revision of rent

22 of 1989, 6 of 1990, 19 of 1995(1) There shall be implied in every lease granted by the Minister a right on the part of the Minister to revise the rent thereby reserved.

(2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this section, in respect of all leases, whether made before, on or after the commencement of this section, the Minister may, at any time, by order published in the Gazette, revise the rents thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents.

(3) In the case of leases for agricultural estates, the rent payable may, in respect of such crops as the Minister may specify by order published in the Gazette, be deducted from the proceeds of the sales of such crops at the auction floors or at other source of payment in accordance with such arrangements as the Minister may agree with the authorities of the auction floors or other source of payment.

[Ch5701s17]17. Matters not to be taken into account

In revising any rent the Minister shall not take into consideration any enhanced value of the demised premises attributable to improvements effected thereon by the lessee during the term of the lease.

[Ch5701s18]18. Procedure on alteration of rent

19 of 1995(1) If the Minister decides to alter a rental on revision, he shall cause the lessee to be notified in writing of the amount of the revised rental and the date from which it shall become payable, which date shall not be less than three months from the date of such notice.

(2) If the rental shall be increased on such revision, and if, within six months of the date of the notice, the lessee does not notify the Minister in writing that he objects to the revised rental and intends to terminate his lease in accordance with section 19, the revised rental shall become payable as from the date specified.

[Ch5701s19]19. Surrender in lieu of revision of rent

(1) If the lessee notifies the Minister of his intention to terminate his lease under section 18, he may surrender his lease to the Minister at any time before the date specified as the date on which the revised rental shall become payable.

(2) If the lessee fails to surrender his lease before such date the lease shall continue in full force and effect and the revised rental shall become payable as from the date specified.

[Ch5701s20]20. Compensation for improvements on surrender

If the lessee shall surrender his lease in accordance with section 19, he shall, upon registration of a Deed of Surrender in the Deeds Registry, be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term as the Minister may determine to be reasonable in all the circumstances.

[Ch5701s21]21. Acceptance of rent not to waive breach of covenant

The acceptance by the Minister of any rent reserved by a lease, or any part thereof, shall not constitute or be construed as a waiver of any previous breach by the lessee of any of the covenants or conditions contained or implied in the lease and on his part to be performed and observed.

[Ch5701s22]22. Authorized officer may distrain

An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or the existing laws, or any amendment thereto.

[Ch5701s23]23. Service of notices

Any notice required to be given under this Act or under any grant, lease or other disposition of land made thereunder, shall be deemed to be sufficiently served on a grantee, lessee or other person in favour of whom such other disposition is made, if addressed to him by prepaid registered post at his last known address, or, if such grantee, lessee or person is a company, at its registered office, or principal office or place of business in Malawi, and on the Minister if addressed to him by prepaid registered post at the Central Government Offices, Lilongwe.

[Ch5701s24]24. Fees

The prescribed fees shall be payable in respect of such matters as may be prescribed:

Provided that in any special case the Minister may remit or reduce any such fee.

[Ch5701s24A]24A. Prior written notification to Minister of intention to sell, etc., private land

7 of 1974(1) Any person who intends to offer for sale or otherwise to convey, lease, transfer or assign any private land shall, not less than thirty days before he makes such offer or otherwise conveys, leases, transfers or assigns, give notice in writing to the Minister of his intention. In this subsection "sale" includes any manner of selling or letting by bids.

(2) Any person who acts, or attempts to act, in contravention of the provisions of subsection (1) shall be liable to a fine of K1,000 and to imprisonment for a term of twelve months.

(3) Nothing in this section shall apply to—

(a) any offer of sale, conveyance, lease, transfer or assignment by or direct to the Government;

(b) any agreement to lease, or any lease, for a non-renewable term of not more than three years;

(c) any sale pursuant to any order of court or by any officer in the public service acting in his official capacity and pursuant to any written law;

(d) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good faith:

Provided that this paragraph shall not apply to any mortgage or hypothecation given for the purpose of the evasion or avoidance of the provisions of this section.

(4) The Minister may, by regulations published in the Gazette, prescribe forms for the purposes of this section.

[Ch5701s24B]24B. Grants of private land to persons who are not citizens of Malawi

6 of 2004 Any grant of private land to any person who is not a citizen of Malawi, whether by way of sale, conveyance, assignment, lease, transfer or other transaction, shall not be for an estate greater than a lease of 50 years unless, for reasons fully explained in writing accompanying the application for the registration of the grant, a greater estate is required for the realization of investment:

Provided that where, at the time of the transaction, the existing interest in the private land concerned is for an estate greater than 50 years, a grant of private land may be made extending up to the entire remaining estate.

[Ch5701s24C]24C. Restriction of sale of private land to persons who are not citizens of Malawi

6 of 2004 (1) Without prejudice to the requirements of section 24A or any other provision of this Act, no person shall sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless—

(a) the intention to sell the private land has been published in a newspaper in daily circulation in Malawi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land;

(b) following the publication referred to in paragraph (a), no person who is a citizen of Malawi has made an offer, or has been able, to purchase the private land at a price that is not lower than the published price; and

(c) the purchaser, if not a citizen of Malawi, has purchased the private land at a price that is not lower than the published price.

(2) Notwithstanding any provision to the contrary in any other written law, no title to private land shall pass under any sale made or purportedly made in contravention of subsection (1), but registration of title upon such sale shall be prima facie evidence of validity of title to the land.

[Ch5701s24D]24D. Freehold land held by non-residents who are not citizens of Malawi

6 of 2004 Where private land under freehold title is held by a person who is not a citizen of Malawi and who is not ordinarily resident in Malawi for a continuous period of more than two years and during that period such person has not shown or effected his intention to develop the land or dispose of it or to use or own the land jointly with a citizen or a permanent resident of Malawi, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law—

(a) by written notice to the person concerned addressed to his registered or his last known address in Malawi, demand voluntary surrender of the land by that person to the Government within a period of ninety days from the date of the notice;

(b) in the event that there is no voluntary surrender as demanded under paragraph (a)—

(i) acquire the land under the Lands Acquisition Act; and Cap. 58:04

(ii) consult with the Minister responsible for the Town and Country Planning Act for the exercise of the powers under section 55 of that Act. Cap. 23:01

[Ch5701s24E]24E. Gifts of private land between persons who are not citizens of Malawi

6 of 2004No title to private land shall pass as between persons who are not citizens of Malawi by way of a gift inter vivos.

## PART V

### CUSTOMARY LAND

[Ch5701s25]25. Vesting of customary land and mineral rights thereof in President

1 of 1981All customary land is hereby declared to be the lawful and undoubted property of the people of Malawi and is vested in perpetuity in the President for the purposes of this Act.

[Ch5701s26]26. Minister to administer and control customary land and mineral rights thereof

The Minister shall, subject to this Act, and to any other law for the time being in force, administer and control all customary land and all minerals in, under or upon any customary land, for the use or common benefit, direct or indirect, of the inhabitants of Malawi:

Provided that a Chief may, subject to the general or special directions of the Minister, authorize the use and occupation of any customary land within his area, in accordance with customary law.

[Ch5701s27]27. Acquisition of customary land for public purposes

1 of 1969(1) Wherever it appears to the Minister that any customary land is needed for a public purpose, that is to say a purpose which is for the benefit, direct or indirect, of the community as a whole, or a part of the community, he may declare, by notice under his hand and published in the Gazette, that such land is public land, and thereupon such land shall become public land:

Provided that this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, but such land shall be acquired for such purpose under or in accordance with the Public Roads Act. Cap. 69:02

(2) Whenever any customary land is required for temporary use for a public purpose, such use not being in the opinion of the Minister likely to necessitate occupation for a period in excess of 7 years, the Minister may authorize the temporary use and occupation of the land for such public



purpose, and such land shall remain customary land throughout the period of temporary use and occupation:

Provided that, on the expiry of such a period, the Minister may authorize such temporary use and occupation for a further period of three years.

[Ch5701s28]28. Compensation to individuals for loss, damage or disturbance

Any person who, by reason of—

- (a) any grant, disposition, permit or licence of or in respect of customary land, made or given by the Minister under section 5;
- (b) any declaration made under section 27 (1) that any such land is public land; or
- (c) the temporary use and occupation of customary land under section 27 (2),

suffers any disturbance of, or loss or damage to any interest which he may have or, immediately prior to the happening of any of the events above mentioned in this section, may have had in such land, shall be paid such compensation for such disturbance, loss or damage as shall be reasonable.

[Ch5701s29]29. Land no longer needed for public purpose

1 of 1969(1) Whenever it appears to the Minister that any public land is surplus to the requirements of the Government, he shall so declare by notice made under his hand and published in the Gazette, and thereupon such land shall become customary land.

(2) Notwithstanding any other provision of this Act, the Minister may give to any Chief directions relating to the disposition of customary land, or the occupation thereof by any persons or classes of persons specified in such directions, and may by such directions restrain any native authority or other person from procuring the removal of any such persons or classes of persons from customary land.

(3) The Minister may take such action as he may deem necessary to ensure compliance with any directions given by him under this section.

[Ch5701s30]30. Conversion of customary land to registered land

Nothing in this Act shall be construed as preventing the application of the Customary Land (Development) Act to any customary land and the subsequent registration of such land under the Registered Land Act as private land. Cap. 59:01, Cap. 58:01

## PART VI

### USER OF LAND

[Ch5701s31]31. Minister's power to regulate, manage or control the user of land

26 of 1988(1) Subject to this Act, the Minister may, from time to time, by Order under his hand and published in the Gazette, or by regulations made under section 39, or by directions or instructions made or given by him in writing in any individual case, make provision for regulating,

managing and controlling the user of all land other than public land or private land situate within a Municipality or Township:

Provided that before exercising any powers granted under this subsection, the Minister shall consult with and have regard to the views of the Minister for the time being responsible for the administration of the Town and Country Planning Act. Cap. 23:01

(2) Without derogation from the generality of subsection (1), any such Order, regulation, direction or instruction, may make provision regulating and controlling the use to which land may be put, the method of cultivation and growing of crops and keeping livestock, the maintenance of proper drainage of such land and the fencing, hedging and modes of access to such land, the preservation and protection of the source, course and banks of streams and generally for the good management and conservation of the soil, water, woodland, pasture and other natural resources thereof. Different Orders, regulations, directions or instructions may be made or given by the Minister in respect of different areas of land.

(3) If any person contravenes this section, or any regulation, direction or instruction made or given thereunder, he shall be liable to a fine of K200 and to imprisonment for six months, and, in the case of a continuing offence, to a further fine of K10 for every day during which the offence continues.

1 of 1969(4) If any person is convicted of an offence under this section, the Minister may by notice under his hand terminate that person's right (however arising) to occupy land in respect of which such offence was committed and such person shall, not more than thirty days after being given such notice, vacate the land. If he fails, omits or refuses so to vacate the land his use and occupation of it shall be unlawful.

[Ch5701s32]32. Failure to comply with regulations, directions or instructions

1 of 1969(1) If any person fails to comply within a reasonable time with the terms of any Order or with any regulation, direction or instruction made or given under section 27 (1) the Minister may by notice in writing under his hand require such person to make such compliance within such time as the Minister may specify in the notice.

(2) If any person to whom notice has been given under subsection (1) fails to comply with the terms thereof within the time specified the Minister may by further notice under his hand terminate that person's right (howsoever arising) to occupy the land to which the regulation, direction or instruction in question related and such person shall, not more than thirty days after being given such further notice, vacate the land. If he fails, omits or refuses to vacate the land his use and occupation of it shall be unlawful.

[Ch5701s33]33. Powers of entry on land

Any authorized officer may at all reasonable times enter upon any land to which section 31 (1) applies for the purpose of ensuring that this Part is being complied with.

[Ch5701s34]34. Obstruction and penalties

If any person obstructs or impedes any person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him by or under this Part, he shall be liable to the penalties provided for in section 31 (3) and subsection (4) of that section shall as well apply to that person so offending.

[Ch5701s35]35. Vesting of land after termination of right to occupy

Where, by virtue of section 31 (4) or 32 (2), the right of a person to occupy land is terminated by the Minister by Order, then, from the date of such Order, such land shall—

(a) if it is held by such person directly under a grant, lease or other disposition of public or customary land made under this Act or the existing laws, revert in the President as public land;

(b) if it is held by such person under a lease, licence or other disposition of private land, revert in the person entitled to the land on the termination of the lease, licence or interest created by such other disposition;

(c) in any other case, become vested in the President as public land.

[Ch5701s35A]35A. Repealed by 21 of 1970

[Repealed by 21 of 1970].

## PART VII

### TRESPASS OR ENCROACHMENT UPON, OR UNLAWFUL OCCUPATION OF, LAND

[Ch5701s36]36. Summons in a Magistrate's Court for trespass, encroachment or unlawful occupation

(1) If any person trespasses or encroaches upon any public land or any private land or is deemed under this Act to be in unlawful use or occupation of any such land then the magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by the person having lawful title to the land, issue a summons to such first-mentioned person (hereinafter referred to as the "defendant") requiring him to attend at the court of that magistrate to answer such complaint. Upon the hearing of the summons, the magistrate, if he is satisfied that such person has trespassed or encroached upon the land, or is, or is deemed to be, in unlawful use or occupation thereof, make an order requiring the defendant, his family or other dependants (if any) to vacate the land within seven days, or such other longer period as the magistrate shall determine, of the making of such order by the magistrate. If the defendant fails to comply with such an order he may be removed from the land by any authorized officer, police officer or officer of the court authorized in that behalf and for that purpose by the magistrate.

Summons in a Traditional Court for trespass, encroachment or unlawful occupation

(2) If any person trespasses or encroaches upon any customary land or is deemed under this Act to be, in unlawful use or occupation of any such land then the Traditional Court having jurisdiction in the area where the land is situated may, upon a sworn complaint being made to it by, or on behalf of, the Minister, or by, or on behalf of, the Chief having jurisdiction in that area, issue a summons requiring such first-named person (hereinafter referred to as "the defendant") to attend

before the Traditional Court to answer the complaint. Upon the hearing of the summons the Traditional Court may, if it is satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be, in unlawful use or occupation thereof, make an order requiring the defendant, his family or other dependants (if any) to vacate the land within seven days, or such other longer period as the Traditional Court may determine, from the date of the making of the order by the Traditional Court. If such person fails to comply with the order, he may be removed from the land by any authorized officer, police officer or officer of the Traditional Court authorized by the Traditional Court in that behalf.

Right of the defendant to remove from the land any property legally or equitably belonging to him

(3) When determining in accordance with subsection (1) or subsection (2), the period of time which shall be allowed to a defendant within which to vacate the land, the magistrate or, as the case may be, the Traditional Court shall take into consideration the period of time which may reasonably be required to enable the defendant, if he be so minded, for his own use and benefit—

(a) to take down, disassemble and remove from the land, or any part thereof, any buildings, structure, fence or improvement of any kind whatsoever which he may have erected upon or made to the land;

(b) to harvest, collect, take-in and remove from the land or any part thereof, any crops, plants, trees, shrubs or other matter which he may have sown, planted or cultivated on the land during his occupation thereof; and

(c) to remove from the land any chattels belonging to him.

(4) The provisions of this section shall be in addition to, and not in substitution for, the provisions of any other law relating to ejection from land.

[Ch5701s37]37. Procedure

The practice and procedure to be observed in any proceedings in the magistrate's court or in the Traditional Court under this Part, shall be the practice and procedure prescribed by, in or under the Courts Act and the Traditional Courts Act respectively, with such variation as to forms or otherwise as this Part, and the circumstances of the case, may require. Cap. 3:02, Cap. 3:03

## PART VIII

### MISCELLANEOUS

[Ch5701s38]38. Minister to act subject to the directions of the President

The Minister, in the exercise of his functions under this Act, shall act subject to the general or special directions of the President.

[Ch5701s39]39. Minister empowered to make regulations

Subject to this Act, the Minister may, from time to time, make regulations for any of the purposes of this Act and to give effect thereto and, in particular, may by such regulations prohibit the unlawful or unauthorized use or occupation of land, and may prescribe as penalties for the

breach of any such regulation a fine not exceeding K200, or imprisonment for a term not exceeding six months, or both such fine and imprisonment and, in the case of a continuing breach, a further fine not exceeding K10 for everyday during which the breach continues.

[Ch5701s40]40. Certificate of Minister to be prima facie proof

In any proceedings before a court in which the question arises as to whether or not any land is public land, private land or customary land, a certificate purporting to be signed by the Minister shall be prima facie proof that the land is public land, private land or customary land, as the case may be.

[Ch5701s40A]40A. Proof of citizenship in relation to land transactions

6 of 2004 Where, in relation to any land transaction, a person who is party to such transaction is required, whether as a matter of law, procedure or practice, to disclose his citizenship to the Minister and claims to be a citizen of Malawi, he shall furnish to the Minister evidence of proof of his Malawi citizenship in accordance with the Malawi Citizenship Act or other applicable law in Malawi. Cap. 15:01

[Ch5701s41]41. Minister's powers of delegation

1 of 1969, 26 of 1988(1) The Minister may, by notice published in the Gazette, depute any authorized officer to exercise and perform such of the Minister's powers or duties under this Act as he may specify in the notice.

26 of 1988(2) Any authorized officer deputed under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 5 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Town and Country Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

[Ch5701s42]42. Minister's power to adapt or modify other laws

The Minister may, by notice published in the Gazette, provide that any other Act, or any subsidiary legislation made thereunder, shall be read and construed with such adaptations or modifications as may be necessary to bring that Act or subsidiary legislation into conformity with this Act.

[Ch5701s43]43. Saving

Any grant, right of occupancy, disposition, permit or licence made, issued or given under or by virtue of the existing laws (now revoked or repealed) shall be as valid, and shall have effect, as if they were made, issued or given under this Act.

[Ch5701s44]44. Saving with respect to mining

Nothing in this Act shall prejudice the grant or issue under the Mines and Minerals Act of any licence or permit, or the exercise of rights conferred on the holder of any such licence or permit or any claim by that Act. Cap. 61:01

## SCHEDULE

### PART I

The Nyasaland Protectorate (African Trust Land) Orders in Council, 1950 to 1963. G.N. 180/1950 to G.N. 251/1963

The Malawi (African Trust Land) (Modification) Order, 1964. G.N. 114/1964(M)

### PART II

8 of 1951 The Public Lands Ordinance.

## SUBSIDIARY LEGISLATION

### NOTE

#### DEFINITION OF "PUBLIC LAND"

under s. 2

Paragraph (b) of the definition of "public land" in section 2 of the Act continues in force the following proclamations made under sections 8 (1), 11 (1) and 11 (2), respectively, of the Nyasaland Protectorate (African Trust Land) Order in Council, 1950 (now repealed)—

(a) under section 8 (1):

G.N. 44 of 1951, 101 of 1952, 102 of 1952, 142 of 1952, 145 of 1952, 146 of 1952, 152 of 1952, 153 of 1952, 160 of 1952, 161 of 1952, 206 of 1952, 1 of 1953, 36 of 1953, 49 of 1953, 50 of 1953;

(b) under section 11 (1):

G.N. 58 of 1953, 59 of 1953;

(c) under section 11 (2):

G.N. 60 of 1953, 61 of 1953.

#### LAND (DEVELOPMENT OF LAKESHORE PLOTS) (CONTROL) ORDER

under ss. 26 and 31

G.N. 42/1988

24/1997

#### 1. Citation

This Order may be cited as the Land (Development of Lakeshore Plots) (Control) Order.

## 2. Control

(1) On the land described in the First Schedule hereto no person shall, without the prior consent of the Minister—

- (a) enter into occupation of any plot or property;
- (b) erect a cottage or a building structure of any description whatsoever;
- (c) fence any plot, property or structure;
- (d) in respect of any rights to land, pay compensation to a chief, village headman or other traditional authority by whatsoever title designated or to any person whomsoever; and
- (e) do or perform any thing or act (including the clearing of grounds or the planting of trees, shrubs or other vegetation) in preparation of, or connected with, the foregoing activities.

(2) The provisions of subparagraph (1) shall not apply—

- (a) to the indigenous people of Malawi living in the area in the enjoyment of their customary rights in relation to their traditional livelihood, dwelling, commerce and business and the sustenance of an economic and improved standard of living;
- (b) in respect of properties developed or being developed or authorized for development before the commencement of this Order;
- (c) to extensions to an existing property not exceeding 10 per cent of the area of its structure or to adjustments or repairs to an existing property:

Provided that in the case of subparagraphs (b) and (c), the Minister may at any time require alterations of any nature to be made to existing developments or plans if he considers such alterations to be desirable in the public interest or for the espousing or protection of the customary rights of the indigenous people of Malawi living in the area;

(d) to the development of hotels, inns and other establishments directly related to the promotion of tourism in Malawi and if a certificate to that effect in Form I set out in the Second Schedule has been issued by the Department of Tourism.

## 3. Form and conditions of Minister's consent

The consent of the Minister shall be in Form II set out in the Second Schedule and shall be subject to—

- (a) the following general conditions, that is to say, that:
  - (i) the grantee shall not suffer anything or act to be done or performed which is injurious to public safety or public health or which interferes, in any degree whatsoever, with the customary rights of the indigenous people of Malawi living in the area;

(ii) the grantee shall develop his property or otherwise carry out development work on his property only in accordance with such specific or general recommendations of the Commissioner as he may deem necessary or relevant in regard to factors of environment, sanitation, location from the water front and customary easements;

(iii) the grantee shall at all reasonable times permit the Commissioner to enter and inspect the premises for the purposes of this Order;

(iv) any lease or other title deeds held by the grantee pertaining to the property concerned shall, for non-compliance with the provisions of this Order as determined by the Commissioner, be surrendered forthwith upon demand by the Commissioner; and

(b) such special conditions as the Minister may endorse on the consent.

#### 4. Fees

The fees specified in the Third Schedule shall be payable in respect of the matters respectively specified in that Schedule and in the case of the application fee such fee shall be non-refundable notwithstanding that the application has not been granted.

#### FIRST SCHEDULE para. 2, G.N. 24/1997

##### 1. THE MANGOCHI LAKESHORE AREA

All that piece and parcel of land containing an area of five two seven nought (5270) hectares or thereabouts situate in the eastern and western shores of Lake Malawi in the Mangochi District the boundaries whereof are shown on the Survey Department Sketch Plan No. 220/86 and thereon edged with red colour and are otherwise described as follows—

(1) Western Lakeshore Area: From the Mangochi Township boundary along the M15 road northwards to its junction with the D110 road; thence along the D110 road to its junction with the S39 road; thence along the S39 road to its junction with the D231 road; thence along the D231 road to its junction with the M18 road; thence along the M18 road to the Mangochi District/Ntcheu District boundary; thence northwards along Nankolukolo Stream to the mouth of that stream.

(2) Eastern Lakeshore Area: From the Mangochi Township boundary along the M3 road to its junction with the S58 road; thence along the S58 road northwards to its junction with the D228 road; thence along the D228 road to its junction with the undesignated road between Makanjira and Fort Maguire Ruins and thence along that undesignated road to the said ruins.

##### 2. THE CENTRAL AND NORTHERN REGIONS LAKESHORE AREAS G.N. 24/1997

All that piece and parcel of land containing two two three eight seven four point five zero (223,874.50) hectares or thereabouts situate in the shores of Lake Malawi in the Central and Northern regions the boundaries whereof are shown on the Survey Department Sketch Plans Nos. SP 380/95, SP 381/95, SP 382/95, SP 383/95, SP 384/95 and SP 419/95 and thereon edged with red colour and are otherwise described as follows—



Commencing at point No. 1 where the Southern Region Boundary crosses the Lake GR 6878421; thence following the regional boundary down to where it crosses the M10 road from Monkey Bay; thence following the M10 road to where it joins the Lakeshore road M5 (Mtakataka turn-off); thence following the M5 road to Chipoka; thence following the M5 road to Salima; thence following the M5 road to Benga; thence following the M5 road to Nkhotakota; thence following the M5 road to Liwaladzi; thence following the M5 road to where the S113 road joins the M5 road near Lawrence Kachulu Village; thence following the M5 road to Chintheche; thence following the M5 road to Nkhata Bay Boma; thence following the eastern direction to the coastline of Lake Malawi; thence following the coastline of Lake Malawi down in a southern direction to the place of commencement which is point No. 1 GR 6878421.

Commencing at Mlowe Post Office in Rumphu District which is situated along the shores of Lake Malawi, following the unidentified road in the northern direction to where this road joins the M1 road at Chiweta; thence following the M1 road up to the junction of M1 and S102 that goes to Chilumba, the boundary follows the M1 road to Nyungwe; thence following the D117 road to Songwe River which borders the Republic of Tanzania and the Republic of Malawi; thence following the said Songwe River to the shores of Lake Malawi; thence the boundary follows the coastline of Lake Malawi in a southern direction to the place of commencement at Mlowe Post Office.

SECOND SCHEDULE para. 2 (2) (d) and 3

FORM I—FORM OF TOURISM PROMOTION CERTIFICATE

MALAWI GOVERNMENT LAND ACT

( CAP. 57:01)

LAND (DEVELOPMENT OF LAKESHORE PLOTS) (CONTROL) ORDER

(UNDER PARA. 2 (2) (d))

TOURISM PROMOTION CERTIFICATE

CERTIFICATE No. ....

AREA: (including the Department of Survey Sketch Plan No.)

.....

PLOT NUMBER: .....

ESTIMATED VALUE OF THE DEVELOPMENT: K .....

DEEDS OF TITLE HELD: .....

DEVELOPER-NAME: .....

.....

Address: .....

.....

Nationality: .....

In the case of individuals, if not Malawian, state the following passport details—

(i) Number: .....

(ii) Date of Expiry: .....

(iii) Nationality: .....

This is to certify that the development of the Plot described above is in the interest of promoting the tourist industry in Malawi and will be undertaken to establish a (state whether hotel, inn, rest house, club or other tourist resort) .....

.....

and that the plans have been inspected and the site visited for verification

Date .....

Signed .....

Chief Tourism Officer

(Official Stamp)

FORM II—FORM OF THE MINISTER’S CONSENT

MALAWI GOVERNMENT LAND ACT

( CAP. 57:01)

LAND (DEVELOPMENT OF LAKESHORE PLOTS) (CONTROL) ORDER

CONSENT No. ....

AREA: (including the Survey Department Sketch Plan No.)

.....

PLOT NUMBER: .....

NATURE OF DEVELOPMENT: .....

.....

.....

This is to certify that the Minister’s consent has been granted to (name of grantee)

.....

.....

to develop, or carry out development work on, the plot described above subject to the provisions of the Land Act and to the general conditions stipulated in the Land (Development of Lakeshore Plots) (Control) Order, and to the special conditions stated hereunder.

Date ..... Signed .....

Commissioner for Lands

(Official Stamp)

SPECIAL CONDITIONS

1. ....  
.....  
.....
2. ....  
.....

THIRD SCHEDULE para. 4

FEES

Matter Fee

K t

- |   |     |                    |
|---|-----|--------------------|
| 1. On application for the Minister's consent      | 10  | 00, non-refundable |
| 2. For the issue of Tourism Promotion Certificate | 100 | 00                 |
| 3. For the grant of the Minister's consent        | 75  | 00                 |

CONTROL OF LAND (AGRICULTURAL LEASES) ORDER

under s. 31

G.N. 13/1990

49/1994

1. Citation

This Order may be cited as the Control of Land (Agricultural Leases) Order.

2. Prohibition against transfers of customary land to private land

(1) No customary land throughout Malawi, except customary land in an area specified in the Schedule, shall be leased for an agricultural estate unless the Minister has, by writing under his hand, authorized the grant of such lease.

(2) Where the Minister authorizes the leasing of customary land for an agricultural estate in an area other than an area specified in the Schedule, he shall cause notice thereof to be published in the Gazette and such notice shall specify—

- (a) the exceptional circumstances necessitating the grant of the lease;
- (b) the name of lessee;
- (c) the term of the lease;
- (d) the description of the land comprised in the lease; and
- (e) the user of land comprised in the lease.

3.

[Deleted by G.N. 49/1994]

SCHEDULE para. 2 (1)

#### AREAS WHERE CUSTOMARY LAND MAY BE LEASED FOR AGRICULTURAL ESTATES

(1) Karonga Agricultural Development Division—

- (a) Chitipa Rural Development Project Area
- (b) Karonga Rural Development Project Area

(2) Mzuzu Agricultural Development Division—

- (a) Rumphi Rural Development Project Area
- (b) Central Mzimba Rural Development Project Area
- (c) South Mzimba Rural Development Project Area
- (d) Nkhata Bay Rural Development Project Area

(3) Lilongwe Agricultural Development Division—

Dedza Hills Area

(4) Salima Agricultural Development Division—

- (a) Nkhotakota Rural Development Project Area
- (b) Bwanje Valley Area

(5) Liwonde Agricultural Development Division—

Mangochi Rural Development Project Area

(6) Ngabu Agricultural Development Division—

- (a) Chikwawa Rural Development Project Area
- (b) Nsanje Rural Development Project Area

CONTROL OF LAND (BUA/RUSA DEVELOPMENT AREA) ORDER

under s. 31

G.N. 172/71

1. This Order may be cited as the Control or Land (Bua/ Rusa Development Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub; and
- (c) erect any building of any description whatsoever.

SCHEDULE

All that piece or parcel of land containing an area of 318,407.24 (three hundred and eighteen thousand four hundred and seven decimal point two four) acres or thereabouts known as Bua/Rusa Development area in the Kasungu/Mchinji Districts the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 26/71 are as follows—

Commencing at a point where the Kasungu/Mchinji road crosses the Rusa River map Grid ref. WA472—271, thence following the Kasungu/Mchinji S19 road in a south-westerly direction to a point map Grid ref. WV139-980, thence in a straight line due west for a distance of approximately 98,000 ft. to a point map Grid ref. VV840—980, thence in a straight line due north for a distance of approximately 47,000 ft. to a point on the Malawi/Zambia International boundary map Grid ref. VA840—120, thence following the said Malawi/Zambia International boundary in a north, east and northerly direction to its junction with the Kasungu National Park boundary map Grid ref. VA917—238, thence following the said Kasungu National Park boundary in a north-east direction to its junction with the Navumbi River map Grid ref. WA077—309, thence following the said Navumbi River down river to its confluence with the Rusa River map Grid ref. WA169—240, thence following the said Rusa River down river in an easterly direction to the point of commencement.

CONTROL OF LAND (CHIFUPA RIDGE TEA AREA) ORDER

under s. 31

1. This Order may be cited as the Control of Land (Chifupa Ridge Tea Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub; and
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising an area of 5,732.8 (five thousand seven hundred and thirty-two decimal point eight) acres or thereabouts commencing at a point situate on summit of an unnamed hill (Grid Reference 262—509, Sheet 1134 A3) the boundary shall run in a straight line for approximately 3,400 feet on a true bearing of 196 degrees 00 minutes; thence in a straight line for 5,250 feet on a true bearing of 209 degrees 30 minutes; thence in a straight line for 4,900 feet on a true bearing of 202 degrees 30 minutes; thence in a straight line for 7,200 feet on a true bearing of 232 degrees 30 minutes; thence in a straight line for 3,900 feet on a true bearing of 178 degrees 30 minutes; thence following a track in a westerly direction for approximately 11,250 feet; thence in a straight line for 2,400 feet on a true bearing of 24 degrees 00 minutes; thence in a straight line for 6,800 feet on a true bearing of 9 degrees 00 minutes; thence in a straight line for 4,900 feet on a true bearing of 23 degrees 30 minutes; thence in a straight line for 3,900 feet on a true bearing of 38 degrees 30 minutes; thence in a straight line for 7,550 feet on a true bearing of 55 degrees 30 minutes; thence in a straight line for 9,500 feet on a true bearing of 89 degrees 30 minutes to the point of commencement which said piece or parcel of land is more particularly described on Survey Department Sketch Plan Number 27/69.

#### CONTROL OF LAND (CHILUMBA AREA) ORDER

under s. 31

G.N. 87/1972

1. This Order may be cited as the Control of Land (Chilumba Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 4,409 (four thousand four hundred and nine) acres or thereabouts situate at Chilumba in the Karonga District the boundaries whereof (as delineated in red on Survey Department Sketch Plan No. 199/71) are as follows—

The Northern Boundary follows the line of the foothills of Mphiri Hill in an approximately westerly direction from a point immediately north of French's Club House on the shores of Deep Bay (approximate grid reference 88476250. 6367000 E) to a point on the northern bank of the Tcharo Stream (approximate grid reference 88 468 000 N 6360 000 E) and from that point follows the course of the said stream to a point to the north of Chilumba Secondary School (grid reference 88 475 000 6350 000). From that point the township boundary follows the Northern Boundary of the Secondary School in a general westerly direction to a point 88 474 000 6347 000, and then proceeds in a general southerly direction to a point on the shore of Youngs Bay to the east of Mwamtawale Village (88 448 000 N 6358 000 E).

#### CONTROL OF LAND (DWANGWA SUGAR PROJECT) ORDER

under s. 31

G.N. 178/1975

1. This Order may be cited as the Control of Land (Dwangwa Sugar Project) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

ALL THAT piece or parcel of land comprising 48,750 (forty-eight thousand, seven hundred and fifty) hectares or thereabouts.

Commencing at the Mouth of the Mkoma/Khuyu River at G.R. 113436, along the river to the confluence of the Mkoma and Khuyu Rivers at G.R. 098425, along the Khuyu River to the point where it crosses the New Lakeshore Road line at G.R. 084427, along the Road line to the point where it is crossed by an un-named stream at G.R. 095389, along the un-named stream to one of its sources as G.R. 084360, in a straight line to a point on the Mkoma River at G.R. 059382, along the Kangoza Stream to G.R. 061360, in a straight line to a point on the Luluzi River at G.R. 068321, in a straight line to the source of an un-named stream at G.R. 080311, along the stream to G.R. 088309, in a straight line to a point on the Changanjo Stream at G.R. 090287, in a straight line to a point on the Kaungozi River at G.R. 102257, in a straight line to a point on the Mazunguza Stream at G.R. 118230, along the Mazunguza Stream to its confluence with the Kaungozi River at G.R. 137228, along the Kaungozi River to its confluence with the Rupashe River at G.R. 146180, along the left bank of the Rupashe River to its confluence with the Dwangwa River at G.R. 191174, along the right bank of the Dwangwa River to G.R. 181164, in a straight line to G.R. 1941150, in a straight line to G.R. 193133, along the Mowi Stream to its source at G.R. 176110, in a straight line to the source of an un-named stream at G.R. 177107, along the stream to G.R. 217093, along an un-named stream to its source at G.R. 226078, in a straight line to G.R. 229072, along an un-named stream to G.R. 239093, along an un-named stream to G.R. 236059, in a straight line to G.R. 245053, in a straight line to G.R.

239041, in a straight line to G.R. 237034, in a straight line to G.R. 228018, following the boundary of the Nkhotakota Game Reserve to the Liwaladzi River at G.R. 237008 and then to G.R. 229998, then continuing to follow the Game Reserve boundary which is denoted by a cleared path along the base of the escarpment to G.R. 250907.5, along an un-named stream to its confluence with the Bua River at 285898, along the left bank of the Bua River to G.R. 366887, in a straight line to G.R. 357893, in a straight line to G.R. 344885, in a straight line to G.R. 333890, following the road line along the western edge of the Dzado Swamp to a point on the Matumbi Stream at G.R. 308960, along the Matumbi Stream to its mouth at G.R. 309960, thence following the Lake Malawi Shore line northwards to the commencement point at G.R. 113437, which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 68/75 and thereon edged with red colour.

#### CONTROL OF LAND (HARA IRRIGATION PROJECT) ORDER

under s. 31

G.N. 170/1969

1. This Order may be cited as the Control of Land (Hara Irrigation Project) Order.

2. It shall be an offence under section 31 of the Act for any person, without the prior consent in writing of the Minister or his authorized representative, to do any of the following things on the land specified in the Schedule hereto—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land commencing at a point on the Hara River at map Grid Reference 622 600—8 838 700; thence proceeding down the Hara River in an easterly direction to the Livingstonia—Karonga road at map Grid Reference 631 750—8 839 100; thence in a northerly direction along the Livingstonia-Karonga road to a point in the vicinity of Mnakanyamali Village at map Grid Reference 631 800—8 842 200; thence along the Mnakanyamali-Kapika road in a north-westerly direction to a point at map Grid Reference 622 100—8 845 200; thence in a southerly direction to the point of commencement on the Hara River the boundaries whereof are delineated on Survey Department Sketch Plan No. 103/69 and are thereon edged with red colour.

#### CONTROL OF LAND (KASINDULA IRRIGATION AREA) ORDER

under s. 31

G.N. 30/1969

1. This Order may be cited as the Control of Land (Kasindula Irrigation Area) Order.



2. On the land described in the Schedule hereto no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 8,788.31 (eight thousand seven hundred and eighty-eight decimal point three one) acres or thereabouts commencing at the junction of the Chikwawa—Chiromo and Chikwawa—Mwanza roads at Grid Reference 922,264 (1634 B2), by the Chikwawa—Chiromo road in a south-easterly direction for approximately five miles to a point just south of the Masea road turn-off Grid Reference 962,195; thence in a straight line due west for approximately 4.4 miles Grid Reference 891,195; thence in a straight line due north for approximately 0.8 miles Grid Reference 891,208; thence in a straight line in a north-westerly direction for approximately 0.6 miles Grid Reference 882,212; thence in a straight line in a north-easterly direction for approximately 1 mile Grid Reference 891,224; thence in a straight line due north for 1.1 miles to a point on the Chikwawa—Mwanza road; thence following the Chikwawa—Mwanza road in a north-easterly direction for approximately 2.4 miles to the Chikwawa—Chiromo turn-off being the point of commencement which premises are delineated on Survey Department Sketch Plan No. 212/68 and are thereon edged with red colour.

#### CONTROL OF LAND (KASUNGU SMALLHOLDER FLUE-CURED TOBACCO DEVELOPMENT PROJECT AREA) ORDER

under s. 31

G.N. 89/1973

1. This Order may be cited as the Control of Land (Kasungu Smallholder Flue-cured Tobacco Development Project Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 43,544 (forty-three thousand five hundred and forty-four) acres or thereabouts situate in the Linyangwa area in the Kasungu District the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 97/73 are as follows—

Commencing at the confluence of the Lisitu and Kunga Streams, at grid reference: WA322—589. Thence, along the Kunga upstream to its source, at grid reference: WA368—483. Thence in a north-easterly direction to the confluence of the Kalindi Stream and an unnamed tributary, at grid reference: WA383—487. Thence, upstream along the Kalindi Stream to its source, at grid reference: WA379—477. Thence on a straight line southerly direction to an unnamed dambo, on grid bearing of 168°, at a distance of approximately 7,400 feet, at grid reference: WA384—455. Thence, along the said dambo, in as south-westerly direction up to a grid reference: WA372—440, the source of another unnamed dambo. Thence in a generally south-westerly direction along the unnamed dambo, to grid reference: WA290—404. Thence in a straight line on grid bearing of 217°, for approximately 8,300 feet to grid reference: WA275—384 near the south of an unnamed dambo. Thence, along the said dambo, in a southerly direction to grid reference: WA275—357. Thence, along the said dambo in a north-westerly direction to grid reference: WA239—387, the source of the unnamed dambo. Thence on grid bearing of 326°, for approximately 5,400 feet, at grid reference: WA230—401, the source of an unnamed dambo. Thence, along the said dambo in a north-easterly direction, until it joins the National Park Boundary, at the source of Lisitu Stream, grid reference: WA240—413. Thence along the National Park Boundary (Lisitu Stream) to the point of commencement, grid reference: WA322—589.

#### CONTROL OF LAND (KAWALAZI TEA AREA) ORDER

under s. 31

G.N. 27/1969

1. This Order may be cited as the Control of Land (Kawalazi Tea Area) Order.
2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—
  - (a) make any new garden;
  - (b) plant any tree or shrub;
  - (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 6,416.20 (six thousand four hundred and sixteen decimal point two nought) acres or thereabouts commencing at triangulation station 65 NYT, Chirundwe, Grid Reference 243,159 (1134 01), by a straight line in a south westerly direction for approximately 3.2 miles to the summit of a hill Grid Reference 22 113; thence in a straight line in a westerly direction for approximately 2.4 miles to the summit of a hill Grid Reference 186 123 on the watershed between the Kawalazi and Kavuzi Rivers; thence following the said watershed in a northerly direction for approximately 3.5 miles to the summit of a hill Grid Reference 185 178; thence in a straight line in an easterly direction for approximately 3.8 miles to the triangulation station 65 NYT being the point of commencement all which premises are delineated on Survey Department Sketch Plan No. 200/68 and are thereon edged with red colour.

#### CONTROL OF LAND (KAWALAZI TEA AREA EXTENSION) ORDER

under s. 31

G.N. 121/1969

1. This Order may be cited as the Control of Land (Kawalazi Tea Area Extension) Order.

2. On the land described in the Schedule no person shall, without the consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 1,944 (one thousand nine hundred and forty-four) acres or thereabouts commencing at Triangulation Station 65 NYT Map Grid Ref. 243.159; thence by a straight line in a westerly direction for a distance of 3.8 miles to Grid Ref. 185.177 which said line is the northern boundary of the Kawalazi Control Area as shown on Survey Department Sketch Plan No. 200/68 attached to the Control of Land (Kawalazi Tea Area) Order 1969 registered as Deed Number 35002; thence along a straight line in a north-north-easterly direction for a distance of 1,000 yards to Grid Ref. 187.186 at the source of Ndalunguwa Stream; thence downstream along the Ndalunguwa Stream in an easterly direction to its confluence with the Lwambadza River; thence downstream along the Lwambadza River in a south-easterly direction for a distance of 200 yards to its confluence with an unnamed stream Grid Ref. 228.178; thence in a south-easterly direction along the unnamed stream to its source; thence in a straight line to the point of commencement. All which premises are delineated on Survey Department Sketch Plan No. 57/69 and are thereon edged with red colour.

#### CONTROL OF LAND (LILONGWE CONTROLLED AREA) ORDER

under s. 31

G.N. 169/1972

1. This Order may be cited as the Control of Land (Lilongwe Controlled Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 110,076 acres or thereabouts in the Lilongwe District.

Commencing one mile South of Lumbadzi market on the Great North road at its junction with the short-cut to the Salima Road, thence following the said short-cut to the Salima Road, thence along the Salima road for  $\frac{3}{4}$  mile to the culvert across the Nakapeche stream at map reference WV 939723, thence by the Nakapeche stream down stream to its confluence with the Ngoma stream, thence by the Ngoma stream downstream to its confluence with the Nvumbu stream, thence by the Nvumbu stream downstream to its confluence with the Chitenta stream, thence by the Chitenta stream downstream to its confluence with the Chimwa stream, thence by the Chimwa stream downstream to its confluence with the Lilongwe river, thence by the Lilongwe river downstream to its confluence with the Nanjire river, thence by the Nanjire river upstream to the point where it is crossed by main Dedza/Lilongwe road, thence along the main Dedza/Lilongwe road in a northwesterly direction to the point where the road crosses the Capital City boundary in an anti-clockwise direction to the confluence of the Lingadzi river and the Kamankuku dambo at G.R. WV 807582, thence upstream along the Lingadzi river to its confluence with the Mteza stream at G.R. WV 786607, thence upstream along the Mteza stream to its confluence with the Ciwangombe dambo at G.R. WV 751778, thence upstream along the Ciwangombe to its confluence with an unnamed dambo at G.R. WV 728807, thence up the unnamed stream in a northerly direction to G.R. WV 732836, thence across the watershed in a north-easterly direction to G.R. WV 737842 at the head of an unnamed dambo, and downstream to its confluence with the Mapanda dambo at G.R. WV 743843, thence upstream along the Mapanda dambo to the point where it crosses the Lilongwe District boundary at G.R. WV 730863, thence easterly and southerly along the Lilongwe District boundary to the Lumbadzi river bridge on the Lilongwe—Kasungu road, thence southerly along the Lilongwe—Kasungu road to the point of commencement the boundaries whereof are for the purpose of illustration shown on Survey Department Sketch Plan No. 91/71 attached hereto and thereon edged with red colour.

#### CONTROL OF LAND (LIWONDE CONTROLLED AREA) ORDER

under s. 31

G.N. 98/1970

1. This Order may be cited as the Control of Land (Liwonde Controlled Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All those three pieces or parcels of land marked Extension Block I, Extension Block II and Extension Block III on Survey Department Sketch Plan No. 34/70 and thereon edged in red colour

together comprising 1,476 (one thousand four hundred and seventy-six) acres or thereabouts; commencing at a point on the Liwonde—Balaka road some two miles from the west bank of the Shire River, the boundary follows a straight line in a northerly direction for 500 feet; thence by a line parallel to the main Liwonde—Balaka road in a south-easterly direction for approximately 4,000 feet to where it meets a small unnamed stream; thence by the said unnamed stream downstream in an easterly direction to its confluence with the Shire River; thence by the west bank of the Shire River in a northerly direction for approximately two miles to a point opposite its confluence with Likwenu Stream; thence across the Shire River and by the Likwenu Stream upstream for approximately three miles to where it meets the Liwonde Nacala railway; thence by the Liwonde—Nacala railway in a westerly direction for approximately 3,000 feet; thence in a straight line in a south-westerly direction for approximately 11,700 feet to the most southerly corner of the old Liwonde Estate SD/356; thence by the southern boundary of the said estate in a westerly direction to the Shire River; thence across the Shire River and by its west bank in a northerly direction for approximately 2,000 feet to its confluence with an unnamed stream; thence by the said unnamed stream upstream for approximately 4,000 feet; thence by a straight line in a north-easterly direction for approximately 8,000 feet to a point distant 500 feet from the centre of the main Liwonde—Balaka road on its south side; thence by a line parallel to the main Liwonde—Balaka road in a north-westerly direction for approximately 6,400 feet; thence by a straight line in a northerly direction for 500 feet to the point of commencement.

Excepting and reserving therefrom all that area edged in red colour on Sketch Plan No. 92/68 annexed to Government Notice No. 166 of 1968 and registered as Deed No. 34453.

#### CONTROL OF LAND (LIWONDE CONTROLLED AREA) ORDER

under s. 31

G.N. 193/1971

1. This Order may be cited as the Control of Land (Liwonde Controlled Area) Order.
2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—
  - (a) make any new garden;
  - (b) plant any tree or shrub;
  - (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of (875) eight hundred and seventy-five acres shown edged red on Survey Department Sketch Plan No. 94/71 and bounded as follows—

From the point where the existing Control Order boundary leaves the Nacala Rail line in a south-westerly direction, eastward along the line of rail to a point where the Likwenu Stream crosses the railway, thence up the Likwenu Stream to its junction with the first small unnamed stream,

thence in a south-westerly direction in a straight line to the south-west survey beacon of the Liwonde Estate SD 356, thence following the boundary of the existing Control Order.

#### CONTROL OF LAND (LUWEYA IRRIGATION SCHEME) ORDER

under s. 31

G.N. 155/1972

1. This Order may be cited as the Control of Land (Luweya Irrigation Scheme) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 7,055 (seven thousand and fifty-five) acres or thereabouts situate at Luweya in the Nkhata Bay District the boundaries whereof (as delineated in red on Survey Department Sketch Plan No. 105/72) are as follows:

Commencing at a point where the Chinteche/Nkhata Bay road crosses the Luweya river at grid ref. XB. 308—981; thence along the said road in a south-westerly direction for a distance of approximately 1,000 ft. at grid ref. XB. 305—980; thence by a cut line on a grid bearing of 313° for a distance of approximately 2,200 ft. at grid ref. XB. 300—985; thence by a cut line on a grid bearing of 216° for a distance of approximately 13,800 ft. at grid ref. XB. 275—951; thence by a cut line due west on a grid bearing of 270° for a distance of approximately 1,300 ft. at grid ref. XB. 271—951; thence by a cut line on a grid bearing of 353° for a distance of approximately 27,100 ft. at grid ref. XC. 261—033 on the Luweya river; thence following the said river, down river in a general southerly direction to the point of commencement at grid ref. XB. 308—981.

#### CONTROL OF LAND (MAGANGA AND KULUUNDA RICE AREA) ORDER

under s. 31

G.N. 28/1969

1. This Order may be cited as the Control of Land (Maganga and Kuluunda Rice Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

## SCHEDULE

All that piece or parcel of land comprising 31,450 (thirty-one thousand four hundred and fifty) acres or thereabouts commencing at the Mpatsanjoka bridge on the Grand Beach road 7.7 miles east of the Salima railway crossing in a straight line due west for approximately 3 miles to a tributary of the said Mpatsanjoka River; thence in a straight line on a true bearing of 342° for approximately 7 miles to the junction of the Salima—Kachulu road and the Kawanga turnoff; thence in a straight line due west for approximately 2.2 miles to where it intersects the line of the old proposed railway to Domira Bay; thence in a straight line on a true bearing of 332° for a distance of 0.7 miles; thence on a true bearing of 352° for a distance of 2.2 miles; thence on a true bearing of 9° for a distance of 0.3 miles; thence due east from the line of the said old proposed railway for a distance of 4 miles to a point 1.4 miles west of the Kachulu Court; thence in a straight line on a true bearing of 136° for approximately 5 miles; thence in a straight line due east for approximately 1.5 miles to a point on the Bibi Kuluunda road (D276) near Bifu Hill; thence by the said Bibi Kuluunda road in a southerly direction for approximately 2.7 miles to where it crosses the Mpatsanjoka River; thence by the Mpatsanjoka River upstream to where it meets the Grand Beach road being the point of commencement all which premises are delineated on Survey Department Sketch Plan No. 203/68 and thereon edged with red colour.

## CONTROL OF LAND (MANGULENJE SETTLEMENT AREA) ORDER

under s. 31

G.N. 31/1969

1. This Order may be cited as the Control of Land (Mangulenje Settlement Area) Order.
2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—
  - (a) make any new garden;
  - (b) plant any tree or shrub;
  - (c) erect any building of any description whatsoever.

## SCHEDULE

Commencing at Beacon B14 being the N. W. corner of Nchalo Estate (SD/4564) the boundary follows the new main Chikwawa—Chiromo road in a N.W. direction for approximately 12,600 feet to G.R. XT 950076; thence in a straight line on a Grid Bearing of 59° for approximately 21,000 feet to a large marked tree opposite the old Lundu Court (G.R. YT 005109); thence along the Lundu—Nyamphota track to Beacon B15 being the N.E. corner of Nchalo Estate; thence along the Northern boundary of Nchalo Estate to the point of commencement Beacon B14 all which premises are for the purpose of illustration more particularly shown on Survey Department Sketch Plan No. 173/68 and thereon edged with red colour.

## CONTROL OF LAND (MANGULENJE SETTLEMENT SCHEME NO. 2 AND SUCOMA NORTH EXTENSION) ORDER

under s. 31

G.N. 225/1969

1. This Order may be cited as the Control of Land (Mangulenje Settlement Scheme No. 2 and Sucoma North Extension) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 7,843.0 (seven thousand eight hundred and forty-three) acres or thereabouts commencing at a point on the main Chikwawa—Chiromo Road approximately 4 miles south east of Tomali Village at map Grid Ref. XT950-076; thence north-west along said road to map Grid Ref. XT930—084; thence due north for a distance of 11,800 ft. to a point on the Mwanza River at map Grid Ref. XT 930—120; thence downstream along the Mwanza River to map Grid Ref. YT014-123; thence in a straight line in a south-easterly direction for a distance of 11,450 feet to a point on the Lundu Tsekani track map Grid Ref. YT032—095; thence in a north-westerly direction along the Nyamphota—Lundu track to Grid Ref. YT005—109; thence in a straight line in a south-westerly direction for a distance of 21,300 feet to map Grid Ref. XT950—076 which is the point of commencement, which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 107/69 and thereon edged with red colour.

#### CONTROL OF LAND (MASENJERE AREA) ORDER

under s. 31

G.N. 267/1970

1. This Order may be cited as the Control of Land (Masenjere Area) Order.

2. On the land described in the schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 9,042 (nine thousand and forty-two) acres or thereabouts commencing at a point on the east bank of the Bua River where the road from



Nkhotakota to Liwaladzi Mission crosses the said river at grid ref. XA297.5—867; thence by the east bank of the said river down river to the confluence with the Khako Stream grid ref. XA291—875; thence by the south bank of the said stream to grid ref. XA278—878 where the Khako Stream crosses the Nkhotakota—Liwaladzi Mission road; thence along the west side of the said road to grid ref. XA276—892; thence on a bearing of 320° for a distance of 2,500 ft. to grid ref. XA272—898 on the Msenjere Stream; thence by the left bank of the said stream upstream to its confluence with an unknown tributary grid ref. XA254—903; thence following the unknown tributary in a north-westerly direction to grid ref. XA250—907.5 at the base of the escarpment; thence following the base of the escarpment in a northerly direction to grid ref. XA229—998; thence on a bearing of 131° for a distance of 28,400 ft. to grid ref. XA294—941 on the Kapwipwi Stream; thence on a bearing of 184° for a distance of 12,000 ft. to grid ref. XA291—904 on the confluence of the Msenjere Stream with the Bua River; thence on a bearing of 171° for a distance of 12,300 ft. to the point of commencement which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 109/69 and thereon edged with red colour.

#### CONTROL OF LAND (MUBANGWE SETTLEMENT SCHEME) ORDER

under s. 31

G.N. 86/1972

1. This Order may be cited as the Control of Land (Mubangwe Settlement Scheme) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 8,605 (eight thousand six hundred and five) acres or thereabouts known as Mubangwe Settlement Scheme, Chief Mtwalo in the Mzimba District the boundaries whereof (as delineated in red on Survey Department Sketch Plan No. 44/72) are as follows—

Commencing at point A M.R. 594769 then along Katonthowolo river to junction with stream M.R. 872583 then following stream to track M.R. 865545 then along track to stream M.R. 889516 then following stream to its confluence with the Kasitu river M.R. 903517; thence along Kasitu to the M14 road M.R. 926554 and then following the new alignment to point A.

#### CONTROL OF LAND (NACALA RAIL LINK) ORDER

under s. 31

G.N. 68/1971

1. This Order may be cited as the Control of Land (Nacala Rail Link) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All those areas of land each comprising 126 (one hundred and twenty-six) acres or thereabouts situate within one quarter of a mile from the following Railway Stations in the Kasupe District: Nkaya, Molipa, Lambulila, Namanja, and Nayuci.

#### CONTROL OF LAND (NANKUMBA PENINSULAR AREA) ORDER

under s. 31

G.N. 140/1972

140/1975

1. This Order may be cited as the Control of Land (Nankumba Peninsular Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

ALL THAT piece and parcel of land containing an area of nine hundred and sixty-five (965) hectares or thereabouts situate at the Nankumba Peninsula in the Mangochi District the boundaries whereof (the same to be more precisely ascertained and defined by survey) are more particularly described and delineated on Survey Department Sketch Plan No. 302/74 and thereon edged with red colour.

#### CONTROL OF LAND (NCHALO CONTROLLED AREA) ORDER

under s. 31

G.N. 202/1969

1. This Order may be cited as the Control of Land (Nchalo Controlled Area) Order.

2. On the land described in the Schedule no person, shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 732.85 (seven hundred and thirty-two decimal point eight five) acres or thereabouts situate at Nchalo in the Chikwawa District of the Southern Region the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Sketch Plan No. 110/69 and thereon edged with red colour.

#### CONTROL OF LAND (NDAKWERA SETTLEMENT AREA (CHIKWAWA)) ORDER

under s. 31

G.N. 224/1969

1. This Order may be cited as the Control of Land (Ndakwera Settlement Area (Chikwawa)) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 8,706 (eight thousand seven hundred and six) acres or thereabouts commencing at a point on the Tomali to Ndakwera Market road map grid ref. XT841—078; thence along said road in a south-westerly direction to grid ref. XT777—047 in Masamba Village; thence due north in a straight line for a distance of 25,350 ft. to grid ref. XT776—125 on the Nadzitimbe river; thence downstream in a general south-easterly direction to map grid ref. XT841—103; thence in a straight line due south for a distance of 8,400 ft. to the point of commencement which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 108/69 and thereon edged with red colour.

#### CONTROL OF LAND (NGABU AREA) ORDER

under s. 31

G.N. 226/1969

1. This Order may be cited as the Control of land (Ngabu Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 2,122 (two thousand one hundred and twenty-two) acres or thereabouts commencing at a point on a tributary of the Nyakamba Stream (G.R. YS 002 785 Sheet 1634 B4); thence by a straight line due north for approximately 1,500 feet; thence by a straight line on a true bearing of 45° for approximately 3,800 feet; thence by a straight line on a true bearing of 63° for approximately 4,400 feet; thence by a straight line on a true bearing of 144° for approximately 4,200 feet to where it meets the Nyakamba Stream; thence by the Nyakamba Stream and its tributary upstream to the point of commencement which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 45/69 and thereon edged with red colour.

#### CONTROL OF LAND (NKHAMANGA PLAIN) ORDER

under s. 31

G.N. 153/1971

1. This Order may be cited as the Control of Land (Nkhamanga Plain) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 66,412 (sixty-six thousand four hundred and twelve) acres or thereabouts situate at the Nkhamanga Plain in the Rumphu District the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 228/70 are as follows—

Commencing at a point where the district roads D11 and D12 meet map Grid ref. WC750—729; thence following the D11 district road in a south-west and northerly direction to its junction with the M1 road at map Grid ref. WC638—933; thence following the said M1 road in a south-easterly direction for a distance of approximately 7 miles to a point map Grid ref. WC720—884

approximately ½ mile west of Luviri School; thence off the road in a north-east and northerly direction following a track to its junction with D294 district road near Chikulamasinda School at map Grid ref. WC735—916; thence following the said D294 road which is the southern boundary of the Thulwe Settlement Area in a south-eastern direction to a point map Grid ref. WC 799—908; thence off the road in north-west and northerly direction following a track to a point on Kapulikanga Borehole map Grid ref. WC789—934; thence following a track in a south-easterly direction to its junction with the track running from Chakoma to Bolero at a point map Grid ref. WC811-920; thence following the track to Bolero in a southerly direction to its junction with D294 district road at map Grid ref. WC814—908; thence along D294 district road in a southerly direction to its junction with M1 road map Grid ref. WC807—861; thence following the said M1 road in an easterly direction to its junction with the district road D12 at map Grid ref. WC847—825; thence following the said D12 road in a south-westerly direction to the point of commencement.

#### CONTROL OF LAND (NKOPIA AREA) ORDER

under s. 31

G.N. 128/1969

1. This Order may be cited as the Control of Land (Nkopola Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All those two pieces or parcels of land containing an area of 29.78 (twenty-nine decimal point seven eight) acres or thereabouts and 20.45 (twenty decimal point four five) acres or thereabouts respectively situate at Nkopola in the Mangochi District the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 443/68 hereunto annexed and thereon edged with red colour.

#### CONTROL OF LAND (NKUKI SETTLEMENT AREA) ORDER

under s. 31

G.N. 63/1969

1. This Order may be cited as the Control of Land (Nkuki Settlement Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;

- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 26 square miles or thereabouts commencing approximately one mile north of Yonam Village on the Yonam—Nkuki—Casamwalala road and bounded by the Nkuki—Yonam road in a southerly direction for approximately 8,550 feet; thence by a straight line on an approximate true bearing of 268° for 12,276 feet; thence by a straight line on an approximate true bearing of 360° for 17,985 feet; thence by a straight line on an approximate true bearing of 270° for 5,544 feet; thence by a straight line on an approximate true bearing of 360° for 5,349 feet; thence by a straight line on an approximate true bearing 40° for 15,312 feet; thence by a straight line on an approximate true bearing 90° for 15,642 feet; thence by a straight line on an approximate true bearing of 148° for 12,408 feet; thence by a straight line on an approximate true bearing of 180° for 6,600 feet; thence by a straight line on an approximate true bearing of 225° for 6,900 feet; thence by a straight line on an approximate true bearing of 295° for 3,500 feet; thence by a straight line on an approximate true bearing of 180° for 3,600 feet; thence by a straight line on an approximate true bearing of 256° for 9,700 feet to the Nkuki—Yonam road being the point of commencement which said land is more particularly delineated on Survey Department Sketch Plan 1/69.

#### CONTROL OF LAND (PARTS OF DEDZA AND NCHEU DISTRICT “CONTROLLED AREA”) ORDER

under s. 31

G.N. 276/1970

1. This Order may be cited as the Control of Land (Parts of Dedza and Ncheu District “Controlled Area”) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All those two pieces or parcels of land together containing 45,603 (forty-five thousand six hundred and three) acres or thereabouts situate in the Dedza and Ncheu Districts the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 127/70 are as follows—

Commencing at a point on the tributary of Livulezi River Grid ref. XV733—235; thence the boundary follows the said tributary downstream for a distance of 7,221 ft. to Grid ref. XV755—240; thence in a straight line due east for a distance of 4,923 ft. to Grid ref. XV769—240 on the Livulezi River; thence following the said river upstream for a distance of 4,596 ft. to Grid ref. XV767—230;

thence in a straight line due east for a distance of 6,399 ft. to Grid ref. XV786—230 joining a track; thence along the said track in a generally south-easterly direction for a distance of 8,205 ft. to Grid ref. XV800—208; thence in a straight line due south for a distance of 3,609 ft. to Grid ref. XV800—196 on the track from Chikwawa School; thence along the said track in a due east and southerly direction for a distance of 7,548 ft. to Grid ref. XV821—191 on the Bwanje River; thence following the Bwanje River upstream for a distance of 37,743 ft. to Grid ref. XV850—085; thence in a straight line due south for a distance of 4,923 ft. to Grid ref. XV850—070; thence in a straight line due east for a distance of 1,968 ft. to Grid ref. XV856—070 on the Bwanje River; thence following the said river upstream for a distance of 24,615 ft. to Grid ref. XV—XU850—000; thence in a straight line due west for a distance of 11,160 ft. to Grid ref. XV—XU816—000 on an unnamed stream, thence following the said stream upstream for a distance of 10,830 ft. to Grid ref. XU781—988 on the Railway line from Balaka to Salima; thence following the Railway line in a north-west direction for a distance of 4,596 ft. to Grid ref. XU770—997; thence in a straight line due north for a distance of 18,378 ft. to Grid ref. XV770—053 on an unnamed stream; thence following the said unnamed stream upstream for a distance of 11,160 ft. to Grid ref. XV740—034; thence in a straight line due north for a distance of 7,875 ft. to Grid ref. XV740—056 to a freehold estate boundary SD/730; thence following the south-east and north boundaries of said estate to G.R. XV740—065; thence in a straight line due north for a distance of 8,205 ft. to Grid ref. XV740—090 on the road from Golomoti station to Chikwawa School; thence following the District road in a northerly direction for a distance of 6,237 ft. to Grid ref. XV745—107 at the junction with a track, thence following the said track in a north-easterly direction for a distance of 32,163 ft. to Grid ref. XV787—195 on a track to the east of an unnamed village; thence by the said track in a west, north-westerly direction for a distance of 10,830 ft. to Grid ref. XV756—203 joining the District road; thence following the said district road in a north-westerly direction for a distance of 984 ft. to Grid ref. XV755—206 at the junction with a track; thence following the said track in a north-westerly direction crossing the Livulezi River for a distance of 11,160 ft. to Grid ref. XV733—235 the point of commencement.

#### CONTROL OF LAND (PROHIBITION OF RIBBON DEVELOPMENT) ORDER

under s. 31

G.N. 233/1969

88/1971

1. This Order may be cited as the Control of Land (Prohibition of Ribbon Development) Order.

2. No person shall, without the prior consent in writing of the Minister or his authorized representative, erect any building of any description whatsoever on any land within 400 ft. of the centre line of the carriageway of the road specified in the Schedule hereto.

#### SCHEDULE

Road Serial No.	Particulars	Approximate Length (Miles)
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M1	Blantyre City Boundary to Zomba Town Planning Area Boundary	27
M2	Blantyre City Boundary to the junction with S70 to Nkula Falls	6
M1	Blantyre City Boundary to the Namichila Stream, Mulanje	41
M7	Blantyre City Boundary to the junction with M1 at Fundi Cross	26

#### CONTROL OF LAND (PROHIBITION OF RIBBON DEVELOPMENT) ORDER

under s. 31

G.N. 130/1970

88/1971

1. This Order may be cited as the Control of Land (Prohibition of Ribbon Development) Order.

2. No person shall, without the prior consent in writing of the Minister or his authorized representative, erect any building of any description whatsoever on any land in Malawi within 400 feet of the centre line of the carriageway of the roads, specified in the Schedule hereto.

#### SCHEDULE

Road Serial No. Particulars Approximate Length (Miles)

M1	from the north-eastern boundary of the Zomba Township for a distance of 32 miles to the southern boundary of the Liwonde Town Planning Area	32
M1	from the north-western boundary of the Liwonde Town Planning Area for a distance of 3 miles in the direction of Balaka	3
M1	a distance of 3 miles in both directions from the point where the road crosses the railway at Balaka	6
M1	a distance of 3 miles in both directions from the Market at Ncheu Trading Centre	6
M1	from a point on the road between Ncheu and Dedza 3 miles south-east of the junction with road S21 to a point 3 miles north-east of the second junction with road S21 between Dedza and Lilongwe	8
M1	from the Lilongwe Township boundary for a distance of 5 miles in a southerly direction	5
M3	from the Liwonde Planning Area boundary to the western boundary of Mangochi Township	46



M15 from the junction with road M3 at Mangochi to Monkey Bay 42

#### CONTROL OF LAND (PROHIBITION OF RIBBON DEVELOPMENT) ORDER

under s. 31

G.N. 118/1971

1. This Order may be cited as the Control of Land (Prohibition of Ribbon Development) Order.

2. No person shall, without the prior consent in writing of the Minister or his authorized representative, erect any building of any description whatsoever on any land within 400 feet of the centre line of the carriageway of the roads specified in the Schedule hereto.

#### SCHEDULE

Road Serial No. Particulars Approximate Distance (Miles)

M1 From the 5-mile mark referred to in Government Notice No. 130 of 1970 to Kalumbu turn off  
4

M1 From Lumbadzi River for a distance of 5 miles in the direction of Kasungu, and from the same river to the junction with S15 12

M1 From Kasungu Government Hospital for a distance of 4 miles in a northerly direction and from the said hospital to Kavunguti River in a southerly direction 7

M4 From the western edge of the Capital City Boundary to the junction with S11 8

M5 From the eastern edge of the Capital City Boundary to the junction with road S15 6

M5 From Salima Township boundary westward to Salima District Boundary 11

#### CONTROL OF LAND (PROHIBITION OF RIBBON DEVELOPMENT) ORDER

under s. 31

G.N. 90/1973

152/1973

1. This Order may be cited as the Control of Land (Prohibition of Ribbon Development) Order.

2. No person shall, without the prior consent in writing of the Minister or his authorized representative, erect any building of any description whatsoever on any land within 400 feet of the centre line of the carriageway of the roads specified in the Schedule hereto, except that this Order will not apply to the erection of traditional buildings on any land comprising villages existing and established on the date of this Order situated along that stretch of Road Serial Number M19 included in the Schedule.

#### SCHEDULE

Road Serial No.	Particulars	Approximate Distance
M18	Monkey Bay-Mua road from junction road M15 approx. 8 miles south of Monkey Bay to Mua junction M17 some 40 miles south of Salima	36 miles
M17	From junction road M1 about 7 miles west of Balaka to junction with road N5 some 1½ miles distant west of Salima township boundary	90 miles
S.33 (part)	From junction road D210 at Benga northwards to junction road M10 at Nkhotakota	33 miles
S.53	Junction road M10 to Dwangwa	32 miles
S.53	From Bandawe northwards to junction M12 at a point approx. 2 miles west of Nkhata Bay Boma	32 miles
M12	From junction road S53 near Nkhata Bay to Mzuzu township boundary	27 miles
M14	From junction Mzuzu township boundary north-wards to junction with road M1 at Enguewini	27 miles
M1	From 3 miles south of junction with road M14 at Enguewini northwards to a point 3 miles beyond Kachece	13 miles
M19	From Chiweta northwards to junction road M11 at Livingstonia escarpment turn-off	10 miles
M11	From junction road M19 northwards to a point 1 mile north of the aerodrome access road at Karonga	58 miles

#### CONTROL OF LAND (PROPOSED LIWONDE NATIONAL PARK AREA) ORDER

under s. 31

G.N. 258/1970

1. This Order may be cited as the Control of Land (Proposed Liwonde National Park Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

(a) make any new garden;

(b) plant any tree or shrub;

(c) erect any building of any description whatsoever;

(d) cut any tree or vegetation except where the materials are required for an existing resident's own domestic use.

#### SCHEDULE

All that piece or parcel of land containing an area of 56,146 (fifty-six thousand one hundred and forty-six) acres or thereabouts situate in the Kasupe and Mangochi Districts of the Southern Region the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 179/70 and thereon edged with red colour.

#### CONTROL OF LAND (PWADZI PROTECTED AREAS) ORDER

under s. 31

G.N. 55/1974

1. This Order may be cited as the Control of Land (Pwadzi Protected Areas) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

(a) make any new garden;

(b) plant any tree or shrub;

(c) erect any building of any description whatsoever.

#### SCHEDULE

FIRST: ALL THAT piece or parcel of land containing an area of five thousand nine hundred and twenty-two (5,922) hectares or thereabouts situate in the Southern Part of Pwadzi Area in the Chikwawa District the boundaries whereof (the same to be more precisely ascertained and defined by survey) are more particularly described and delineated on Survey Department Sketch Plan No. 259/73 and thereon edged with red colour.

SECOND: ALL THAT piece or parcel of land containing an area of four thousand six hundred and forty-two (4,642) hectares or thereabouts situate in the Northern Part of Pwadzi Area in the Chikwawa District the boundaries whereof (the same to be more precisely ascertained and defined

by survey) are more particularly described and delineated on Survey Department Sketch Plan No. 260/73 and thereon edged with red colour.

#### CONTROL OF LAND (RUSA CATTLE RANCH AREA) ORDER

under s. 31

G.N. 232/1969

1. This Order may be cited as the Control of Land (Rusa Cattle Ranch Area) Order.

2. On the land described in the schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 52,316 (fifty-two thousand three hundred and sixteen) acres or thereabouts commencing at a point south of Chikungu Village on the Kasungu-Mchinji road at Grid Ref. WA. 241—100; thence in a straight line due west for a distance of 15,200 feet to Grid Ref. WA. 195—100 on the Mwanje Dambo; thence down the Mwanje Dambo in a north-westerly direction to its confluence with the Rusa River Grid Ref. WA. 160-182; thence along the Rusa River down river to the confluence with the Mavumbi Stream Grid Ref. WA. 169—240.5; thence following the Rusa River downstream to Grid Ref. WA. 377—247; thence in a straight line for a distance of 20,900 feet to Grid Ref. WA. 320—220; thence due west in a straight line for a distance of 19,500 feet to Grid Ref. WA. 260—220; thence in a straight line due south for a distance of 28,300 feet on the Kasungu-Mchinji road Grid Ref. WA. 260—133.5; thence along the south-west of the Kasungu-Mchinji road to the point of commencement, which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 114—69 and thereon edged with red colour.

#### CONTROL OF LAND (THE CENTRAL REGION LAKE-SHORE DEVELOPMENT PROJECT POTENTIAL GRAZING AREAS) ORDER

under s. 31

G.N. 139/1972

1. This Order may be cited as the Control of Land (The Central Region Lake-shore Development Project Potential Grazing Areas) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;

- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All those two pieces or parcels of land together containing a total area of 21,211.33 (twenty-one thousand two hundred and eleven decimal point three three) acres situate and known as Block I and Block II at Nkanga range in the Salima District the boundaries whereof as demarcated by beacons are more particularly described and delineated on Survey Department Sketch Plan No. 150/72 and thereon edged in red.

#### CONTROL OF LAND (WESTERN ESCARPMENT OF THE LOWER SHIRE VALLEY ZONE A, ZONE B AND ZONE C) ORDER

under s. 31

G.N. 56/1974

1. This Order may be cited as the Control of Land (Western Escarpment of the Lower Shire Valley Zone A, Zone B and Zone C) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

ALL THAT piece or parcel of land containing an area of one hundred and forty-six thousand three hundred and seventy-nine (146,379) hectares or thereabouts situate in the western escarpment of the Lower Shire Valley Area extending from Chikwawa to Nsanje District the boundaries whereof (the same to be more precisely ascertained and defined by survey) are more particularly described and delineated on Survey Department Sketch Plan No. 253/73 and thereon edged with red colour.

#### CONTROL OF LAND (WOVWE CONTROLLED AREA) ORDER

under s. 31

G.N. 24/1971

1. This Order may be cited as the Control of Land (Wovwe Controlled Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;

- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 10,650 (ten thousand six hundred and fifty) acres or thereabouts situate at Wovwe in the Karonga District the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 174/70 are as follows—

Commencing at a point Grid ref. XD 230—589 on the district road 5,000 ft. south-west of the main Karonga—Livingstonia road crossing of the Wovwe River, the boundary follows the western side of the said district road in a southerly direction to Grid ref. XD 239—494 some 8,850 ft. south of the Kasangamara Village; thence on a bearing of 277° for a distance of approximately 9,583 ft. to Grid ref. XD 210—497; thence on a bearing of 325° for a distance of approximately 24,166 ft. to Grid ref. XD 168—558; thence on a bearing of 49° for a distance of approximately 15,000 ft. to Grid ref. XD 203—588; thence on a bearing of 88° for a distance of approximately 9,000 ft. to the point of commencement.

#### CONTROL OF LAND (WOVWE CONTROLLED AREA—EXTENSION) ORDER

under s. 31

G.N. 41/1972

1. This Order may be cited as the Control of Land (Wovwe Controlled Area—Extension) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land containing an area of 703.3 (seven nought three decimal point three) acres or thereabouts situate at Wovwe in the Karonga District the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 156/71 are as follows—

Commencing at the bridge over the Wovwe River on the Karonga/ Chilumba road. Proceeding south east along this road to the bridge over the Hangarawe River. South along the river to a point Map reference XD2385 (Map 1034A3) south west from this point to a point Map Ref. XD2325—5710 on the Wovwe River. North along the Wovwe River to the commencement.

#### CONTROL OF LAND (NORTH-WEST MZIMBA FLUE-CURED TOBACCO DEVELOPMENT) ORDER

under s. 31

G.N. 21/1976

1. This Order may be cited as the Control of Land (North-West Mzimba Flue-cured Tobacco Development Area) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that piece or parcel of land comprising 257.63 (two hundred and fifty-seven decimal point six three) square kilometres or thereabouts as follows—

Commencing at the mid-point of South Rukuru River at its confluence with Chamaji Stream at grid reference 463 481; thence following South Rukuru in the Northerly direction to a point of confluence between South Rukuru and a minor stream at grid reference 503 583; thence following the said minor stream in a South-Easterly direction to a point at grid reference 562 550; thence on a grid bearing of 27 degrees to grid reference point 573 572 on the boundary of piece of land leased to A. C. E. LUNGU, as delineated on Survey Department Sketch Plan No. 173/73; thence in a South-Easterly direction and following the boundary of Sketch Plan No. 173/73 up to a point on its Northern boundary at grid reference 578 581; thence in a North-Easterly direction to a peak of a hill at grid reference 580 586; thence on a grid bearing of 85 degrees in an Easterly direction to a peak of a hill at grid reference 603 588; thence on a grid bearing of 34 degrees 30 minutes in a North-Easterly direction to a peak of another hill at grid reference 609 598; thence on a grid bearing of 26 degrees in a North-Easterly direction to a peak of a hill (Secondary Trigonometrical Station) at grid reference 618 616; thence on a grid bearing of 67 degrees 30 minutes in a North Easterly direction to a peak of a hill at grid reference 666 636; thence on a grid bearing of 90 degrees due East to road No. D. 161 at grid reference 686 636; thence following the road No. D. 161 in a South-Westerly direction to a bridge at grid reference 673 603; thence following Manthulo Stream in a generally South-Westerly direction to a bridge on Malidade/Mpherembe Road at grid reference 614 548; thence following the road to Kafukule in a South-Easterly direction and then South-Westerly direction to a point along that road at grid reference 670 412; thence on a grid bearing of 270 degrees due West to a point on Chamaji Stream at grid reference 535 412; thence downstream to its confluence with South Rukuru River and the point of commencement at grid reference 463 481, which said land is for the purpose of identification shown on Survey Department Sketch Plan No. 174/75 and thereon edged red colour.

CONTROL OF LAND (MPASADZI SMALLHOLDER FLUECURED TOBACCO DEVELOPMENT AREA) ORDER

under s. 31

G.N. 66/1976

1. This Order may be cited as the Control of Land (Mpasadzi Smallholder Flue-cured Tobacco Development Area) Order.

2. On the lands described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

All that parcel of land comprising approximately twelve thousand four hundred (12,400) hectares.

Commencing at the head of a tributary drainage line of the Kambulauju Stream, at the road D191 at G.R. 508966; along D191 in NNW direction to the corner at G.R. 462066, thence in SW direction along the drainage line (unnamed) to its junction with Mpasadzi R. at G.R. 415013; thence northwards along Mpasadzi R. to G.R. 411021; thence in a NW direction along the drainage line marked Kembala to its junction with that marked Kamfutu at G.R. 375065; thence along Kamfutu drainage line to its junction with road D180 at G.R. 365095; thence in a southerly direction along road D180 to its junction with the drainage line marked Juni at 378966; thence along Juni Stream to its junction with Mpasadzi R. at G.R. 442937; thence in south-easterly direction along Mpasadzi to its junction with Kambulauju Stream at G.R. 450928; thence NE along Kambulauju Stream and tributary drainage line to starting point at 508966. All which said parcel of land is for the purpose of identification shown on Survey Department Sketch Plan No. 186/75 and thereon edged with red colour.

#### CONTROL OF LAND (KASUNGU NATIONAL PARK) (BUFFER ZONE) ORDER

under s. 31

G.N. 149/1977

1. This Order may be cited as the Control of Land (Kasungu National Park) (Buffer Zone) Order.

2. On the land described in the Schedule hereto no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) plant any tree or shrub or cut any tree or shrub;
- (c) erect any building of any description whatsoever;
- (d) hunt or carry any firearm;
- (e) set fire to any vegetation.



3. The authorized representative shall be the Principal Game Warden.

#### SCHEDULE

ALL THAT piece or parcel of land comprising eleven thousand two hundred (11,200) hectares or thereabouts situate at and known as Zones A and B near Kasungu National Park in the Kasungu District the boundaries whereof are as delineated on Survey Department Sketch Plan No. 104/77 and thereon edged red.

#### CONTROL OF LAND (DWAMBAZI FOREST RESERVE) ORDER

under s. 31

G.N. 1/1978

1. This Order may be cited as the Control of Land (Dwambazi Forest Reserve) Order.

2. On the land described in the Schedule no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any garden;
- (b) plant any tree or shrub;
- (c) erect any building of any description whatsoever.

#### SCHEDULE

ALL THAT piece or parcel of land containing an area of seventy-eight thousand nine hundred and twenty-five decimal point eight nine one (78,925.891) hectares or thereabouts situate at Dwambazi in the Nkhotakota and Mzimba Districts the boundaries whereof as delineated in red on Survey Department Sketch Plan No. 1/77 are as follows:

Commencing at the confluence of Lunguzi Stream with Dwangwa River on the opposite bank to the Nkhotakota Game Reserve, GRXB 083088; thence by the Lunguzi Stream upstream to its confluence with Chatuvi Stream GRXB 060109; thence by the Chatuvi Stream to beacon FD2, GRXB 061112; thence in a straight demarcated line, on a true bearing of 327° for an approximate distance of 400 metres to beacon FD3 on the source of Kadyasenjele Stream to beacon FD4 on its confluence with Vuuka Stream GRXB 061123; thence by the Vuuka Stream downstream to beacon FD5 on its confluence with Rupashe River, GRXB 118165; thence by the Rupashe River upriver to beacon FD6 on its confluence with Chamalukwa Stream, GRXB 043206; thence by the Chamalukwa Stream upstream to beacon FD7 on its source, GRXB 051215; thence in a straight demarcated line, on a true bearing of 0° (360°) for an approximate distance of 443 metres to beacon FD 8 on Luluzi Stream, GRXB 051219; thence by the Luluzi Stream downstream to beacon FD9 on its confluence with an unnamed stream, GRXB 062316; thence by the unnamed stream upstream to beacon FD10 GRXB 053312; thence in a straight demarcated line, on a true bearing of 334° for an approximate distance of 1.25 km. to beacon FD11, GRXB 048323; thence in a straight demarcated line, on a true bearing of 35° for an approximate distance of 2.94 km. to beacon FD12, GRXB 065348; thence in a straight demarcated line, on a true bearing of 340° for an approximate distance of 1.35 km. to beacon FD13

on Kangoza Stream, GRXB 061360; thence by the Kangoza Stream downstream to beacon FD14, on its confluence with Nkoma River, GRXB 059383; thence by the Nkoma River upriver to beacon FD15, on its confluence with an unnamed stream GRXB 059384; thence by the unnamed stream upstream to beacon FD16, GRXB 059385; thence in a straight demarcated line, on a true bearing of 355° for an approximate distance of 3.15 km. to beacon FD17 on Khuyu River, GRXB 057417; thence by the Khuyu River upriver to beacon FD18 on its confluence with Kajando Stream GRXB 055416; thence by the Kajando Stream upstream to beacon FD20 on its source, GRXB 049424; thence in a straight demarcated line, on a true bearing of 5° for an approximate distance of 1.81 km. to beacon FD21, GRXB 051442; thence in a straight demarcated line, on a true bearing of 42° for an approximate distance of 1.50 km. to beacon FD22, GRXB 058451; thence in a straight demarcated line, on a true bearing of 9° for an approximate distance of 250 metres to beacon FD23, GRXB 058453; thence in a straight demarcated line, on a true bearing of 259° for an approximate distance of 1.8 km. to beacon FD24, GRXB 041450; thence in a straight demarcated line, on a true bearing of 337° for an approximate distance of 369 metres to beacon FD25 on Kaluweya Stream GRXB 039453; thence by the Kaluweya Stream upstream to beacon FD26 on its source, GRXB 018466; thence in a straight demarcated line, on a true bearing of 348° for an approximate distance of 260 metres to beacon FD27 on the source of Kabvuzi Stream, GRXB 017468; thence by the Kabvuzi Stream downstream to beacon FD28 on its confluence with Dwambazi River, GRXB 022495; thence by the Dwambazi River upriver to beacon FD30 on the boundary of South Viphya Forest Reserve, GRWB 818551; thence by the South Viphya Forest Reserve boundary in a south-westerly direction to beacon FD31, GRWB 810543; thence in a straight demarcated line, on a true bearing of 157° for an approximate distance of 369 metres to beacon FD32 on Kawiya Stream, GRWB 811539; thence by the Kawiya Stream downstream to beacon FD33 on its confluence with an unnamed tributary, GRWB 824528; thence by the unnamed tributary upstream to beacon FD34, GRWB 821523; thence in a straight demarcated line, on a true bearing of 182° for an approximate distance of 2.9 km to beacon FD35 on the source of Chasato Stream, GRWB 820496; thence by the Chasato Stream downstream to beacon FD36, GRWB 822488; thence in a straight demarcated line, on a true bearing of 86° for an approximate distance of 4.05 km to beacon FD37 on the summit of an unnamed hill, GRWB 862491; thence in a straight demarcated line, on a true bearing of 150° for an approximate distance of 1.95 km to beacon FD38 on a tributary of Makando Stream, GRWB 871475; thence by the tributary downstream to beacon FD39 on its confluence with Makando Stream, GRWB 872471; thence by the Makando Stream downstream to beacon FD40 on its confluence with Njobvuroro Stream, GRWB 888462; thence by the Njobvuroro Stream upstream to beacon FD41 on its confluence with Kapanje Stream, GRWB 885443; thence by the Kapanje Stream upstream to beacon FD42 on its source, GRWB 861388; thence in a straight demarcated line, on a true bearing of 195° for an approximate distance of 700 metres to beacon FD43, GRWB 859381; thence in a straight demarcated line, on a true bearing of 206° to beacon FD44, a point where Kazimba and Malita Streams meet Chanjati Stream GRWB 858379; thence by the Chanjati Stream downstream to beacon FD45 on its confluence with Rupashe River, GRWB 855375; thence by the Rupashe River downriver to beacon FD46 on its confluence with Majiwanandi Stream, GRWB 888337; thence by the Majiwanandi Stream upstream to beacon FD47, on its source, GRWB 882314; thence in a straight demarcated line, on a true bearing of 213° for an approximate distance of 525 metres to beacon FD48 on the source of Lupanda Stream, GRWB 878309; thence by the Lupanda Stream downstream to beacon FD49 on its confluence with Kachigongwe Stream, GRWB 849278; thence by the Kachigongwe Stream upstream to beacon FD50 on its source, GRWB 855276; thence in a straight demarcated line, on a true bearing

of 118° for an approximate distance of 2.40 km to beacon FD51, GRWB 876265; thence in a straight demarcated line, on a true bearing of 73° for an approximate distance of 325 metres to beacon FD52 on the source of Kachere Stream, GRWB 879266; thence by the Kachere stream to beacon FD53 on its confluence with Rupashe River, GRWB 951275; thence by the Rupashe River downriver to beacon FD54 on its confluence with Pwazi River, GRWB 999194; thence by the Pwazi River upriver to beacon FD55 on its confluence with Thete Stream, GRWB 909149; thence by the Thete Stream upstream to beacon FD56 on its source, GRWB 902083; thence in a straight demarcated line on a true bearing of 168° for an approximate distance of 5.59 km to beacon FD57 on the confluence of Mlozi Stream with Katute Stream, GRWB 915028; thence by Katute Stream to beacon FD58 on its source, GRWB 919017; thence in a straight demarcated line, on a true bearing of 210° for an approximate distance of 200 metres to beacon FD59 on the source of Chamuchere Stream, GRWB 919015; thence by the Chamuchere Stream downstream to beacon ED60 on its confluence with Bale Stream, GRWB 919007; thence by the Bale Stream downstream to beacon FD61 on its confluence with Dwangwa River, GRWB 939998; thence by the Dwangwa River downriver on its left bank to its confluence with Lunguzi Stream, GRWB 083088, being the point of commencement.

#### CONTROL OF LAND (CHENKUMBI LIMESTONE DEPOSITS AREA) ORDER

under s. 31

G.N. 81/1987

1. Citation

This Order may be cited as the Control of Land (Chenkumbi Limestone Deposits Area) Order.

2. Control of described land

(1) The land described in the Schedule (not being public land or private land situate within a Municipality or Township) shall be known as the Chenkumbi Limestone Deposits Area.

(2) In the Chenkumbi Limestone Deposits Area no person shall, without the prior consent in writing of the Minister or his authorized representative—

- (a) make any new garden;
- (b) make any new excavation;
- (c) plant any tree or shrub;
- (d) erect any building of any description whatsoever.

#### SCHEDULE

ALL THAT piece and parcel of land the boundary whereof is, for the purpose of identification only, delineated in red on Survey Department Sketch Plan No. 43/87, being an area of land situate in Machinga District and comprising 1,852 (one thousand eight hundred and fifty-two) hectares or thereabouts and runs as follows—

Commencing at beacon A at GR 208379; thence on a bearing of 148° for a distance of 1,500 metres to beacon B at GR 216367; thence on a bearing of 64° for a distance of 900 metres to beacon C at GR 224371; thence on a bearing of 134° for a distance of 3,150 metres to beacon D at GR 247349; thence on a bearing of 232° for a distance of 3,750 metres to beacon E at GR 217326; thence on a bearing of 314° for a distance of 2,025 metres to beacon F at GR 203340; thence on a bearing of 322° for a distance of 3,550 metres to beacon G at GR181368; thence on a bearing of 360° for a distance of 1,100 metres to beacon H at GR 181379; thence on a bearing of 90° for a distance of 2,725 metres to beacon A at GR 208379, the point of commencement.

#### LAND ACT REGULATIONS

under s. 39

G.N. 166/1965

87/1986

99/1995

9/2002

1. Citation

These Regulations may be cited as the Land Act Regulations.

2. Covenants to be implied in every lease

The Covenants to be implied in every lease granted under the Land Act (hereinafter referred to as “the Act”), shall, subject to the provisions there of, be as follows—

(a) to pay on demand the cost of a survey of the boundaries of the demised premises and of the erection and maintenance to the satisfaction of an authorized officer of survey beacons to demarcate the same;

(b) to pay the rent reserved by the lease (and, if the rent is revised in accordance with the Act, the revised rent) on the day and in the manner therein provided;

(c) to bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions, outgoings and burdens whatsoever assessed, charged or imposed upon the demised premises or upon the owner or occupier in respect thereof or payable by either in respect thereof;

(d) to erect and complete upon the demised premises, not later than the date stipulated in the lease, the buildings required to be construct by the lease;

(e) to erect the said buildings in a substantial and workmanlike manner with the best materials of their several kinds, with all necessary fences, boundary walls, sewers and drains, and to expend thereon at the least the sum specified in the lease in the cost price of materials and labour, and, if required, to verify such expenditure to an authorized officer by the production of proper vouchers;

(f) not to alter the structure of or add to the said buildings nor erect any other building or structure or carry out any works of whatever nature without first obtaining the prior consent in writing of the Minister;

(g) to keep and maintain all buildings and drains on the demised premises clean and in a good and substantial state of repair and condition and also to keep and maintain in good and substantial repair and condition all (if any) private roads, tracks or ways, bridges, gates, posts, rails, walls, fences and hedges, and to clean out and keep open and free and in good working order all (if any) ditches, gutters, drains, sewers, pipes, culverts, streams, springs and water-courses for the time being on the demised premises, and not to divert any rivers, streams or water-courses thereon or suffer the same to be diverted or to overflow so as to cause soil erosion to any land whatsoever, or injury, damage or inconvenience to adjoining or neighbouring occupiers of land;

(h) not to affix or exhibit or permit to be affixed or exhibited to or upon any part of the exterior of the demised premises or of the external walls, posts, rails or fences thereon any signboard, placard, poster or advertisement except such as shall be approved in writing by an authorized officer;

(i) to use the demised premises only for such purposes as may be specified in the lease and for purposes incidental thereto and directly and necessarily connected therewith;

(j) not to sell any indigenous timber or trees growing on the demised premises or cut the same for sale or for use otherwise than on the demised premises, except where otherwise approved in writing by an authorized officer, and upon the conditions under which any such approval may be given or for any purpose of in any circumstances whatsoever to cut any timber or trees within eight yards of any river or stream without the written consent of an authorized officer, or without similar consent to cut any trees of the species known as "mbawa" (Khaya nyasica) and except as aforesaid to preserve all timber and trees from all injury or damage;

(k) not to do, cause, permit or suffer upon the demised premises anything which may be or become a nuisance or annoyance or cause damage to other lessees, tenants or licensees of or grantees from the Minister, or to the occupiers of adjoining or neighbouring premises;

(l) not to assign, subdivide, underlet, mortgage, charge or part with the possession of the demised premises or any part thereof without first obtaining the written consent of the Minister; and to submit to the Minister for his approval a draft of the instrument to give effect to the transaction, and, if the Minister shall approve the same and give his consent, pay to the Minister the prescribed fee for such consent, and to produce to the Minister the completed instrument giving effect to the assignment or other disposition within four months of the date of the execution thereof;

(m) to permit any authorized officer with or without workmen or others at all reasonable times and for all reasonable purposes to enter upon and inspect the demised premises and any building or structure in course of erection or standing thereon, and to comply forthwith with any written notice given by such officer requiring the lessee to perform his obligations to build and repair in accordance with the provisions in that behalf contained in the lease;

(n) to pay all costs, charges and expenses (including legal costs and surveyors' fees) incurred by the Minister for the purpose of or incidental to or connected with the preparation and service of a notice under section 14 of the Conveyancing and Law of Property Act, 1881, of the United Kingdom requiring the lessee to remedy a breach of any of the covenants contained or implied in his lease notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the High Court of Malawi;

(o) at the expiration or sooner determination of the term quietly to yield up the demised premises to the Minister with all buildings thereon and additions and improvements thereto and all fixtures (other than tenant's fixtures) in such a state of repair and condition as shall be in all respects in accordance with the covenants contained or implied in the lease. 44 & 45 Vict. c. 41

### 3. Fees

The fees specified in the second column of the Schedule shall be paid in respect of the matters specified in the first column thereof.

SCHEDULE reg. 3, G.N. 87/1987, 99/1995, 9/2002

Matter	Fee
	K t
1. On application for a lease of land	1,000 00
2. For a lease	5,000 00
3. For—	
(a) a confirmatory instrument consequential on the survey of demised premises with or without adjustment of rent	2,000 00
(b) for a variation of lease	2,000 00
4. For the preparation of notice under regulation 2 (n) of these Regulations	2,000
5. For consent to an assignment, subdivision, underlease, mortgage or charge	1,000 00
6. For a surrender—	
(a) where no premium is charged by the Minister to the lessee for accepting the surrender	2,000 00
(b) where a premium is charged by the Minister to the lessee for accepting the surrender	1,000 00

7. For the preparation of any other document or instrument required under the Act but not otherwise specifically provided for in this Schedule Such fee not exceeding K5,000 as the Commissioner for Lands may determine.

## LAND (TRESPASS, ENCROACHMENT OR UNLAWFUL OCCUPATION) REGULATIONS

under s. 39

G.N. 165/1965

215/1965

### 1. Citation

These Regulations may be cited as the Land (Trespass, Encroachment or Unlawful Occupation) Regulations.

### 2. Offences and penalties in respect of trespass, encroachment upon or unlawful use or occupation of land

(1) Any person—

(a) who trespasses or encroaches upon any public land, any private land or any customary land; or

(b) who, under the Act, is, or is deemed to be, in unlawful use or occupation of any such land; and

(c) who, in either of the cases specified in paragraph (a) or direction, request or notice to quit and remove himself, his family or other dependants (if any) from the land, such order, direction, request or notice having been made, given or served by the person having lawful title to the land, or by or on behalf of the Minister, or by or on behalf of the Chief having jurisdiction in the area where any such land is situated, or by a magistrate, or a Traditional Court in terms of section 36 (1) or (2) of the Act, as the case may be,

shall be liable to a fine of K200 and to imprisonment for six months.

(2) No proceeding in respect of any offence against these Regulations shall be brought save with the previous consent in writing of the Director of Public Prosecution.

(3) These Regulations shall be in addition to, and not in substitution for any other Act or subsidiary legislation.

### 3. Form of certificate

(1) Any certificate signed by the Minister in accordance with the powers conferred upon him by section 40 of the Act shall be in the form set out in the First Schedule, or with such modification as the circumstances of the case may require.

(2) Any certificate signed by an authorized officer under section 40 of the Act in accordance with the powers conferred upon him by an Order of the Minister made under section 41 of the Act shall be in the form set out in the Second Schedule, or with such modification as the circumstances of the case may require.

4. Proceedings by authorized officer

Subject to the general or special directions of the Minister, an authorized officer may make a sworn complaint and carry on proceedings under section 36 (1) of the Act against any person who it appears has trespassed or encroached upon public land, or is, or is deemed to be, in unlawful use or occupation of such land.

FIRST SCHEDULE reg. 3 (1)

THE LAND ACT

CERTIFICATE UNDER SECTION 40

(By the Minister)

By virtue of the powers conferred upon me by section 40 of the Land Act, I,  
.....

.....Minister of ..... hereby certify—

(a) that the land more particularly described in the Schedule hereto is  
..... (1) ..... land; and

(b) that the lawful title to the said land is vested in ..... of  
.....

Dated ..... day of ....., 19.....

The Schedule above referred to

(2)

.....

Minister of Natural Resources

N.B.— (1) Insert “public” or “private” or “customary” as the case may be.

(2) Set out a full description of the land and where possible a plan should be annexed to the certificate showing clearly the boundaries.

SECOND SCHEDULE reg. 3 (2)

THE LAND ACT

CERTIFICATE UNDER SECTION 40



(By an Authorized Officer)

By virtue of the powers conferred upon the Minister under section 40 of the Land Act and deputed to me by Order under the hand of the Minister (acting in exercise of the powers conferred upon him by section 41 of the Act) dated the ..... day of ..... 19..... and published in Government Notice ..... of 19....., I,....., Secretary for ..... hereby certify—

(a) that the land more particularly described in the Schedule hereto is ..... (1) ..... land; and

(b) that the lawful title to the said land is vested in ..... of .....

Dated ..... day of ....., 19.....

The Schedule above referred to

(2)

.....

Secretary for .....

N.B.— (1) Insert “public,” “private” or “customary” as the case may be.

(2) Set out a full description of the land and where possible a plan should be annexed to the certificate showing clearly the boundaries.

#### DELEGATION OF POWERS ORDER

under s. 41

G.N. 169/1969

The Minister has deputed and authorized the Commissioner for Lands, for and on his behalf, and subject to his special and general written directions— Cap. 57:01

(a) to administer the Land Act in accordance with the provisions thereof and the prescribed Regulations made thereunder;

(b) to make grants, leases or other dispositions in accordance with section 5;

(c) to sign, seal, execute and perfect as may act and deed and to deliver and accept—

(i) grants, leases or other dispositions of public or customary land, and surrenders made under section 11;

(ii) agreements or licences in respect of the control or use of running or stagnant water or affecting the dispositions of interests or rights therein;

(d) to sign and issue documents including documents of consent;

(e) to grant relief from liability to perform, and to extend the time for performance or observance of any covenant, condition, agreement or stipulation in accordance with the provisions of section 12;

(f) to except from any lease any implied covenant or covenants and to vary or modify such covenant or covenants in accordance with the provisions of section 13;

(g) to serve notice of determination of any lease in accordance with the provisions of section 14;

(h) to determine the amount of compensation payable in accordance with the provisions of section 28 but should any individual or Chief object to the amount so determined for any reason the matter shall be referred to me.

ORDER

under s. 41

G.N. 196/1969

The Minister has deputed and authorized the Project Manager, the Chief Settlement Officer, the Settlement Officer or the Assistant Settlement Officer for and on his behalf and subject to his special and general directions to sign and issue Settlers Licences in connection with any agricultural settlement or re-settlement scheme in any Region of Malawi.

ORDER

under s. 41

G.N. 167/1965

The Minister has deputed to the Secretary for Agriculture and Natural Resources the exercise and performance of all the powers, functions and duties conferred upon the Minister by section 40 of the Act.

[Chap5801]CHAPTER 58:01

REGISTERED LAND

ARRANGEMENT OF SECTIONS

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6 of 1967

32 of 1970

18 of 1971

1 of 1981

An Act to make provision for the Registration of Title to Land, and for dealings in land so registered, and for purposes connected therewith

[9TH MAY 1967]

PART I

PRELIMINARY

[Ch5801s1]1. Short title

This Act may be cited as the Registered Land Act.

[Ch5801s2]2. Interpretation

In this Act, except where the context otherwise requires—

“Allocation Officer” and “Allocation Record” have the meanings assigned to “Allocation Officer” and “Allocation Record” in the Customary Land (Development) Act; Cap. 59:01

“application book” means the application book kept under section 5 (d);

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge;

“chargee” means the proprietor of a charge;

“chargor” means the proprietor of charged land or of a charged lease or charge;

“court”, save as is otherwise expressly provided, means the High Court or a subordinate court held by a Resident Magistrate;

“dealing” includes disposition and transmission;

“disposition” means any act by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

“easement” means a right attached to a piece of land which allows the proprietor of the piece either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“to file” means to place in the relative piece file;

“guardian” means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“incumbrance” means a lease, charge, easement, restrictive agreement or profit;

“instrument” includes any deed, judgment, decree, order or other document requiring or capable of registration under this Act;

“interest in land” includes ownership of land;

“land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“Land Register” means the Land Register compiled under Division 2 of Part II;

“lease” means the grant with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease, but does not include an agreement for lease;

“lessee” means the holder of a lease;

“lessor” means the proprietor of leased land;

“licence” means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

“piece” means an area of land separately delineated on the registry map and given a number;

“periodic tenancy” means a tenancy from year to year, half-year to half-year, quarter to quarter, month to month, week to week or the like;

“personal representative” means executor of the will or administrator of the estate or part of the estate;

“private land” bears the same meaning as in section 2 of the Land Act; Cap. 57:01

“profit” means the right to go on the land of another and take a particular substance from that land;

“proprietor” means the person registered under this Act as the owner of land or a lease or a charge;

“the register” means the leaf of the land register kept in respect of a piece of land or of a registered lease;

“to register” means to make an entry, note or record in the register, and “registered”, “unregistered” and “registration” bear a corresponding meaning;

“Registrar” means—

(a) the Chief Land Registrar or the Deputy Chief Land Registrar, appointed under section 6; or

(b) where a Land Registrar or an Assistant Land Registrar has been authorized under section 6 (4) to exercise or perform any particular power or duty, that Land Registrar or Assistant Land Registrar so far as concerns that power or duty;

“registration district” means a land registration district constituted under section 4;

“registration section” means a division of a registration district established under section 15 (3);

“registry” means a land registry established under section 5;

“registry map” means the map or series of maps referred to in section 15;

“transfer” means the passing of land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected;

“transmission” means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;

“trustee” includes personal representative;

“valuable consideration” includes marriage, but does not include a nominal consideration.

### [Ch5801s3]3. Reconciliation with other laws

Except as otherwise provided in this Act, no other written law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act:

Provided that, except where a contrary intention appears, nothing contained in this Act shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing.

## PART II

### ORGANIZATION AND ADMINISTRATION

## Division 1—Land Registries and Officers

### [Ch5801s4]4. Registration Districts

(1) For the purposes of this Act, the Minister may, by order, constitute a part or parts of Malawi a land registration district or land registration districts and may at any time vary the limits of any such district.

(2) The Minister in such order may exclude from registration any kind of land or dealing which he considers cannot conveniently be registered in any such district.

### [Ch5801s5]5. Land registries

There shall be maintained in each registration district a land registry, in which there shall be kept—

(a) a register, to be known as the land register, in accordance with Division 2 of this Part;

(b) a copy of the registry map;

(c) piece files containing the instruments which support subsisting entries in the land register and any filed plans and documents;

(d) a book, to be known as the application book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;

(e) an index, in alphabetical order, of the names of the proprietors of land, leases and charges, showing the numbers of the pieces in which they are interested; and

(f) a register and a file of powers of attorney.

### [Ch5801s6]6. Appointment of officers

(1) There shall be appointed a Chief Land Registrar, who shall be responsible for administering the land registries in accordance with this Act.

(2) There may be appointed a Deputy Chief Land Registrar and so many Land Registrars and Assistant Land Registrars as may be necessary for the carrying out of this Act.

(3) The Deputy Chief Land Registrar shall have all the powers and may perform all or any of the duties conferred and imposed on the Chief Land Registrar by this Act or by any rules made thereunder, except the power of authorization conferred by subsection (4).

(4) The Chief Land Registrar may in writing authorize any Land Registrar or Assistant Land Registrar to exercise or to perform all or any of the powers or duties conferred or imposed on the Chief Land Registrar by this Act or by any rules made thereunder, and may at any time revoke or vary any such authorization:

Provided that no such authorization shall be deemed to divest the Chief Land Registrar of any of his powers or duties, and he may, if he thinks fit, exercise and perform all his powers or duties notwithstanding any such authorization.

(5) All officers exercising powers or performing duties conferred or imposed by this Act shall be subject to the general or special directions of the Minister.

[Ch5801s7]7. General powers of Registrar

The Registrar may exercise the following powers in addition to any other powers conferred on him by this Act, that is to say—

(a) he may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;

(b) he may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;

(c) he may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;

(d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration;

(e) he may order that the costs, charges and expenses incurred by him or by any person in connexion with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit.

[Ch5801s8]8. Indemnity of officers

The Chief Land Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceedings for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers of this Act, or any rules made thereunder.

[Ch5801s9]9. Seal of registry

Each registry shall have a seal, and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Chief Land Registrar.

Division 2—The Land Register

[Ch5801s10]10. The Land Register

(1) The Land Register shall comprise a register in respect of every piece required by this Act to be registered, and a register in respect of each lease required by this Act to be registered.

18 of 1971(2) Each register shall show—

- (i) whether the land is public land or private land; and
- (ii) where the land is private land, and the Adjudication Record prepared under the Adjudication of Title Act, 1971, so records, that the title is provisional.

(3) Each register shall be divided into three sections as follows—

A—the property section, containing a brief description of the land or lease, together with particulars of its appurtenances and, where the title is provisional, of the information recorded in the Adjudication Record under section 16 (1) (d) of the Adjudication of Title Act, 1971, and a reference to the registry map and filed plan, if any;

B—the proprietorship section, containing the name and, where possible, the address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition;

C—the incumbrances section, containing a note of every incumbrance.

(4) No entry shall be required in the proprietorship section of the register relating to any piece which is described as public land.

[Ch5801s11]11. Compilation of Land Register

32 of 1970(1) Whenever an Allocation Record has become final under section 27 of the Customary Land (Development) Act and the Allocation Officer has delivered the Allocation Record to the Land Registrar or Assistant Land Registrar in charge of the registration district concerned, such Land Registrar or Assistant Land Registrar shall prepare a register for each piece of intended private land, intended public land and recorded customary land shown in the Allocation Record and for any lease which requires registration and shall register therein any of the particulars in the Allocation Record which require registration. Cap. 59:01

18 of 1971(2) Whenever an Adjudication Record has become final under section 23 of the Adjudication of Title Act, 1971, and the Adjudication Officer has delivered the Adjudication Record to the Registrar, the Registrar shall prepare a register for each piece shown in the Adjudication Record and for any lease required to be registered, and shall register therein any of the particulars in the Adjudication Record which require registration.

[Ch5801s11A]11A. Transitional provisions relating to rights, etc., acquired under charges, etc., registered under Cap. 58:02

Nothing in this Act shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, equitable mortgage or other form of security which, immediately before the registration under this Act of the land affected thereby, was registered under the Deeds Registration Act, and such rights liabilities and remedies shall be exercisable and enforceable in accordance with the law which was applicable thereto immediately before the registration of the land under this Act.



[Ch5801s12]12. Manner of registration

(1) The first registration of any piece shall be effected by the preparation of a register or registers in accordance with section 10 and the signing by the Registrar of the particulars of the proprietorship and the particulars of incumbrances, if any appearing thereon.

(2) Every subsequent registration shall be effected by an entry in the land register in such form as the Chief Land Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

(3) No subsequent registration shall be made in regard to land or a lease of land within a Land Control Division declared under the Local Land Boards Act unless the Registrar is satisfied that the dealing in such land or a lease which requires registration has been given the consent of a Local Land Board or that no consent is required or a general consent has been given by the Minister in accordance with such Act. The Registrar shall file a copy of any consent given by a Local Land Board.

Cap. 59:02

[Ch5801s13]13. Cancellation of obsolete entries

The Registrar may cancel any entry in the register which he is satisfied has ceased to have any effect.

[Ch5801s14]14. New editions of register

The Registrar at any time may open a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.

Division 3—Maps, Parcels and Boundaries

[Ch5801s15]15. Registry map

(1) The Director of Surveys shall, as soon as practicable, prepare and thereafter maintain a map or series of maps, to be called the registry map, for every registration district.

(2) Where for any registration district, or for a part thereof, no map has been so prepared, the Registrar may himself cause a map or series of maps to be prepared for that registration district, or for that part, and thereafter maintained, and such maps or series of maps shall be deemed to be the registry map until the Director of Surveys prepares a map or maps under subsection (1) and delivers it to the Registrar.

(3) On the registry map, every registration district shall be divided into registration sections, which shall be identified by distinctive names, and the registration sections may be further divided into blocks, which shall be given distinctive number or letters or combinations of numbers and letters.

(4) The pieces in each registration section or block shall be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, and the number of the piece shall together be a sufficient reference to any piece.

(5) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

(6) A plan may be filed in respect of a particular piece to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

[Ch5801s16]16. Power to alter registry map and to prepare new editions

(1) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, correct the line or position of any boundary shown on the registry map with the agreement of every person shown by the register to be affected by the correction, but no such correction shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed:

Provided that the Registrar or the Director, as the case may be, may correct an error in the registry map which does not affect the interest of any person.

(2) Whenever the boundary of a piece is altered on the registry map, the piece number shall be cancelled and the piece shall be given a new number.

(3) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, prepare a new edition of the registry map or any part thereof, and there may be omitted from the new map any matter which the Registrar considers obsolete.

[Ch5801s17]17. Further surveys

The Registrar may cause a survey to be made for any purpose connected with this Act, but, where the registry map is maintained by the Director of Surveys such survey shall be used to amend the registry map only if it is approved by the Director of Surveys.

[Ch5801s18]18. General boundaries

(1) Except where, under section 19, it is noted in the register that the boundaries of a piece have been fixed, the registry map and any filed plan shall be deemed to indicate the general boundaries only of the piece.

(2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.

(3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision.

(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

(5) Except where, as aforesaid, it is noted in the register that the boundaries of a piece have been fixed, the court or the Registrar may, in any proceedings concerning the piece, receive such evidence as to its boundaries as it or he thinks fit.

[Ch5801s19]19. Fixed boundaries

(1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a piece or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the piece.

(3) Where the dimensions and boundaries of a piece are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register, and the piece shall be deemed to have had its boundaries fixed under this section.

[Ch5801s20]20. Maintenance of boundary features

(1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, walls, survey marks and other features which demarcate his boundaries, whether established pursuant to the requirements of any other written law or pursuant to an order of the Registrar or of the proprietor's own accord.

(2) The Registrar may in writing order the demarcation within a specified time of any boundary in such permanent manner as he may direct, and any person who fails to comply with such an order shall be liable to a fine of £10.

(3) The Registrar may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be liable to a fine of £10.

[Ch5801s21]21. Interference with boundary features

(1) Any person who defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorized to do so by the Registrar shall be liable to a fine of £100 and to imprisonment for two months.

(2) Any person convicted of such an offence, whether or not any penalty therefor is imposed upon him, shall be liable to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under section 20 for the maintenance of the feature.

[Ch5801s22]22. Combinations and subdivisions

(1) Where contiguous pieces are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine these pieces by closing the registers relating to them and opening a new register or registers in respect of the piece or pieces resulting from the combination.

(2) Upon the application of the proprietor of a piece for the division of his piece into two or more pieces, the Registrar shall effect the division by closing the register relating to the piece and opening new registers in respect of the new pieces resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that—

(a) nothing shall be done under this section which would be inconsistent with this Act or any other written law; and

(b) no piece which is subject to a lease shall be subdivided so as to subdivide the land comprised in such lease.

[Ch5801s23]23. Change of boundaries

(1) The Registrar may, on the application of the proprietors of contiguous pieces who are desirous of changing the layout of their pieces, and with the consent in writing of all other persons in whose names any right or interest in such pieces is registered and of any cautioner, cancel the registers relating to such pieces and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed change of boundaries involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such change.

(2) Upon any such change of boundaries, the new pieces shall, notwithstanding section 31, vest in the persons in whose names they are registered.

PART III

EFFECT OF REGISTRATION

[Ch5801s24]24. Interest conferred by registration

Subject to this Act—

(a) the registration of a person as the proprietor of private land shall confer on that person the rights of owner of that land as private land;

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, subject to all implied and expressed agreements, liabilities and incidents of the lease:

18 of 1971 Provided that if the title of the lessor is provisional the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

[Ch5801s24A]24A. Effect of registration with provisional title

Subject to this Act, the registration of any person as the proprietor of a piece of private land with a provisional title shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before the date of such registration, or under such instrument or in such other manner as is specified in the register of that piece, but save as aforesaid, such registration shall have the same effect as the registration of a person without such qualification.

[Ch5801s25]25. Rights of proprietor

The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided in this Act and the Land Act and shall be held by the proprietor, free from all other interests and claims whatsoever, but subject—Cap. 57:01

- (a) to the leases, charges and other encumbrances, if any, shown in the register; and
- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 27 not to require noting on the register:

Provided that—

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee, or as a family representative;
- (ii) the registration of any person under this Act shall not confer on him any right to any minerals or to any mineral oils as defined in the Mining Act and the Mining Regulation (Oil) Act respectively unless the same are expressly referred to in the register. Cap. 61:01, Cap. 62:01

[Ch5801s26]26. Voluntary transfer

Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the Bankruptcy Act and to the winding-up provisions of the Companies Act, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration. Cap. 11:01, Cap. 46:03

[Ch5801s27]27. Overriding interests

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

- (a) natural rights of water and support;

(b) rights of compulsory acquisition, sale, resumption, entry, search and user conferred by any other written law;

(c) leases or agreements for leases for a term not exceeding three years, and periodic tenancies within the meaning of section 39;

(d) any unpaid rates and other moneys which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;

(e) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

(f) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;

(g) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law:

Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

[Ch5801s27A]27A. Conversion of provisional title

18 of 1971(1) Any proprietor registered with provisional title or any other interested person may at any time apply to the Registrar to remove the qualification to which such provisional title is subject, and if the Registrar is satisfied that such qualification has ceased to be of effect, and after such advertisement as the Registrar may think fit, the Registrar shall make an order that the title shall cease to be provisional.

(2) On the making of an order under subsection (1) or on the application of the proprietor or of any other interested person after the expiration of twelve years from the date of first registration with a provisional title, the Registrar, subject to his being satisfied that the proprietor, or the successive proprietors, has, or have, been in possession during the said period, shall delete the word "provisional" from the register of the piece in question, and thereupon the title to such piece shall cease to be provisional.

[Ch5801s28]28. Entries to constitute actual notice

Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.

#### PART IV

#### SEARCHES AND CERTIFICATES

[Ch5801s29]29. Searches and copies

(1) Any person, on application in the prescribed form, may inspect during official hours of business any register and any sheet of the registry map or any filed instrument or plan.

(2) Any person, on application in the prescribed form, shall be entitled to a certified copy of any register or part of the registry map or any plan or instrument filed in the registry.

(3) Any person, on application in the prescribed form, may require an official search in respect of any piece, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that piece.

[Ch5801s29A]29A. Land certificates and certificates of lease

32 of 1970(1) The Registrar shall, if requested by any proprietor of land or of a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form, showing all subsisting entries in the register affecting that land or lease:

Provided that—

- (i) only one such certificate shall be issued in respect of each piece of land or lease;
- (ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding five years.

(2) A land certificate or certificate of lease shall be only prima facie evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register whether they are shown on the certificate or not.

(3) When there is more than one proprietor, the proprietors may concur in nominating one of their number who shall receive the certificate, and failing such concurrence the certificate shall be filed in the registry.

(4) The fact and date of the issue of a land certificate or certificate of lease shall be noted in the register.

[Ch5801s29B]29B. Production of certificate

(1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates.

(2) A note of such registration shall be made in the certificate or the certificate may be destroyed and a new certificate may be issued to the new proprietor.

(3) If the disposition is a charge, the certificate shall be filed in the registry until the charge has been discharged.

[Ch5801s29C]29C. Lost or destroyed certificates

(1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate.

(2) The Registrar may require a statutory declaration that the certificate has been lost or destroyed.

(3) The Registrar, if satisfied with the evidence as to the destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.

(4) When a lost certificate is found, it shall be delivered to the Registrar for cancellation.

#### [Ch5801s30]30. Evidence

(1) A certified copy of the register or part of the registry map or any plan or instrument filed in the registry shall be admissible in evidence in all actions and matters and between all persons or parties, to the same extent as the original, and a signature on any such certified copy purporting to be the signature of the Registrar shall be presumed to be the signature of the Registrar until the contrary is proved.

(2) No legal practitioner, trustee, personal representative or other person in a fiduciary position shall be answerable in respect of any loss occasioned by relying on the accuracy of any such certified copy as is referred to in subsection (1).

(3) No process for compelling the production of the register, or of the registry map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

### PART V

#### DISPOSITIONS

##### Division 1—General

#### [Ch5801s31]31. Subsequent dealings

(1) No land, lease or charge shall be capable of being disposed of except in accordance with this Act and the Local Land Boards Act and every attempt to dispose of such land, lease or charge otherwise than in accordance with such Acts shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or charge. Cap. 59:02

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some other person thereunto by him lawfully authorized:

Provided that such an action shall not be prevented by reason only of the absence of writing where an intending purchaser or lessee who has performed or is willing to perform his part of a contract—

(a) has in part performance of the contract taken possession of the property or any part thereof; or



(b) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

(3) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof, and any such instrument may be presented for registration as if the death had not occurred.

#### [Ch5801s32]32. Protection of persons dealing in registered land

(1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned—

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the Deeds Registration Act. Cap. 58:02

(2) Where the proprietor of land, a lease or a charge is a trustee or family representative, no disposition by such trustee or family representative to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust or did not conform with custom.

#### [Ch5801s33]33. Additional fee for delayed registration

Where an instrument is presented for registration later than three months from the date of the instrument, then, as well as the registration fee, an additional fee equal to the registration fee shall be payable for each three months which have elapsed since such date:

Provided that—

(a) in no such case shall the sum of the additional fees exceed five times the original registration fee payable;

(b) the Chief Land Registrar may, in his sole discretion, remit any additional fee payable by virtue of this section, either in whole or in part.

#### [Ch5801s34]34. Power to compel registration

(1) If he is satisfied that any person, through his wilful default, has failed to register any instrument which is registrable under this Act, the Registrar may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 33 shall become due and shall be payable whether the instrument is presented for registration or not.

(2) Any person who fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice shall be liable to a fine of £25.

#### [Ch5801s35]35. Priority of registered interests

(1) Subject to subsection (3), interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may have been delayed:

Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

(2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.

#### [Ch5801s36]36. Stay of registration

(1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

(2) If within the suspension period a properly executed instrument effecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or other entry for which application for registration may have been made during the suspension period.

(3) Subject to subsection (2), any instrument or document for which application for registration is made during the suspension period other than that effecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

#### [Ch5801s37]37. Merger of registered interests

Where, upon the registration of a dealing, the interests of—

- (a) lessor and lessee;
- (b) chargor and chargee; or
- (c) the proprietor of a piece which is burdened with an easement, profit or restrictive agreement and the proprietor of a piece which benefits therefrom,

vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or the pieces are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

## Division 2—Leases

### [Ch5801s38]38. Leases

Subject to this Act and any other written law, the proprietor of land may lease the land or part of it to any person for a definite period or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

### [Ch5801s39]39. Periodic tenancies

(1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.

(2) Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy deemed to be created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall, subject to any other written law, be not less than the period of the tenancy.

### [Ch5801s40]40. Registration of leases

A lease for a specified period exceeding three years, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed three years, shall be in the prescribed form, and shall be completed by—

- (a) opening a register in respect of the lease in the name of the lessee; and
- (b) filing the lease; and
- (c) noting the lease in the encumbrances section of the register of the lessor's land or lease.

### [Ch5801s41]41. Lessor's consent to dealing with lease

Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 105 has been produced to the Registrar.

[Ch5801s42]42. Lease of charged land

Where any land or a lease is subject to a charge, no lease of such land or lease shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 105, unless the charge expressly dispenses with the necessity for such consent.

[Ch5801s43]43. Duration of leases

(1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.

(2) Where no day of commencement is named, the period commences on the date of execution of the lease, and that day is excluded in computing that period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

[Ch5801s44]44. Future leases

(1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.

(2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

[Ch5801s45]45. Holding over

(1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

[Ch5801s46]46. Agreements implied in leases on part of lessor

Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessor with the lessee binding the lessor—

(a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period

of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;

(b) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased,

and such other agreements as the Minister may have prescribed prior to the execution of the lease.

[Ch5801s47]47. Agreements implied in leases on part of lessee

Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessee with the lessor binding the lessee—

(a) to pay the rent reserved by the lease at the times and in the manner therein specified;

(b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;

(c) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine their condition;

(d) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and

(e) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld,

and such other agreements as may have been prescribed by the Minister prior to the execution of the lease.

[Ch5801s48]48. Meaning of “in repair”

Where an agreement is contained or implied in any lease to keep a building or a particular part of a building “in repair”, it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

[Ch5801s49]49. Lessor’s right of forfeiture

(1) Subject to section 52 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease;
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation, except for the purpose of amalgamation or reconstruction.

(2) The right of forfeiture may be—

- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) enforced by action in the court.

(3) The right of forfeiture shall be taken to have been waived if—

- (a) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
- (b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.

#### [Ch5801s50]50. Effect of forfeiture on subleases

The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but—

- (a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or
- (b) where the court grants relief against the forfeiture under section 52,

every such sublease and other interest shall be deemed not to have terminated.

#### [Ch5801s51]51. Notice before forfeiture

Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a written notice—

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

[Ch5801s52]52. Relief against forfeiture

(1) A lessee upon whom a notice has been served under section 51, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) For the purpose of this section a lease limited to continue as long only as the lessee abstains from committing a breach of agreement or condition shall be and take effect as a lease to continue for any longer term for which it could subsist, but terminable by a proviso for re-entry on such breach.

(4) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

[Ch5801s53]53. Variation and extension of leases

Subject to section 51, the agreements and conditions contained or implied in any registered lease may be varied, negated or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

[Ch5801s54]54. Substitution of leases

Where upon the presentation of a lease for registration the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

[Ch5801s55]55. Subleases

(1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may be a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease.

(2) Save as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.

(3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings such termination shall terminate the sublease.

(4) In addition to the agreements specified by or prescribed under this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

#### [Ch5801s56]56. Surrender of leases

(1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner—

(a) an instrument shall be prepared in the prescribed form, or else the word "surrendered" shall be inscribed on the lease or on the duplicate or triplicate thereof;

(b) the instrument or inscription shall then be executed by the lessor and lessee;

(c) the Registrar shall then cancel the registration of the lease; and

(d) the instrument or inscribed lease shall then be filed, and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.

(2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

#### [Ch5801s57]57. Determination of leases

(1) Where—

(a) the period of a lease has expired;

(b) an event upon which a lease is expressed to terminate has happened;

(c) a lessor has lawfully re-entered; or

(d) a notice duly given to terminate the lease has expired,



and the lessor has recovered possession of the land leased, the lease and every other interest appearing on the register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel its registration.

(2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar may require, and the Registrar on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

[Ch5801s58]58. Voluntary registration of leases

Where application is made to the Registrar to register any lease which is not compulsorily registrable under this Act but which is capable of registration, the Registrar shall not register such lease unless—

(a) it is in the prescribed form, or in such form as the Registrar may approve; and

(b) in the case of a sublease, every lease superior to that sublease complies with condition (a) and is registered in priority to the sublease.

[Ch5801s59]59.

[Repealed by 1 of 1981.]

Division 3—Charges

[Ch5801s60]60. Form and effect of charges

(1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, and the instrument shall, except where section 68 has by the instrument been expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.

(3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

(4) A charge shall not operate as a transfer but shall have effect as a security only.

(5) There shall be included, in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to section 72, of the money which may arise on the exercise by the chargee of his power of sale, either by setting aside the proceeds of

sale or part thereof and investing it to make future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

[Ch5801s61]61. Second or subsequent charges

A proprietor whose land or lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

[Ch5801s62]62. Presumption that money paid is interest

If any question arises whether any payment made by the chargor is in respect of principal or interest, such payment shall be presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.

[Ch5801s63]63. Agreements implied in charges

There shall be implied in every charge, unless the contrary is expressed therein, such agreements by the chargor with the chargee binding the chargor as may be prescribed by the Minister.

[Ch5801s64]64. Chargee's consent to transfer

Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register, and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with section 105, has been produced to the Registrar.

[Ch5801s65]65. Variation of charge

The amount secured, the method of repayment, the rate of interest or the term of the charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights of the proprietor of any subsequent charge, unless he has consented to the variation in writing on the instrument of variation.

[Ch5801s66]66. Right of redemption

(1) Subject to this section, a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by section 68, may redeem the charged land or lease or charge at any time before it has been sold under section 71, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void. For the purposes of this subsection, land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

(2) If the chargor wishes to redeem the charged land or lease or charge before the date specified in the charge for repayment, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, interest on the principal sum secured thereby for the unexpired portion of the term of the charge.

(3) If the chargor seeks to redeem the charged land or lease or charge after the date specified in the charge, or where no such date is specified, he shall give the chargee three months' notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.

(4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the Consolidated Fund.

#### [Ch5801s67]67. Right of third party to transfer of charge

On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under section 66, any of the following persons, that is to say—

- (a) any person, other than the chargor, who has an interest in the land or lease or charge charged;
- (b) any surety for the payment of the amount secured by the charge; or
- (c) any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge,

may require the chargee to transfer the charge to him.

#### [Ch5801s68]68. Chargee's remedies

(1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

(2) If the chargor does not comply, within three months of the date of service, with a notice served on him under subsection (1), the chargee may—

- (a) appoint a receiver of the income of the charged property; or
- (b) sell the charged property:

Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under that subsection.

(3) The chargee shall be entitled to sue for the money secured by the charge in the following cases only—

(a) where the chargor is bound to repay the same;

(b) where, by any cause other than the wrongful act of the chargor or chargee, the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further security which will render the whole security sufficient, and the chargor has failed to provide such security;

(c) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that—

(i) in the case specified in paragraph (a) of this subsection—

(a) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and

(b) no action shall be commenced until a notice served in accordance with subsection (1) has expired;

(ii) the court may, at its discretion, stay a suit brought under paragraph (a) or paragraph (b) of this subsection, notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property.

[Ch5801s69]69. Appointment, powers, remuneration and duties of receiver

(1) The appointment of a receiver under the powers conferred by section 68 shall be in writing signed by the chargee.

(2) A receiver may be removed at any time and a new receiver appointed by writing signed by the chargee.

(3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver shall not be concerned to inquire into the validity of the receiver's appointment.

(6) Subject to subsection (8), the receiver shall be entitled to retain out of any money received by him all costs, charges and expenses properly incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five per cent of that gross amount, or such other rate as the chargor and the chargee and other chargees, if any, agree or the court thinks fit to allow on application made by the receiver for that purpose.

(7) The receiver shall apply insurance money in making good the loss or damage in respect of which the money is received.

(8) Subject to subsection (7), the receiver shall apply all money received by him in the following order of priority—

(a) in discharge of all rents, rates, taxes and outgoings whatever affecting the charged property;

(b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge in right whereof he is receiver;

(c) in payment of his commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Act, and the cost of executing necessary or proper repairs directed in writing by the chargee;

(d) in payment of the interest accruing due in respect of any principal money due under the charge;

(e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee,

and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the charged property.

[Ch5801s70]70. Chargee's powers of leasing

(1) The proprietor of a charge of land or a lease who has appointed a receiver under the powers conferred on him by section 68 shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to this Act and any other written law—

(a) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; and

(b) to accept a surrender of any lease so granted and of any lease created by the chargor,

and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.

(2) Every lease granted by a chargee shall—

- (a) be made to take effect in possession not later than twelve months after its date;
- (b) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without a fine or premium being obtained;
- (c) be for a term not exceeding twenty-one years; and
- (d) contain a declaration by the chargee that he has appointed a receiver, with the date of appointment.

[Ch5801s71]71. Power of sale

(1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the Registrar may approve, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.

(2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.

(3) A transfer by a chargee in exercise of his power of sale shall be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power shall have his remedy in damages only against the person exercising the power.

(4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other encumbrance to which the charge has priority (other than a lease, easement, restrictive agreement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing).

(5) A chargee, in exercising his power of sale, shall have the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by sections 89 and 90.

[Ch5801s72]72. Application of purchase money

The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior encumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior encumbrances, shall be applied—

- (a) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;

(b) secondly, in accordance with any express provision in the charge (as required by section 60) for disposing of such money and, in the absence of any such express provision, in discharge of the money due to the chargee at the date of the sale; and

(c) thirdly, in payment of any subsequent charges in the order of their priority,

and the residue of the money so received shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

#### [Ch5801s73]73. Variation of powers

Sections 66 (2) and (3), 68, 69, 70 and 71 may in their application to a charge be varied or added to in the charge:

Provided that any such variation or addition shall not be acted upon, unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

#### [Ch5801s74]74. No right of entry into possession or foreclosure

For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

#### [Ch5801s75]75. Discharge of charge

(1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word "Discharged" may be endorsed on the charge or the duplicate or triplicate and the endorsement executed by the chargee and dated.

(2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge or the endorsed charge.

#### [Ch5801s76]76. Satisfaction of charges

Upon proof to the satisfaction of the Registrar—

(a) that all money due under a charge has been paid to the chargee or by his direction;  
or

(b) that there has occurred the event or circumstance upon which, in accordance with any charge, the money thereby secured ceases to be payable, and that no money is owing under the charge, the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

#### [Ch5801s77]77. Further advances

Provision may be made in the charge for a chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

[Ch5801s78]78. Consolidation

A chargee has no right to consolidate his charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

Division 4—Transfers

[Ch5801s79]79. Transfer

(1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

(3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

[Ch5801s80]80. Certificates as to payment of rates

The Registrar shall not register any instrument purporting to transfer or to vest any land, or a lease of land, situated within the area of a rating authority unless there is produced to the Registrar a written statement by the authority that all rates and other charges payable to the authority in respect of the land for the last twelve years have been paid, expressed to be available until the day upon which, or until a day not earlier than that upon which, the instrument was registered:

Provided that no such statement shall be required where the instrument relates to—

(a) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or

(b) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

[Ch5801s81]81. Transfer to take effect immediately

A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time shall not be capable of registration.

[Ch5801s82]82. Conditions repugnant to interest transferred

(1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be void.



(2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen shall be void.

(3) Except as provided in Division 5 of this Part, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

[Ch5801s83]83. Transfer of part

No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

[Ch5801s84]84. Transfer of lease

On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

(a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified, the date of the transfer; and

(b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

[Ch5801s85]85. Effect of transfer on agreements in lease

A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Provided that nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in the lease which occurred before the transfer.

[Ch5801s86]86. Transfer subject to charge

In every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to keep the transferor indemnified against the principal sum secured by the charge and from and against all liability in respect of any of the agreements on the part of the transferor therein contained or implied.

[Ch5801s87]87. Transfer subject to lease

A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

- (a) affects the validity of any payment of rent made by the lessee to the transferor; or
- (b) renders the lessee liable, on account of his failure to pay rent to the transferee, for any breach of agreement to pay rent, before notice of the transfer is given to the lessee by the transferee or transferor.

[Ch5801s88]88. Transfer of unregistered lease

A transfer of a lease of registered land, which lease does not require registration and is not so registered, shall not itself require registration, but if application is made to the Registrar to register such transfer, he shall not do so unless the transfer is in the prescribed form and the lease and prior transfers or other dealings therewith have been registered.

Division 5—Easements, Restrictive Agreements, Profits and Licences

[Ch5801s89]89. Easements

(1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.

(2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly—

- (a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment;
- (b) the land burdened by the easement and, if required by the Registrar, the particular part thereof so burdened;
- (c) the land which enjoys the benefit of the easement,

and shall, if so required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.

(5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.

[Ch5801s90]90. Restrictive agreements

(1) Where an instrument, other than a lease or charge, contains an agreement (hereinafter referred to as a restrictive agreement) by one proprietor restricting the building on or the user or other enjoyment of his land for the benefit of the proprietor of other land, and is presented to the

Registrar, the Registrar shall note the restrictive agreement in the encumbrances section of the register of the land or lease burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement, and shall file the instrument.

(2) Unless it is noted in the register, a restrictive agreement is not binding on the proprietor of the land or lease burdened by it or on anybody acquiring the land or lease.

(3) If a restrictive agreement is noted in the Register, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

#### [Ch5801s91]91. Profits

(1) Subject to the Mining Act and any other written law, the proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit. Cap. 61:01

(2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and—

- (a) whether it is appurtenant to other land or a lease or not; and
- (b) whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor.

(3) The grant of a profit shall be completed—

- (a) by its registration as an encumbrance in the register of the land or lease which it affects;
- (b) where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant; and
- (c) by filing the instrument.

(4) A profit which is not appurtenant to land may be dealt with as though it were land.

(5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

#### [Ch5801s92]92. Release and extinguishment of easements, profits and restrictive agreements

(1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled, and the easement, profit or restrictive agreement shall thereupon be extinguished.

(2) On the application of any person affected thereby, the Registrar may cancel the registration of an easement, profit or restrictive agreement upon proof to his satisfaction that—

- (a) the period of time for which it was intended to subsist has expired;

- (b) the event upon which it was intended to terminate has occurred; or
- (c) it has been abandoned.

[Ch5801s93]93. Discharge and modification of easements, profits and restrictive agreement

The court shall have power, on the application of any person interested in land affected by an easement, restrictive agreement or profit by order wholly or partially to extinguish or modify any such easement, profit or restrictive agreement (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied—

(a) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit or restrictive agreement ought to be held to be obsolete;

(b) that the continued existence of the easement, profit or restrictive agreement impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user; or

(c) that the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit or restrictive agreement.

[Ch5801s94]94. Licences

(1) Without prejudice to section 126, a licence is not capable of registration.

(2) A licence relating to the use or enjoyment of land is ineffective against a bona fide purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

Division 6—Co-proprietorship and Partition

[Ch5801s95]95. Registration of more than one proprietor

(1) Every instrument made in favour of two or more persons, and the registration giving effect to it, shall show—

- (a) whether such persons are joint proprietors or proprietors in common; and
- (b) where they are proprietors in common, the share of each proprietor.

(2) The Minister may for any registration section prescribe either—

(a) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or

(b) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,

or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.

[Ch5801s96]96. Characteristics of joint proprietorship and severance thereof

(1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently—

(a) dispositions may be made only by all the joint proprietors; and

(b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

(2) For avoidance of doubt, it is hereby declared that—

(a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

(b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

[Ch5801s97]97. Characteristics of proprietorship in common

(1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.

[Ch5801s98]98. Partition of land owned in common

(1) An application for the partition of the land owned in common may be made in the prescribed form to the Registrar by—

(a) any one or more of the proprietors; or

(b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree,

and, subject to this Act and any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common, or, in the absence of agreement, in such manner as the Registrar may order:

Provided that the Registrar may require the production of plans of the sub-divided pieces or may cause plans of the sub-divided pieces to be prepared before effecting the partition of the land.

(2) Partition shall be completed by closing the register of the piece partitioned and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

[Ch5801s99]99. When Registrar may order sale

(1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land be sold, the Registrar shall, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.

(2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty.

[Ch5801s100]100. Procedure where share small

(1) Where the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.

(2) Where the Registrar proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.

(3) Where any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it.

[Ch5801s101]101. Partition of family land

(1) An application for the partition of family land may be made, in the prescribed form, to the Registrar by—

- (a) the family representative;
- (b) an adult member of the family; or
- (c) the Minister.

(2) The Registrar shall forward the application to the Local Land Board having jurisdiction, and the Local Land Board shall proceed in accordance with section 10 of the Local Land Boards Act. Cap. 59:02

(3) On receipt from the Local Land Board of the partition agreement or order the Registrar shall complete the partition by closing the register of the family land and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

#### Division 7—Succession on Death

[Ch5801s102]102. Succession on death

Subject to Part VII, nothing in this Act shall affect the law of testate or intestate succession.

### PART VI

#### INSTRUMENTS AND AGENTS

[Ch5801s103]103. Form of instruments

(1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.

(2) Leases and charges shall be presented for registration in triplicate.

(3) Instruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

[Ch5801s104]104. Execution of instruments

(1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Provided that the Registrar may dispense with execution by any particular party (other than the donee under a disposition by way of gift) where he considers that such execution is unnecessary.

(2) Subject to section 117 (2), an instrument shall be deemed to have been executed only—

(a) by a natural person, if signed by him;

(b) by a corporation—

(i) if sealed with the common seal of the corporation, affixed thereto in accordance with section 43 (2) of the General Interpretation Act in the case of a statutory corporation, or in accordance with the articles of association in the case of a company; or Cap. 1:01

(ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorized in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.

[Ch5801s105]105. Verification of execution

(1) A person executing an instrument shall, subject to subsection (2), appear before the Registrar who shall verify the execution of the instrument as if he were an administrative officer authenticating a document in accordance with section 4 of the Authentication of Documents Act. Cap. 4:06

18 of 1971(2) The Registrar may accept for registration an instrument the execution of which has been verified—

(a) under subsection (1); or

(b) by such other person as may be prescribed who has endorsed on or attached to the instrument a certificate in the prescribed form.

(3) In the case of official documents, section 6 of the Authentication of Documents Act shall apply.

(4) No instrument executed out of Malawi shall be registered unless it has been authenticated in accordance with Part V or section 16 of the Authentication of Documents Act.

(5) The Registrar may dispense with verification under this section—

(a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or

(b) in cases in which to his knowledge the document has been properly executed, and shall record on the document his reasons for dispensing with the appearance of the parties.

[Ch5801s106]106. Stamps

No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

[Ch5801s107]107. Disposal of instruments

Subject to subsection (2) and to section 109 (2), all instruments accepted by the Registrar shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter.

(2) When a lease or charge is registered particulars of registration shall be noted on the duplicate and the triplicate thereof, and the duplicate and the triplicate shall be returned to the person who presented them.

(3) Six years or more after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

[Ch5801s108]108. Minors

(1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of twenty-one years may be entered in the register either on first registration or as a transferee or on transmission.



(2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.

(3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, such disposition may not be set aside only on the grounds of minority.

[Ch5801s109]109. Agents and persons under disability

(1) Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a power of attorney executed and verified in accordance with sections 104 and 105.

(2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.

(3) Where any person who, if not under a disability, might have made any application, done any act or been a party to any proceeding under this Act or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Act.

(4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar shall satisfy himself that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

[Ch5801s110]110. Gift to person under disability

A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until—

(a) he has transferred the land, lease or charge to the donor who shall be bound to accept it; and

(b) the transfer has been registered.

[Ch5801s111]111. Powers of attorney

(1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.

(2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve, and shall be executed and verified in accordance with sections 104 and 105.

(3) The donor of a power of attorney filed in accordance with subsection (1) may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the Registrar considers it desirable, he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

[Ch5801s112]112. Effect of registered power of attorney

(1) A power of attorney which has been registered under section 111 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 111 shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

## PART VII

### TRANSMISSIONS, TRUSTS AND FAMILY REPRESENTATION

[Ch5801s113]113. Transmission on death of joint proprietor

If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.

[Ch5801s114]114. Transmission on death of sole proprietor or proprietor in common

(1) If a sole proprietor or a proprietor in common dies, his personal representative or personal representatives, on application to the Registrar in the prescribed form and on production to him of the grant or grants, shall be entitled to be registered by transmission as proprietor, or in the case of two or more personal representatives as joint proprietors, in the place of the deceased with the addition after his name or their names of the words “as personal representative of ..... deceased” or “as personal representatives of ..... deceased”, as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative or personal representatives to be registered, register by transmission—

(a) any transfer by the personal representative or personal representatives;

(b) any surrender of a lease or discharge of a charge by the personal representative, or personal representatives.

(3) In this section, “grant” means the grant of probate of the will or the grant of letters of administration of the estate of the deceased proprietor, or an administration grant made by a Local Court under any written law.

[Ch5801s115]115. Effect of transmission by death

(1) A proprietor registered as personal representative, or, being a person beneficially entitled on the death of a proprietor, after transfer from a personal representative, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing he shall be deemed to have taken such land, lease or charge, under a transfer for valuable consideration.

(2) The registration of any person by transmission shall relate back to and take effect from the date of the death of the proprietor.

[Ch5801s116]116. Transmission on bankruptcy

(1) A trustee in bankruptcy shall, upon production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed.

(2) A trustee in bankruptcy shall be described in the register as “trustee of the property of ....., a bankrupt”.

(3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in the Bankruptcy Act or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be

subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration. Cap. 11:01

[Ch5801s117]117. Liquidation

(1) Where a company is being wound up, the liquidator shall produce to the Registrar any resolution or order appointing him liquidator, and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 105.

[Ch5801s118]118. Transmission in other cases

Where the Government or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Government or the person entitled as the proprietor.

[Ch5801s119]119. Trusts

(1) A person acquiring land or a lease or a charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words "as trustee", but the Registrar shall not enter particulars of any trust in the register.

(2) An instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for the purpose of any registered dealings, no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Act.

[Ch5801s120]120. Co-trustees

(1) Where two or more proprietors are registered as trustees or as trustees in bankruptcy, they shall hold as joint proprietors.

(2) Where the survivor of two or more trustees or trustees in bankruptcy would not be entitled to exercise alone the powers which are vested in them, the Registrar shall enter a restriction to that effect.

[Ch5801s121]121. Family representation

(1) Where land is family land the head of the family shall be registered as the proprietor with the addition of the words “as family representative”.

(2) Where the proprietor of land, or a lease or a charge is a family representative he shall have the sole and exclusive right of dealing with the land, lease or charge:

Provided that nothing contained in this section shall preclude the family representative and family members from regulating the occupation of the land among themselves according to custom.

(3) Nothing in this Act shall relieve any person registered as the family representative from any duty, customary or otherwise, to consult other members of the family. A person so registered shall be bound to exercise the powers vested in him by this Act on behalf of and for the collective benefit of the family, but any failure by such person to comply with such duty or obligation shall in no way concern or affect any person dealing with him in good faith for valuable consideration nor shall any such failure create any right to indemnity under this Act.

[Ch5801s122]122. Replacement of family representative

(1) The Registrar, on being notified by any member of a family of which the head is registered as family representative—

(a) of the death of the family representative;

(b) that the family representative is unable to act by reason of mental or physical incapacity, absence from Malawi, imprisonment or detention; or

(c) that the family representative is no longer acceptable to the majority of the members of the family,

shall refer the matter to the appropriate Local Land Board established under the Local Land Boards Act. Cap. 59:02

(2) Upon receipt from the Local Land Board of the nomination of a new family representative, the Registrar shall delete the name of the registered family representative and substitute the name of the new family representative, and shall file the nomination.

## PART VIII

### RESTRAINTS ON DISPOSITION

#### Division 1—Inhibitions

[Ch5801s123]123. Power of court to inhibit registered dealings

(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

[Ch5801s124]124. Effect of inhibition

So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered.

[Ch5801s125]125. Cancellation of inhibition

The registration of an inhibition shall be cancelled in the following cases and in no others—

- (a) on the expiration of the time limited by the inhibition;
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;
- (c) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or
- (d) by order of the court.

Division 2—Cautions

[Ch5801s126]126. Lodging of cautions

- (1) Any person who—
- (a) claims any unregistrable interest whatsoever, in land or a lease or a charge;
  - (b) is entitled to a licence;
  - (c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or
  - (d) being a Bank, has advanced money on a current account to the proprietor of land or a lease or a charge,

may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

- (2) A caution may either—
- (a) forbid the registration of dispositions and the making of entries altogether; or
  - (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.

(3) A caution shall be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar may reject a caution which he considers unnecessary.

(5) Subject to this section, the caution shall be registered in the appropriate register.

[Ch5801s127]127. Notice and effect of caution

(1) The Registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.

(2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.

[Ch5801s128]128. Withdrawal and removal of caution

(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.

(2) (a) The Registrar may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.

(b) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.

(c) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

(3) On registration of a transfer by a chargee in exercise of his power of sale under section 71, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.

(4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 130 shall not be affected by the cancellation.

[Ch5801s129]129. Second caution in respect of same matter

The Registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

[Ch5801s130]130. Wrongful cautions

Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has thereby sustained damage, to pay compensation to such person.

Division 3—Restrictions

[Ch5801s131]131. Restrictions

(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

- (a) for a particular period;
- (b) until the occurrence of a particular event; or
- (c) until the making of a further order,

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

[Ch5801s132]132. Notice and effect of restriction

(1) Upon the entry of a restriction the Registrar shall give notice thereof in writing to the proprietor affected thereby.

(2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

[Ch5801s133]133. Removal and variation of restrictions

(1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

(2) Upon the application of a proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

## PART IX

### PRESCRIPTION

[Ch5801s134]134. Acquisition of land by prescription

(1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years:

Provided that no person shall so acquire the ownership of customary or public land.

(2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor thereof.

[Ch5801s135]135. Principles of possession



(1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

(2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his possession shall be deemed to have been possession or receipt of the rents or profits by the claimant.

(3) Where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another his possession shall be deemed to be or to have been the possession of that other.

(4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor, continues in such possession after the expiry of the term during which such conditions subsist without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceable, open and uninterrupted possession within the meaning of section 134.

(5) For the purposes of subsection (4)—

(a) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined;

(b) a periodic tenancy shall be deemed to have terminated at the expiration of the period:

Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.

(6) Possession shall be interrupted—

(a) by dispossession by a person claiming the land in opposition to the person in possession;

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

(7) No person possessing land in a fiduciary capacity on behalf of another may acquire by prescription the ownership of the land as against such other.

[Ch5801s136]136. Procedure on application

(1) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby; and may order that the application be advertised at the expense of the applicant in such manner as the Registrar may direct.

(2) After one month has elapsed from the date of giving notice under subsection (1) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.

[Ch5801s137]137. Acquisition of easements and profits by prescription

(1) Except in respect of customary or public land, easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twelve years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it.

(2) Where any person claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisements and conditions as the Registrar may direct, shall register the easement or profit as an encumbrance on the register of the land affected and, in the case of an easement, in the property register of the land which benefits.

## PART X

### RECTIFICATION AND INDEMNITY

[Ch5801s138]138. Rectification by Registrar

(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

- (a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;
- (b) where any person has acquired an interest in land by prescription under Part IX;
- (c) in any case and at any time with consent of all persons interested;
- (d) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.

(2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

[Ch5801s139]139. Rectification by court

(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

[Ch5801s140]140. Right to indemnity

(1) Subject to this Act and any written law relating to the limitation of actions, any person suffering damage by reason of—

- (a) any rectification of the register;
- (b) any mistake or omission in the register which cannot be rectified under this Act, other than a mistake or omission in a first registration; or
- (c) any error in a certificate of official search issued by the Registrar or in a copy of or extract from the register or in a copy of or extract from any document or plan, certified under this Act,

shall be entitled to be indemnified by the Government out of moneys provided by Parliament.

(2) No indemnity shall be payable to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title (otherwise than under a registered disposition made bona fide for valuable consideration) from a person who so caused or substantially contributed to the damage.

[Ch5801s141]141. Amount of indemnity

Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed—

- (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
- (b) where the register is rectified, the value of the interest immediately before the time of rectification.

[Ch5801s142]142. Procedure for claiming indemnity

The Registrar may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

[Ch5801s143]143. Recovery of indemnity paid

Where any moneys are paid by way of indemnity under this Part, the Minister shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or

implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

[Ch5801s144]144. Errors in survey

(1) Subject to the proviso to section 28 (2) of the Customary Land (Development) Act as between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area of measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the registry map. Cap. 59:01

(2) As between a proprietor and any person from or through whom he acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the registry map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

## PART XI

### DECISIONS OF REGISTRAR AND APPEALS

[Ch5801s145]145. Power of Registrar to state case

Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act, the Registrar may state a case for the opinion of the High Court; and thereupon the High Court shall give its opinion thereon, which shall be binding upon the Registrar.

[Ch5801s146]146. Appeals

(1) If any person is dissatisfied by the refusal of the Deputy Chief Land Registrar or any Assistant Land Registrar to effect or cancel any registration, he may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that such registration be effected or cancelled, as the case may require, or may uphold the refusal.

(2) (a) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.

(b) On receipt of a notice of appeal, the Chief Land Registrar shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.

(c) On the hearing of the appeal, the appellant and the Chief Land Registrar and any other person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by a legal practitioner.

(d) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Chief Land Registrar.

(e) The costs of the appeal shall be in the discretion of Court.

[Ch5801s147]147. Effect of appeal on disposition

(1) An appeal to the Court shall not affect a disposition for valuable consideration made in good faith and registered before delivery of notice of the appeal to the Registrar.

(2) A note that an appeal is pending shall be made in the register affected by the appeal and any disposition shall be subject to such notice.

[Ch5801s148]148. Appeal Rules

The Chief Justice may make rules of Court for regulating applications and appeals to the Court under this Act, and for the fees to be paid in respect thereof.

## PART XII

### MISCELLANEOUS

[Ch5801s149]149. Addresses

Any person who under this Act submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar in writing a postal address within Malawi for service, and shall notify him in writing of any change in that address:

Provided that the Registrar may in his discretion dispense with this requirement in regard to any particular registration or kind of registration.

[Ch5801s150]150. Service of notices

A notice under this Act shall be deemed to have been served on or given to any person—

(a) if served on him personally;

(b) if left for him at his last known place of residence or business in Malawi;

(c) if sent by registered post to him at his last known postal address;

(d) if served in any of the above-mentioned ways on an attorney holding a power of attorney whereunder such attorney is authorized to accept such service;

(e) if service cannot be effected in one of the abovementioned ways, by displaying it in a prominent place on the land affected.

[Ch5801s151]151. Meaning of “opportunity of being heard”

(1) Where by this Act a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity—

(a) if he attends before the Registrar personally or by a legal practitioner or other agent, and is given such an opportunity;

(b) if he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or

(c) if he fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time not less than seven days after service of the notice at which he will, if he attends before the Registrar, be heard.

(2) Where a person or a legal practitioner or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.

(3) Where by this Act all persons interested or affected are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

[Ch5801s152]152. Offences

(1) Any person who—

(a) knowingly misleads or deceives any person authorized by or under this Act to require information in respect of any land or interest in land;

(b) fraudulently issues or makes or fraudulently procures the issue or making of, any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register;

(c) fraudulently uses, assists in fraudulently using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorized by the Registrar; or

(d) causes any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instrument,

shall be liable to a fine of £200 and to imprisonment for three years.

(2) If any person after the delivery to him of a summons to attend before the Registrar or to produce any document neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to him by the Registrar under the powers conferred by this Act, he shall be liable to a fine of £20.

[Ch5801s153]153. Fees

(1) There shall be payable in respect of land certificates, certificates of lease, searches, surveys and survey plans, printed forms and all other matters connected with registration, such fees

as shall from time to time be prescribed, and the Registrar may refuse registration until the fees are paid.

(2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.

(3) The Registrar may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

[Ch5801s154]154. Recovery of fees and expenses

Unpaid fees or expenses incurred by the Registrar shall constitute a civil debt recoverable by the Registrar in a magistrate's court.

[Ch5801s155]155. Enforcement of Registrar's orders for payment

An order for the payment of a sum of money made by the Registrar under any power conferred by this Act shall be enforceable by a magistrate's court as if it were an order of that court.

[Ch5801s156]156. Jurisdiction of courts

Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge, registered under this Act, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this Act, or being an interest which is referred to in section 27, shall, notwithstanding the Courts Act, be tried by the High Court, or, where the value of the subject matter in dispute does not exceed £200, by the High Court or a subordinate court held by a Resident Magistrate. Cap. 3:02

[Ch5801s157]157. Rules

The Minister may make rules generally to give effect to the purposes and provisions of this Act, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used under this Act and the fees payable for anything to be done thereunder, and for prescribing anything which under this Act may be prescribed.

[Ch5801s158]158. Savings of rights

Nothing in this Act shall prejudice any of the interests, rights, powers and privileges conferred on the Minister or the Government by any other written law.

[Ch5801s159]159. Act to bind Government

Except as otherwise provided, this Act binds the Government.

[Ch5801s160]160. Other law

Any matter not provided for in this Act, or in any other written law relating to land, leases and charges registered under this Act and interests therein, shall be decided in accordance with the principles of justice, equity and good conscience.

SUBSIDIARY LEGISLATION

## APPOINTMENT

under s. 6

G.N. 131/1970

The Minister has appointed the person for the time being holding the office of Commissioner for Lands to be Chief Land Registrar for the purposes of the said Act.

## ORDER

under s. 4

G.N. 129/1970

Constitution of the Lilongwe Land Registration District

The Minister has ordered that the area for the time being described in the Schedule to the Lilongwe Agricultural Development Area Order shall constitute the Lilongwe Land Registration District. Cap. 59:01, sub. leg. p. 14

## REGISTERED LAND (CAPITAL CITY OF LILONGWE LAND REGISTRATION DISTRICT) ORDER

under s. 4

G.N. 85/1983

### 1. Citation

This Order may be cited as the Registered Land (Capital City of Lilongwe Land Registration District) Order.

### 2. Constitution of the Capital City of Lilongwe Land Registration District

The areas specified in the Schedule hereto shall hereafter constitute the Capital City of Lilongwe Land Registration District.

## SCHEDULE (para. 3)

The areas designated as part of the Capital City of Lilongwe by the following Orders—

(i) Capital City Development Corporation Designation Order, 1968 (G.N. 160/1968); Cap. 39:02, sub. leg. pp. 12, 12a, 25 and G.N. 132/1980, 109/1986

(ii) Capital City Development Corporation (Supplemental Designation) Order, 1972 (General Notice No. 40/1972);

(iii) Capital City Development Corporation (Supplemental Designation) Order, 1977 (General Notice No. 86/1977);

(iv) Capital City Development Corporation (Supplemental Designation and Land Vesting) Order, 1980 (G.N. 132/1980);



(v) Capital City Development Corporation (Supplemental Designation) Order, 1984 (G.N. 88/1984).

ORDER

under s. 4

G.N. 51/1976

Constitution of the Blantyre Land Registration District

The Minister has ordered that the area for the time being within the boundaries of the City of Blantyre described in the City of Blantyre (Declaration of Boundaries) Order shall constitute a land registration district for the purposes of the Act. Such district shall be known as the Blantyre Land Registration District. Cap. 22:01, sub. leg. p. A25

REGISTERED LAND RULES

under s. 157

G.N 185/1970

114/1982

142/1983

15/1986

106/1995

8/2002

1. Citation

These Rules may be cited as the Registered Land Rules.

2. Form of register

A register shall be in one of the forms in the First Schedule to these Rules, with such alterations and additions consistent with the provisions of section 10 of the Act as the Chief Land Registrar considers necessary or desirable; the title number of a piece and of any lease or sublease of that piece, whether of the whole or part of the piece, shall be the registration section and the piece number together, where applicable, with—

(a) in the case of a sublease, a letter suffix unique to that sublease, and

(b) in the case of a lease or sublease of a portion of a piece, a subdivisional number unique to that portion,

and letters and subdivisional numbers shall appear in the order in which the respective interests were created.

3. Forms of certificates

A land certificate and a certificate of lease shall be in the appropriate form in the Second Schedule to these Rules.

4. Other forms

The forms in the Third Schedule to these Rules shall, subject to section 103 of the Act, be used in all matters to which they refer.

5. Forms to be in English

(1) All forms shall be clearly and legibly completed in the English language with such alterations and additions as the Chief Land Registrar considers necessary or desirable. Instruments for which no form is provided or to which the scheduled forms cannot conveniently be adapted, shall be in such form as the Chief Land Registrar shall direct or allow, the scheduled forms being followed as nearly as circumstances permit. G.N. 15/1986

(2) Every instrument presented for registration or filing in the Land Registry shall be on paper of durable quality and shall have endorsed thereon a certificate of preparation in the form set out in the Seventh Schedule signed by the person or firm presenting the instrument.

6. Verification of instruments

(1) In addition to the Registrar, the persons specified in the Fifth Schedule may verify any instrument for the purposes of section 105 (1) of the Act. G.N. 142/1983

(2) A certificate for the purpose of paragraph (b) of subsection (2) of section 105 of the Act shall be in the form set out in the Sixth Schedule which may be typed, or otherwise legibly incorporated in ink, on any instrument presented for registration.

7. Fees

The fees specified in the second column of the Fourth Schedule to these Rules shall be paid in respect of the matters specified in the first column of that Schedule:

Provided that—

- (i) on fees shall be payable by the Government;
- (ii) where a piece is identified by reference to more than one sheet of the registry map, the sheets required to identify that piece shall, for the purposes of any fee, be deemed to be one sheet only.

8. Assessment of fees

Where any fee is calculated ad valorem and no consideration is expressed in the instrument the value on which the fee is calculated shall be the value for the purposes of assessment of stamp duty.

9. Registrar not to prepare instruments in certain cases

(1) No instrument shall be prepared by the registrar except on behalf of the Government where the amount or value of the consideration exceeds K2,000 or where the amount or value of the annual rent or other annual payment reserved exceeds K200 and the Registrar may refuse to prepare an instrument in any other case where he is of the opinion that the parties to the transaction should obtain the advice of a legal practitioner.

(2) Where an instrument is prepared by the Registrar, his responsibility is limited to the preparation of that instrument, and he shall not be concerned with, nor be in any way liable for, any other issue which may arise between the parties to any transaction.

10. Refund of fees

No fee shall be refunded except by order of the Chief Land Registrar.

11. Agreements implied in charges

(1) In every charge, unless the contrary is expressed therein, the charger shall be deemed to have agreed in favour of the chargee as follows—G.N. 15/1986

(a) to pay the principal money on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon, or on so much thereof as for the time being remains unpaid, at the rate, at the times and in manner therein specified;

(b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the charged property;

(c) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or his agent, at all reasonable times until the charge is discharged and after reasonable notice to the chargor, to enter the land and examine the state and improvements;

(d) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire in the joint names of the chargor and chargee with insurers approved by the chargee to the full value thereof;

(e) in the case of a charge of land or of a lease not to lease the charged land or any part thereof or sublease the whole or any part of the land comprised in the charged lease without the previous consent in writing of the chargee, but such consent shall not be unreasonably withheld;

(f) not to transfer the land lease or charge or any part thereof without the previous written consent of the chargee but such consent shall not be unreasonably withheld;

(g) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreements and conditions thereof, and to keep the charges indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part thereof, or the breach or non-observance of the said agreements and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;

(h) where the charge is a second or subsequent charge, to pay the interest from time to time accruing due on each prior charge when it becomes due, and at the proper time repay the principal money due on each prior charge.

(2) Where the chargor fails to comply with any of the agreements implied by paragraphs (b), (c), (d) and (g) of subrule (1) then the chargee may spend such money as is necessary to remedy the breach, and may add the amount so spent to the principal money secured by the charge, and thereupon that amount shall be deemed for all purposes to be part of that principal money.

12. Certificate of registration under the Companies Act, Cap. 46:03

On application to register a charge created by a company registered under the Companies Act, there shall be produced to the Land Registrar a certificate that the charge has been registered under the relevant section of the Companies Act.

FIRST SCHEDULE r. 2

THE REGISTER

PART A—PROPERTY SECTION

[Front] [To be printed on green paper]

Edition:

Opened:

Registration Section      Easements, etc. Nature of Title

Absolute

Piece number

Approximate Area

Acres Hectares

Registry Map sheet No.

PART B—PROPRIETORSHIP SECTION

Entry No.	Date	Name of registered proprietor	Address	of	registered	proprietor
		Consideration and remarks	Signature of registrar			

THE REGISTER

PART C—INCUMBRANCES SECTION

[Back]

Entry No.	Date	Nature of incumbrance	Further particulars	Signature of registrar
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THE REGISTER r. 2

PART A—PROPERTY SECTION

[Front] [To be printed on white paper]

Edition:

Opened:

Registration Section	Particulars of Lease	Nature of title
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Lessor: Leasehold

Piece number Lessee:

Approximate area Rent: Terms: From:

Acres Hectares

Registry Map sheet No. For appurtenances see the registered lease

PART B—PROPRIETORSHIP SECTION

Entry No.	Date	Name of registered proprietor	Address	of	registered	proprietor
		Consideration and remarks	Signature of registrar			

THE REGISTER

PART C—INCUMBRANCES SECTION

[Back]

Entry No.	Date	Nature of incumbrance	Further particulars	Signature of registrar
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SECOND SCHEDULE r. 3

REGISTERED LAND ACT

(CAP. 58:01)

[Front]

LAND CERTIFICATE

Registration District

Title No.

.....

This is to certify that ..... is [are] now registered as the absolute proprietor[s] of the land comprised in the above-mentioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 27 of the Registered Land Act as may for the time being subsist and affect the land.

Given under my hand and the seal of the .....

District Registry this ..... day of ....., 19.....

L.S.

.....

Land Registrar

[Back]

At the date stated on the front hereof, the following entries appeared in the register relating to the land:

PART A—Property Section (easements, etc.)

PART B—Proprietorship Section (inhibitions, cautions and restrictions)

PART C—Incumbrances Section (leases, charges, etc.)

.....

Land Registrar

REGISTERED LAND ACT r. 3

( CAP. 58:01)

[Front]

CERTIFICATE OF LEASE

Registration District

Title No.

.....

Lessor

Rent

Term

This is to certify that ..... is [are] now registered as the proprietor[s] of the leasehold interest above referred to subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 27 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

Given under my hand and the seal of the .....

District Registry this ..... day of....., 19.....

L.S.

.....

Land Registrar

[Back]

At the date stated on the front hereof, the following entries appeared in the register relating to the lease:

PART A—Property Section (easements, etc.)

PART B—Proprietorship Section (inhibitions, cautions and restrictions)

PART C—Incumbrances Section (subleases, charges, etc.)

.....

Land Registrar

THIRD SCHEDULE reg. 4, G.N. 15/1986

REGISTERED LAND ACT

FORM R.L. 1

TRANSFER OF LAND

TITLE No. ....



I/WE, ..... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the land comprised in the above-mentioned title.

The Transferees declare that they hold the land as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of....., 19.....

Signed by the Transferor in the presence of—

Signed by the Transferee in the presence of—

FORM R.L. 2

REGISTERED LAND ACT

TRANSFER OF LEASE

TITLE No. ....

I/WE, ..... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the leasehold interest comprised in the above-mentioned title.

The Transferees declare that they hold the leasehold interest as proprietors in common in the following shares—

[or as joint proprietors]

Dated this ..... day of....., 19.....

Signed by the Transferor in the presence of—

Signed by the Transferee in the presence of—

FORM R.L. 3

REGISTERED LAND ACT

TRANSFER OF CHARGE

TITLE No. ....

I/WE, .....

in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title.

The Transferor hereby declares that the amount of principal and interest owing by the Chargor at the date hereof is:

[And the Chargor hereby acknowledges that that is the amount now due and owing by him\*].

Dated this ..... day of ....., 19.....

Signed by the Transferor in the presence of—

Signed by the Transferee in the presence of—

Signed by the Chargor in the presence of—

FORM R.L. 4

REGISTERED LAND ACT

TRANSFER BY CHARGE IN EXERCISE OF POWER OF SALE

TITLE NO. ....

I/WE, .....

having exercised the power of sale conferred upon me/us by the charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title, in consideration of (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... the interest comprised in the above-mentioned title.

The Transferees declare that they hold the said interest as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] in the presence of—

Signed by the Transferee[s] in the presence of—

FORM R.L. 5

REGISTERED LAND ACT

TRANSFER OF PROFIT

TITLE No. ....

I/WE, .....

In consideration of..... (the receipt whereof is hereby acknowledged) HEREBY TRANSFER to..... of ..... the profit shown as entry number ..... in the incumbrances section of the above-mentioned title.

The Transferees declare that they hold the profit as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor in the presence of—

Signed by the Transferee in the presence of—

FORM R.L. 6

REGISTERED LAND ACT

TRANSFER OF UNDIVIDED SHARE

TITLE NO. ....

I/WE, .....

in consideration of .....

(the receipt whereof is hereby acknowledged) HEREBY TRANSFER to ..... of ..... my/our undivided ..... share[s] [respectively] in the above-mentioned title.

The Transferees declare that they hold [the combined] undivided share[s] as proprietor in common in the following shares—

[or as joint proprietors]

I/WE, .....

the remaining proprietor[s] of the interest comprised in the above-mentioned title hereby consent to this transfer.

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] in the presence of—

Signed by the Transferee[s] in the presence of—

Signed by the remaining proprietor[s] in the presence of—

FORM R.L. 7

REGISTERED LAND ACT

TRANSFER BY PERSONAL REPRESENTATIVE TO PERSON ENTITLED UNDER A WILL OR ON AN INTESTACY

TITLE NO. ....

I/WE, .....

as personal representative[s] of ..... deceased

HEREBY TRANSFER to ..... of ..... (being the person[s] entitled thereto under the will [or on the intestacy] of the deceased) the interest of the deceased comprised in the above-mentioned title.

The Transferees declare that they hold that interest as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Transferor[s] in the presence of—

Signed by the Transferee[s] in the presence of—

FORM R.L. 8

REGISTERED LAND ACT

LEASE

TITLE No. ....

I/WE, .....

HEREBY LEASE to ..... of ..... the land comprised in the above-mentioned title [or that portion of the land comprised in the above-mentioned title which is shown (on the registry map as piece number ..... / .....) or (on the filed plan as ..... number .....)] for the term of ..... from the ..... day of ..... at the rent of ..... payable .....

The Lessees declare that they hold the lease as proprietors in common in the following undivided shares—

[or as joint proprietors]

Dated this ..... day of ....., 19.....

Signed by the Lessor[s] in the presence of—

Signed by the Lessee[s] in the presence of—

FORM R.L. 9

REGISTERED LAND ACT

CHARGE

TITLE No. ....

I/WE, .....

HEREBY CHARGE my/our interest in the above-mentioned title [or the charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title] to secure the payment to ..... of ..... of the principal sum of ..... with interest at the rate of ..... per cent per annum.

The principal sum shall be repaid on the ..... day of ..... together with any interest then due.

And I/We, the above-named Chargor[s] hereby acknowledge that I/We understand the effect of section 68 of the Registered Land Act.

Dated this ..... day of ....., 19.....

Signed by the Chargor[s] in the presence of—

Signed by the Chargee[s] in the presence of—

FORM R.L. 10

REGISTERED LAND ACT

DISCHARGE OF CHARGE

TITLE NO. ....

I/WE, .....

HEREBY DISCHARGE the Charge shown as entry number ..... in the incumbrances section of the register of the above-mentioned title wholly [or in relation to .....]

Dated this ..... day of ....., 19.....

Signed by the Chargee[s] in the presence of—

FORM R.L. 11

REGISTERED LAND ACT

SURRENDER OF LEASE

TITLE No. ....

I/WE, .....

in consideration of\* ..... (the receipt whereof is hereby acknowledged)\*  
HEREBY SURRENDER the lease comprised in the above-mentioned title and the Lessor[s] HEREBY ACCEPT[S] the said surrender.

Dated this ..... day of ....., 19.....

Signed by the Lessee[s] in the presence of—

Signed by the Lessor[s] in the presence of—

FORM R.L. 12

REGISTERED LAND ACT

GRANT OF EASEMENT

TITLE NO. ....

I/WE, .....

in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY GRANT to ..... of ..... the proprietor of the Interest comprised in title number ..... the following easement:

.....

Dated this ..... day of ....., 19.....

Signed by the Grantor[s] in the presence of—

Signed by the Grantee[s] in the presence of—

FORM R.L. 13

REGISTERED LAND ACT

GRANT OF PROFIT

TITLE No. ....

I/WE, ..... in consideration of ..... (the receipt whereof is hereby acknowledged) HEREBY GRANT to..... of ..... the following profit to arise from the interest comprised in the above-mentioned title: .....

The profit is to be enjoyed in gross [or as appurtenant to the interest of the Grantee comprised in title number .....]

Dated this ..... day of ....., 19.....

Signed by the Grantor[s] in the presence of—

FORM R.L. 14

REGISTERED LAND ACT

RELEASE OF EASEMENT, PROFIT OR RESTRICTIVE AGREEMENT

TITLE No. ....

I/WE, ..... being the person[s] now entitled to the benefit of the [easement] [profit] [restrictive agreement] shown as entry number ..... in the incumbrances section of the register of the above-mentioned title HEREBY RELEASE the [easement] [profit] [restrictive agreement].

Dated this ..... day of ....., 19.....

Signed in the presence of—

FORM R.L. 15

REGISTERED LAND ACT

SEVERANCE OF JOINT PROPRIETORSHIP

TITLE NO. ....

I/WE, ..... HEREBY SEVER out joint proprietorship of our interest in the above-mentioned title and apply to be registered as proprietor[s] in common in the following shares—

Dated this ..... day of ....., 19.....

Signed by the Proprietor[s] in the presence of—

FORM R.L. 16

REGISTERED LAND ACT

APPLICATION FOR PARTITION

(To be used for cases arising under sections 98 and 101)

TITLE NO. ....

I/WE, ..... HEREBY APPLY for the land comprised in the above-mentioned title to be partitioned in the following manner:



(Where the application relates to family land, the applicant must indicate here the capacity in which he makes the application:.....)

Dated this ..... day of ....., 19.....

Signed by the Applicant in the presence of—

FORM R.L. 17

REGISTERED LAND ACT

POWER OF ATTORNEY

TITLE No. ....

I, .....

HEREBY APPOINT ..... of ..... to be my attorney and generally in relation to my interest in the above-mentioned title to do anything and everything that I myself could do, and for me and in my name to execute all such instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given.

[If the power is to be limited to particular acts only, delete everything after the word “attorney” and set out below what powers are to be conferred.]

Dated this ..... day of ....., 19.....

Signed by the Applicant in the presence of—

FORM R.L. 18

REGISTERED LAND ACT

NOTICE OF REVOCATION OF A POWER OF ATTORNEY

TITLE No. ....

I,.....

HEREBY GIVE NOTICE that the Power of Attorney filed in the register of powers of attorney as No. .... has been revoked—

(a) by me .....

or

(b) by the [death] [bankruptcy] [disability] of the donor

.....

or

(c) by the [death] [disability] of the attorney.

[And I attach the following documents in support thereof—

.....]

Dated this ..... day of ....., 19.....

Signed in the presence of—

FORM R.L. 19

REGISTERED LAND ACT

APPLICATION TO BE REGISTERED AS PROPRIETOR BY TRANSMISSION

TITLE No. ....

I/WE, .....

as personal representative[s] of ..... deceased HEREBY APPLY to be registered by transmission as proprietor in place of the deceased of his interest in the above-mentioned title, and in support thereof attach the Grant as required by section 114(1) of the Act.

Dated this ..... day of ....., 19.....

Signed by the Representative[s] in the presence of—

FORM R.L. 20

REGISTERED LAND ACT

CAUTION

TITLE NO. ....

I, ..... of .....

claim an interest as ..... in the above-mentioned title and forbid the registration of dealings and the making of entries in the register relating to the title[altogether] [to the following extent:

.....]

without my consent until this caution has been withdrawn by me or removed by order of the Court or the Registrar.

Dated this ..... day of ....., 19.....

Signed in the presence of—

FORM R.L. 21

REGISTERED LAND ACT

APPEAL TO THE CHIEF LAND REGISTRAR UNDER SECTION 146 (1)

TITLE No. ....

I,..... HEREBY APPEAL against the refusal of the ..... Registrar to effect or cancel the following registration: .....

My grounds for appeal are as follows:.....

Dated this ..... day of ....., 19 .....

.....

Signature of Appellant

FORM R.L. 22

REGISTERED LAND ACT

NOTICE OF INTENTION TO APPEAL TO THE SUPREME COURT

TITLE No. ....

To: The Chief Land Registrar,

TAKE NOTICE that I intend to appeal to the Supreme Court against the decision taken by you in my appeal to you dated the .....

Dated this ..... day of ....., 19 .....

.....

Signature of Appellant

FORM R.L. 23

REGISTERED LAND ACT

APPLICATION TO INSPECT THE REGISTER

TITLE No. ....

I HEREBY APPLY to inspect the register of the above-mentioned title. I have paid inspection fee of..... as per land registration fee Receipt No. .... of today.

Dated this ..... 19 .....

Signature .....

Postal Address .....

Piece file checked on completion of search by: .....

(Counter clerk's signature)

CONDITIONS

1. Persons making searches may take brief notes in pencil, but no document shall be copied.
2. Under no circumstances may any note or mark be made on any register, document or file produced for inspection.
3. Persons making searches shall check the contents of any piece file produced to them and have it checked by the counter clerk, both before and on completion of the search, and obtain the counter clerk's initials on the duplicate search form, otherwise the person searching will be held responsible for any document lost or damaged.
4. The counter clerk's duty does not extend to answering questions on matters of title and no responsibility is accepted for any opinion which may be expressed by him.

FORM R.L. 24

REGISTERED LAND ACT

APPLICATION FOR OFFICIAL SEARCH AND FOR CERTIFIED COPIES

TITLE No. ....

To: The Land Registrar,

DISTRICT REGISTRY

Please supply—

(a) \*particulars of the subsisting entries in the register of the above-mentioned title;

(b) \*a certified copy of each of the following—

I enclose postal Order/Money Order/Cash for .....†

I understand that any additional fee which is payable must be paid by me forthwith on demand.

Dated this ..... 19 .....

.....

Signature of Applicant or his Solicitor

Postal Address .....

FORM R.L. 25

REGISTERED LAND ACT

CERTIFICATE OF OFFICIAL RESEARCH

TITLE NO..... SEARCH NO. ....

On the ..... day of ....., 19..... the following were subsisting entries on the register of the above-mentioned title—

PART A—Property Section (Easements, etc.)

Nature of title

Approximate area

PART B—Proprietorship Section

Name and address of proprietor—

Inhibitions, cautions and restrictions—

PART C—Incumbrances Section (leases, charges, etc.)

The following applications are pending—

The certified copies requested are attached.

The fees now payable are .....; please detach the form below, and remit this amount and return it to me within seven days of today's date.

Dated ....., 19 .....

Land Registrar

To: The Land Registrar, Search No. ....

DISTRICT REGISTRY

Postal Order/Money Order/Cash for ..... enclosed herewith.

.....

Signature of Applicant or his Solicitor

FORM R.L. 26

REGISTERED LAND ACT

MUTATION FORM

[Front]

TITLE No..... Area of land: .....

Registry Map Sheet No.....

Registrar's Instructions to Director of Surveys—

1. Present boundaries of piece are shown on the sketch below.

2. (a) The proprietor wishes to subdivide as shown by the dotted lines on the sketch.

or

(a) The proprietors wish to change their common boundary, as shown by the dotted lines on the sketch.

(b) The new piece numbers will be: ..... relevant approximate area of land.

(c) Consent of Local Land Board below.

(d) The persons interested, and their addresses, are:.....

They will meet the District Surveyor on the land at a time appointed by him.

(e) Please advise when survey effected and registry map amended.

SKETCH

[To be completed by Registrar]

Date: ..... 19.....

Land Registrar

Application approved/refused

..... Chairman ..... District.

..... Local Land Board. Date: ..... 19.....

REGISTERED LAND ACT

MUTATION FORM—(continued)

[Back]

SKETCH

[To be completed by District Surveyor]

Not to scale

Date: ..... 19.....

.....

Signature of District Surveyor

Signature of parties present on the land at the time of survey:

.....

To: Director of Surveys,

Please amend registry map to conform with above. The following additional information is supplied—

.....  
Date: ..... 19..... District Surveyor

To: Land Registrar,  
District.

Registry map amended; application now fit for new registers.

.....  
Date: ..... 19..... for Director of Surveys

[This form to be completed in triplicate]

FORM R.L. 27

REGISTERED LAND ACT G.N. 5/1986

APPLICATION FOR RECORDING OF RIGHT TO TACK

(SECTION 77)

TITLE No. ....

REGISTRATION DISTRICT:.....

I/WE, .....

of ..... HEREBY APPLY that the right to tack further advances created by the attached charge dated ..... be recorded in the land register of the above-mentioned title.

.....

Signature

FORM R.L. 28

REGISTERED LAND ACT G.N. 15/1986

APPLICATION FOR RECORDING OF RIGHT OF CONSOLIDATION

(SECTION 78)



I/We, ..... of  
 ..... HEREBY APPLY that the right to consolidate  
 the charges described in the Appendix hereto be recorded in the land register.

APPENDIX

Date	Parties	Title No.	Amount Secured
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

.....  
 Signature.

FOURTH SCHEDULE r. 6, G.N. 114/1982, 106/1995, 8/2002

FEES

First Column    Second Column

K            t

1.    On application for lease of land    1,000    00
2.    On application for consent to any land transaction            1,000    00
3.    On application for registration or filing of any instrument for each title affected    2,000    00
4.    On application for a land certificate of lease            500    00
5.    On application to inspect under section 29 (3) of the Act, for each title inspected    2,000    00
6.    On application for an official search under 29 (3) of the Act            500    00
7.    On application for a certified copy of any register or part of the registry map or any plan or instrument under section 29 (c) of the Act            500    00

8. For opening a register consequent upon a partition or subdivision or combination for each piece resulting 500 00
9. On application for combination of two or more pieces or partition of—
  - (a) family land 500 00
  - (b) land other than family land 500 00
10. On application for the preparation of instruments prescribed by the Act 500 00
11. On application for the preparation of any instrument which, in the opinion of the Registrar, requires substantial additions to or variation from the prescribed form 1,000 00
12. For fixing a boundary on the application for any person under section 19 (1) of the Act 1,000 00
13. For approving the form of any document 500 00
14. On application for the filing of a power of attorney under section 111 of the Act 500 00
15. For rectification of land register of the Act 200 00
16. For any act, matter or thing not specifically hereinbefore provided for 1,000 00
17. On verification of any instrument under rule 6 (2) of these 200 00

FIFTH SCHEDULE G.N. 142/1983

VERIFICATION OF INSTRUMENTS r. 6(1)

Instruments executed in Malawi by—

Registrar General

District Commissioner

Principal Lands Officer

Senior Lands Officer

Notary Public

SIXTH SCHEDULE

CERTIFICATE r. 6 (2)

I certify that on the ..... day of  
 ....., 20....., .....

(name)

signed the above written or annexed \*document/documents in my presence and

.....

(name)

\*is personally known to me/has been identified by

.....

.....

.....

.....

Signature and designation of person certifying

SEVENTH SCHEDULE G.N. 15/1986

CERTIFICATE OF PREPARATION

This is to certify that this document was prepared by (a) .....

and that it is presented for registration by the undersigned (b) .....

Dated .....

(a) Name and address of person who prepared the document.

(b) Name and address of person who presented the document.

[Chap5802]CHAPTER 58:02

DEEDS REGISTRATION

ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title
- 2. Saving
- 3. Interpretation
- 4. Official seal
- 5. Power to sue

6. Compulsory registration of documents
7. Time for presenting documents for registration
8. Charges on land take priority according to date of registration
9. Holder of mortgage entitled to certificate of registration
10. Registration of recognizance
11. Registration of lis pendens
12. Cancellation of registration
13. Registration defined
14. Power of attorney
15. Registration of map accompanying document
16. Persons to present documents for registration
17. Description of parcels
18. Documents in foreign language
19. Fees and duties to be paid before registration
20. Right of Registrar to refuse documents
21. Registrar to refuse documents executed by companies in certain circumstances
22. Registration not to cure defect or confer validity
23. Copy documents to be numbered and filed in order of lodgment
24. Endorsed memorandum prima facie proof of registration
25. Indemnity of Deeds Registrar
26. Amendment of Register
27. Appeal and reference to the Court
28. Effect of non-registration
29. Penalties for fraud
30. Saving of obligation to make discovery
31. Penalty for non-registration of documents
32. Certified copy admissible as evidence of contents of lost or destroyed document

33. Production of filed document in Court
34. Search
35. Fees payable
36. Power of Minister to make Rules

#### Schedules

8 of 1916

8 of 1951

16 of 1958

28 of 1960

11 of 1963

6 of 1967

25 of 1968

51 of 1971

G.N. 106/1942

219/1964(N)

137/1966

166/1967

224/1971

89/1987

109/1987

An Act to replace with amendments the law as to the registration of documents relating to land

[31ST MARCH 1916]

[Ch5802s1]1. Short title

This Act may be cited for all purposes as the Deeds Registration Act.

[Ch5802s2]2. Saving

12 of 1910 All documents affecting land registered under the Registration of Documents Ordinance, 1910 (now repealed) or under any previous regulation shall be deemed to be registered under this Act.

[Ch5802s3]3. Interpretation

In this Act unless the context otherwise requires—

“Deeds Registrar” means the Registrar General or such other person as the Minister may, by notice published in the Gazette, appoint to be Deeds Registrar for the purpose of this Act;

“Document” includes deeds and all instruments in writing which pass any interest in land or affecting land and in the case of a will means the probate of a will sealed in Malawi or letters of administration with will annexed sealed in Malawi;

“Deeds Registry File” shall consist of documents filed in chronological order in the archives of the Deeds Registry.

[Ch5802s4]4. Official seal

(1) The Deeds Registrar shall have an official seal.

(2) Judicial notice shall be taken by all courts of law of the said official seal and any instruments purporting to be sealed therewith shall be presumed to be a correct copy of the original.

[Ch5802s5]5. Power to sue

The Deeds Registrar may sue and be sued by his official title.

[Ch5802s6]6. Compulsory registration of documents

25 of 1968 From and after the commencement of this Act all deeds, conveyances, wills and instruments in writing whether under seal or not whereby any land or interest in or affecting land other than land registered in accordance with the Registered Land Act, may be affected at law or in equity whether executed prior or subsequent to the date of this Act are subject to compulsory registration in the Deeds Registry Office: Cap. 58:01

Provided that the Minister designated for the purpose of this section by the President may, in such areas and in respect of such leases or classes of leases or other instruments relating to land tenancy as he may specify by notice published in the Gazette, exempt such leases, classes of leases or other instruments from the requirement of registration under this section.

[Ch5802s7]7. Time for presenting documents for registration

(1) In the case of any deed or document the registration of which is declared by this Act to be compulsory—

(a) where such deed or document is executed after the commencement of this Act the same shall be presented for registration within three months from the date of its execution if executed within Malawi;

(b) where such deed or document is executed after the commencement of this Act but without Malawi the same shall be presented for registration within six months from the date of its execution;

(c) where such deed or document has been executed before the commencement of this Act and has not been registered but its effect continues after the commencement of this Act the same shall be presented for registration within three months of the commencement of this Act;

(d) the registration of any unregistered document executed before the commencement of this Act shall validate the transaction thereby effected as from the date of the document but subject to any interim registered acts touching the same land or interests and subject to any dealings of later date that may be registered under the next following paragraph;

(e) the High Court may in its discretion in any particular case extend the time for lodging any deed or document for registration upon such terms and conditions as it may deem reasonable.

51 of 1971(2) In calculating the time within which any deed or document shall be presented for registration in accordance with paragraph (a) or (b) of subsection (1), any period during which such deed or document is lodged with the Commissioners of Stamp Duties for purposes of adjudication of stamp duty under the Stamp Duties Act shall not be taken into account and such deed or document shall be presented for registration within thirty days after the date shown on the particular stamp stamped thereon pursuant to section 16 (2) or section 16 (3), as the case may be, of the said Stamp Duties Act. Cap. 42:01

[Ch5802s8]8. Charges on land take priority according to date of registration

All charges upon land or any interest in land whether by way of mortgage or otherwise and whether equitable or otherwise and all transfers, assignments or leases of land shall take priority according to the date of registration.

All priorities given by this Act shall have full effect in all courts except in cases of actual fraud and all persons claiming thereunder any legal or equitable interests shall be entitled to corresponding priorities and no person shall lose any such priority merely in consequence of his having been affected with actual or constructive notice of a prior unregistered document except in cases of actual fraud.

[Ch5802s9]9. Holder of mortgage entitled to certificate of registration

The holder of a mortgage or charge shall be entitled on demand to receive a certificate of registration on payment of the prescribed fees.

[Ch5802s10]10. Registration of recognizance

A recognizance or bond entered into by order of the High Court may be registered as a charge on land or any interest in land on lodgment of a certificate from the Registrar of the High Court that such recognizance or bond has been duly filed.

[Ch5802s11]11. Registration of lis pendens

A lis pendens to affect land or interest therein may be registered as a charge against the same on production of evidence of the institution of any proceedings in the High Court affecting the land or interest. Such evidence shall consist of the certificate of the Registrar of the High Court or any order of the High Court showing the institution of such proceedings.

[Ch5802s12]12. Cancellation of registration

A recognizance, bond or lis pendens may be cancelled in the Register on the lodgment of a certificate from the Registry of the High Court showing that the same has been vacated.

[Ch5802s13]13. Registration defined

Registration shall consist—

(a) where the land affected is not public land, in the filing of a copy of the document brought for registration in the Deeds Registry File, such copy to be duly certified by the Deeds Registrar as a true copy and in the entry in the Deeds Registry of the names of the parties, the date of the document, the date and hour of registration and briefly the nature of the document;

(b) where the land affected is public land, registration shall be defined as in the preceding paragraph with the addition that an extra copy must be lodged and certified for the use of Government;

(c) in the case of bonds, recognizances or lites pendentes referred to in section 10, 11 or 12, registration shall consist in the filing of the certificate of the Registrar of the High Court or a copy of the order of the Court.

[Ch5802s14]14. Power of attorney

If the instrument presented for registration has been executed under power of attorney the power of attorney or an office copy thereof shall be produced to the Registrar and in cases not falling within section 8 and 9 of the Conveyancing Act, 1882, of the United Kingdom evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the Registrar that the principal was alive at the time of execution of the instrument and that the power was then unrevoked shall also be produced. 45 & 46 Vict., Cap. 39

[Ch5802s15]15. Registration of map accompanying document

When a map or plan is comprised in or annexed to any document a true copy of such map or plan shall be filed together with the copy of the document to which it refers.

[Ch5802s16]16. Persons to present documents for registration



(1) Every document presented for registration under this Act must be presented either by a person executing or claiming an interest under the same or the representative or agent of such person and the Deeds Registrar may require to be satisfied as to the identity of the person by whom it is brought, or, in the case of a representative or agent, as to his authority.

(2) Every document presented for registration under this Act shall have endorsed thereon a certificate in the form set out in the Second Schedule signed by the person or firm presenting such document.

(3) A document may be presented for registration through the post or under cover if it is accompanied by the prescribed fee and by a letter requesting registration signed by the person or firm who has signed the form of certificate referred to in subsection (2).

#### [Ch5802s17]17. Description of parcels

(1) Every document on presentation for registration must contain a description of the land to which it refers sufficient for its proper identification and the Deeds Registrar may refuse to accept for registration any document as aforesaid which does not contain such a description.

(2) Every document presented for registration must contain the registered number of some previous document relating to the land to which it refers:

Provided that this subsection shall not apply to—

- (a) a Grant of Probate, a Grant of Letters of Administration or other order of any Court;
- (b) any disposition by the Minister responsible for Land or public land or customary land or any interest therein and any permit or licence in respect of any such land;
- (c) a power of attorney;
- (d) any certificate of title granted under the Lands Acquisition Act; Cap. 58:04
- (e) any declaration by Order issued under Part V of the Land Act; Cap. 57:01
- (f) any rights in respect of prospecting, mining and water issued under the Mining Act. Cap. 61:01

#### [Ch5802s18]18. Documents in foreign language

If any document presented for registration be not in the English language it must be accompanied by a translation in English together with the requisite number of copies in English duly certified to the satisfaction of the Deeds Registrar and also by a true copy of the original document.

#### [Ch5802s19]19. Fees and duties to be paid before registration

The Deeds Registrar shall refuse to register any document until he is satisfied that all Government duties and fees have been paid in respect thereof or in respect of the transaction or series of transactions of which the document forms a record in whole or in part if any such duties or fees are exigible.

[Ch5802s20]20. Right of Registrar to refuse documents

(1) The Deeds Registrar may in his discretion refuse to accept for registration any documents in which any interlineation, blank, erasure or alteration appears unless such interlineation, blank, erasure or alteration shall have been initialled by the parties to the document or otherwise validly incorporated in the same. On the registration of such document the Deeds Registrar will in addition initial such interlineation, blank, erasure or alteration.

(2) The Deeds Registrar shall refuse to register any document which purports, on the face of it, to have been executed outside Malawi by any party thereto unless—

(a) he is satisfied by affidavit or otherwise that the document was in fact executed inside Malawi; or

(b) such document has been authenticated in a manner which complies with the Authentication of Documents Act. Cap. 4:06

[Ch5802s21]21. Registrar to refuse documents executed by companies in certain circumstances

(1) The Deeds Registrar shall refuse to register any document which is executed by, or on behalf of, a company within or without Malawi otherwise than under the common seal of that company, affixed in the presence of at least one director and the secretary of the company, whose signatures shall appear on the document, or in accordance with its constitution, when such document, if executed by an individual within Malawi, is by law required to be executed under seal:

Provided that such document may be registered if it is executed by an attorney of the company appointed by a power of attorney under the common seal of the company and in accordance with its constitution.

(2) For the purposes of this section—

(a) every company shall have its name engraved in legible characters upon its common seal in such a manner that, when the seal is affixed to any document, a permanent impressed or embossed mark is made on the document; and

(b) the impression upon any document of a rubber or other stamp bearing the name of a company or of a wafer seal upon which is written or printed the name of the company shall not be deemed to be a valid execution under the common seal of the company.

[Ch5802s22]22. Registration not to cure defect or confer validity

Registration shall not cure any defect in any document registered or confer upon it any validity which it would not otherwise have had except in so far as provided in this Act.

[Ch5802s23]23. Copy documents to be numbered and filed in order of lodgment

The Deeds Registrar shall number every copy of documents filed consecutively entering the time of the day and the day of the month and the year when it is registered and shall file the copies in the order in which the documents are received by him.

[Ch5802s24]24. Endorsed memorandum prima facie proof of registration

(1) A memorandum signed by the Deeds Registrar shall be endorsed on every document or copy of a document registered containing a sufficient reference to the number and position of the document in the Register which memorandum shall be proof of the due registration of the document in the absence of sufficient evidence to the contrary.

(2) Where any extension of time for registration is granted by order of the High Court reference to such order of Court shall be made in the margin of the Register and in the endorsement of the document presented for registration.

[Ch5802s25]25. Indemnity of Deeds Registrar

The Deeds Registrar shall not nor shall any person acting under any order or general Rule made in pursuance of this Act be liable to any action, suit or proceedings for or in respect of any act or matter bona fide done or omitted to be done in the exercise or supposed exercise of the powers of this Act or any order or general Rule made in pursuance of this Act.

[Ch5802s26]26. Amendment of Register

Where any person alleges that any error or omission, has been made in the Register or that any entry or omission therein has been procured by fraud or mistake the Deeds Registrar shall if he shall consider such allegation satisfactorily proved correct such error or omission or entry as aforesaid.

[Ch5802s27]27. Appeal and reference to the Court

If the Registrar shall refuse to correct any error, omission or entry in pursuance of an application under the last preceding section any person aggrieved by such refusal may apply to the Court for an order that the Register be rectified and the Court may make an order for the rectification of the Register in such manner as it shall direct.

[Ch5802s28]28. Effect of non-registration

The non-registration of a document the registration whereof is compulsory according to this Act will render such document null and void.

[Ch5802s29]29. Penalties for fraud

If any person commits any of the following offences—

(a) fraudulently procures or attempts fraudulently to procure or is privy to the fraudulent procurement of any entry, erasure or alteration in the Register; or

(b) in any affidavit or certificate required or authorized to be made for any purpose under this Act or under any order or general Rules made in pursuance of this Act wilfully makes a false statement in any material particular,

he shall be guilty of a misdemeanour and if convicted on information shall be liable to a fine of K200 and to imprisonment for one year.

[Ch5802s30]30. Saving of obligation to make discovery

Nothing in this Act shall entitle any person to refuse to make a complete discovery in any legal proceedings or to answer any question or interrogatory in any civil proceedings but no such discovery or answer shall be admissible in evidence against that person in any criminal proceeding under this Act.

[Ch5802s31]31. Penalty for non-registration of documents

Any person wilfully or negligently failing to register any document which is subject to compulsory registration under this Act shall be liable on summary conviction to a penalty of K100 or on information to a penalty of K200.

[Ch5802s32]32. Certified copy admissible as evidence of contents of lost or destroyed document

In the event of the loss or destruction of any document registered under this or any previous Act or regulation a copy certified to be a true copy under the hand of the Deeds Registrar shall be admissible in evidence of its contents in all Courts of Justice in Malawi saving all just and lawful exceptions.

[Ch5802s33]33. Production of filed document in Court

Where the production in court is required of any filed documents an official of the Registry will attend with the document on receipt of an application made to that effect accompanied by payment of the prescribed fee and expenses if any.

[Ch5802s34]34. Search

Subject to such directions as the Deeds Registrar may think proper any person is entitled on payment of the prescribed fees to search the indexes and registers at the office of the Registrar and to have a certified copy of any entry in the Registers and Records in the custody of the Registrar or an official search against index of names but no document filed in the office of the Registrar shall be permitted to be taken therefrom.

[Ch5802s35]35. Fees payable First Schedule

(1) In respect of the registration of documents under this Act the fees stated in the First Schedule shall be payable, provided always that the Court may remit or reduce any of the prescribed fees in special cases for reasons to be recorded.

(2) The Minister may from time to time by notice published in the Gazette rescind, revoke, amend or vary the said First Schedule in whole or in part and may add thereto such fees as may be deemed fit.

[Ch5802s36]36. Power of Minister to make Rules

The Minister may from time to time make Rules for the better carrying into effect of this Act.

Such Rules may provide a penalty not exceeding K10 recoverable on summary conviction before a magistrate for any breach thereof.

FIRST SCHEDULE s. 35, G.N. 89/1987, 109/1987, 31/2002

First Column    Second Column

K            t

1.    On registration of any document            2,000   00
2.    For making a photostat copy of any document   500    00        plus such sum per page to recoup the cost of the paper used as the Deeds Registrar may, from time to time, determine.
3.    For certifying a copy of any document in addition to any charges under paragraph 2        100   00        per page
4.    For certificate of official seal        200    00        per page
5.    For leave to search indices and registers of one title        500    00        for each day of search
6.    On requisition to produce a document or documents in court in addition to any expenses as provided by section 33 of the Act        1,000   00
7.    For any act not specifically prescribed        1,000   00
8.    For any act where the fee would other-wise be payable by Government   Nil.

SECOND SCHEDULE s. 16 (2)

This is to certify that this document was prepared by (a) ..... and that it is presented for registration by the undersigned.

(b) .....

Date .....

(a)    Name and address of person who prepared the document or, in the case of a Government Department or office, the words "the Government" to be inserted.

(b)    Name and address of person or firm presenting the document.

SUBSIDIARY LEGISLATION

APPOINTMENT OF DEEDS REGISTRAR

under s. 3

G.N. 23/1969

The Comomissioner for Lands has been appointed to be Deeds Registrar.

#### EXEMPTION FROM REQUIREMENT OF REGISTRATION

under s. 6

G.N. 18/1969

The Minister has exempted the following instruments from the requirement of registration under section 6—

All Licences for the occupation of land issued by the Minister under the powers conferred upon him by section 5 of the Land Act in connexion with Agricultural Settlement or Re-Settlement in any part of Malawi. Cap. 57:01

#### EXEMPTION FROM REQUIREMENT OF REGISTRATION

under s. 6

G.N. 197/1971

The Minister has exempted the following instruments from the requirement of registration under section 6—

All leases, tenancy agreements or licences for the occupation of land granted by the Malawi Housing Corporation or the Capital City Development Corporation where the term granted does not exceed 364 days.

#### DEEDS REGISTRATION RULES

under s. 36

G.N. 106/1942

1. These Rules may be cited as the Deeds Registration Rules.

2. Copies of documents presented for registration shall be on paper of durable quality with a left-hand margin one inch wide. The Registrar may refuse to register any document which does not comply with these requirements.

[Chap5803]CHAPTER 58:03

#### CONVEYANCING

#### ARRANGEMENT OF SECTIONS

##### SECTION

1. Short title

2. Application of the Conveyancing Act, 1911 (1 and 2 Geo. 5. c. 37)

11 of 1952

6 of 1967

An Act to Make Provision for the Application of the Conveyancing Act, 1911, of the United Kingdom to Malawi

[10TH JULY 1952]

[Ch5803s1]1. Short title

This Act may be cited as the Conveyancing Act.

[Ch5803s2]2. Application of the Conveyancing Act, 1911 (1 and 2 Geo. 5. c. 37)

(1) The Conveyancing Act, 1911, of the United Kingdom, is hereby applied to Malawi:

Provided that the said Act shall not apply to land registered in accordance with the Registered Land Act.

(2) In the application of the said Act to Malawi, references therein to “the court” shall be construed as references to the High Court of Malawi. Cap. 58:01

[Chap5804]CHAPTER 58:04

LANDS ACQUISITION

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ACQUISITION

3. Power to acquire land

4. Preliminary investigation
5. Notice of intention to acquire
6. Notice to yield up, and power to take, possession
7. Service of notices, etc.
8. Acquisition of portion of house or other building
9. Compensation
10. Assessment of fair compensation
11. Effect of payment of compensation

### PART III

#### TRANSFER

12. Transfer to the President
13. Minister may execute transfer in certain circumstances
14. Vesting of land acquired

### PART IV

#### MISCELLANEOUS AND GENERAL

15. Minister may withdraw from acquisition
16. Service of notice not an admission
17. Penalty for hindering or obstructing
18. Regulations

21 of 1970

5 of 1971

An Act to provide for the acquisition of land and for matters relating and incidental thereto

[24TH AUGUST 1971]

### PART I



## PRELIMINARY

### [Ch5804s1]1. Short title

This Act may be cited as the Lands Acquisition Act.

### [Ch5804s2]2. Interpretation

In this Act, unless the context otherwise requires—

“land” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land, and any interest in land;

“transfer” includes convey, assign, surrender or otherwise alienate or dispose of and “transfer” and “transferor” as nouns shall be correspondingly construed;

“public land” has the meaning ascribed to that term by the Land Act. Cap. 57:01

## PART II

### ACQUISITION

### [Ch5804s3]3. Power to acquire land

Subject to the provisions of this Act the Minister may, whenever he is of the opinion that it is desirable or expedient in the interests of Malawi so to do, acquire any land, either compulsorily or by agreement, paying such compensation therefor as may be agreed or determined under this Act.

### [Ch5804s4]4. Preliminary investigation

(1) Whenever it appears to the Minister that it may be desirable or expedient to acquire any land under this Act it shall be lawful for any person authorized by the Minister in that behalf and for his servants and agents to—

- (a) enter upon the land in question or any land in the vicinity thereof and survey and take levels;
- (b) dig or bore under the sub-soil;
- (c) do all other acts necessary to ascertain whether the land is or may be suitable; or
- (d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of the work (if any) proposed to be done thereon:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (except with the consent of the occupier thereof) unless he has previously given such occupier not less than seven days' notice of his intention so to do.

(2) As soon as conveniently may be after any entry made under subsection (1) the Government shall pay for all damage done by the persons so entering.

### [Ch5804s5]5. Notice of intention to acquire

(1) If the Minister resolves that it is desirable or expedient compulsorily to acquire any land under this Act, he shall serve notice upon the persons who are possessed of an interest in the land or upon such of those persons as are after reasonable enquiry known to him.

(2) Every notice under this section shall with all reasonable dispatch be published in the Gazette.

(3) Every notice under this section shall invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the Gazette.

[Ch5804s6]6. Notice to yield up, and power to take, possession

(1) The Minister may by notice under section 5 direct the persons upon whom such notice is required to be served by that section, or may by any subsequent notice direct such persons, and any other persons believed by him to be in possession of the land to which the notice in question relates, to yield up possession of such land upon the expiration of the period specified in the notice which period shall not be less than two months from the date of the service of the notice:

Provided that where the Minister considers that the land is urgently required the persons aforesaid may be required to yield up possession on the expiration of such lesser period as the Minister may direct.

(2) On the expiration of the period referred to in subsection (1) the Minister and all persons authorized by him may take possession of the land.

[Ch5804s7]7. Service of notices, etc

(1) Every notice under section 5 or section 6 shall be served either personally on the persons to be served or by leaving it at their last usual place of residence or business if any such place can after reasonable enquiry be found; and if any such person is absent from Malawi or if he or his last usual place of residence or business cannot after reasonable enquiry be found, such notice shall be left with the occupier of such land or his agent or, if such occupier or agent cannot after reasonable enquiry be found, shall be affixed upon some conspicuous part of such land.

(2) If any such person be a body corporate such notice shall be deemed duly served if it be left at the principal office of such body corporate in Malawi or if no such office can, after reasonable enquiry, be found, such notice shall be deemed duly served if served upon some officer (if any) or agent (if any) of such body corporate in Malawi if such officer or agent can, after reasonable enquiry, be found.

(3) Where any such notice has been published the acquisition of the property to which it relates shall not be invalid by reason only of any irregularity in the service or publication of the notice.

[Ch5804s8]8. Acquisition of portion of house or other building

Where he is willing and able to yield up possession of the whole thereof, no person shall be required to yield up to the Minister possession of part only of any house or other building.

[Ch5804s9]9. Compensation

(1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act the Minister shall on behalf of the Government pay in respect thereof fair compensation agreed or determined in accordance with the provisions of this Act.

(2) The Minister may, in his discretion, direct in each case that any compensation payable under this Act be paid either—

(a) in one lump sum; or

(b) in such instalments, at such times, and at such rates of interest on outstanding balances, as he may specify.

[Ch5804s10]10. Assessment of fair compensation

(1) Unless otherwise agreed between the parties fair compensation shall be assessed by the Minister.

(2) An assessment of compensation made by the Minister under this section shall be calculated by adding together—

(a) the consideration which the person entitled to the land paid in acquiring it;

(b) the value of unexhausted improvements to the land made at the expense of the person entitled thereto since the date of his acquisition thereof; and

(c) any other appreciation in the value of the land since the date of such acquisition.

(3) In this section “unexhausted improvements” means anything permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation other than standing crops and growing produce.

(4) In calculating an assessment of compensation under this section no amount shall be included under paragraph (c) of subsection (2) in any case where the Minister is satisfied that the person entitled to the land has, either through absence from the country or otherwise, failed unreasonably to develop the land, or in the case of agricultural land to cultivate or supervise it satisfactorily.

(5) In any case where the Minister is satisfied that a person acquired the land by way of gift or inheritance or otherwise without payment of full consideration, or by way of any fictitious or artificial transaction, he shall substitute for the compensation referred to in paragraphs (a) and (b) of subsection (2) an amount equal to the consideration paid on the last preceding acquisition of the land concerned plus the value of unexhausted improvements made to the land since the date of such preceding acquisition at the expense of the person entitled to the land at the time the improvements were made.

(6) Notwithstanding any other provisions of this-section, no compensation assessed under this section shall exceed the current market value of the land.

5 of 1971(7) An assessment of compensation made by the Minister under this section shall be final and shall not be subject to any appeal to, or to any review by, any court.

(8) No proceedings in any court shall constitute grounds for any delay in yielding up possession of any land in accordance with the provisions of section 6.

[Ch5804s11]11. Effect of payment of compensation

The payment to the person who appears to be entitled thereto (or into court if the identity of such person, or any question of apportionment, is in dispute) of compensation under this Act shall operate as a complete discharge of the Minister from all claims in respect of the land, but shall not bar any subsequent proceedings against the person to whom the same was awarded by any person claiming to have a better right to the compensation or the right to a share thereof:

Provided that no proceedings under this subsection by any person claiming to have a better right to any compensation or a right to a share therein shall be commenced after the expiration of three years from the date of the payment of the compensation by the Minister.

PART III

TRANSFER

[Ch5804s12]12. Transfer to the President

Where a notice to acquire any land under this Act has been published in terms of section 5, the persons entitled to transfer the land shall, notwithstanding anything to the contrary contained in any other law or in any order of any court, within two months of the publication of such notice transfer the same to the President as public land.

[Ch5804s13]13. Minister may execute transfer in certain circumstances

Where two months have elapsed since publication in terms of section 5 of a notice to acquire land and no transfer of such land has been executed in accordance with the terms of such notice or such other terms as may have been agreed between the Minister and the person entitled to transfer the land the Minister may himself execute the transfer of such land as transferor and such execution shall be valid and effective for all purposes.

[Ch5804s14]14. Vesting of land acquired

A transfer to the President under this Act on presentation to the Deeds Registrar, or the Chief Lands Registrar, as the case may be, shall be registered under the Deeds Registration Act or the Registered Land Act as may be appropriate and such registration shall vest the land in question in the President as public land free from all adverse or competing rights, title, trusts, charges, claims or demands whatsoever, but subject to any terms and conditions contained in such transfer. Cap. 58:02, Cap. 58:01

PART IV

MISCELLANEOUS AND GENERAL

[Ch5804s15]15. Minister may withdraw from acquisition

Nothing in this Act shall be construed as requiring the Minister to complete the acquisition of any property unless he has taken possession thereof:

Provided that where the acquisition of any land is not completed the Government shall pay to the owner thereof all such costs and expenses as may have been incurred by him by reason of or in consequence of the proceedings for acquisition and compensation for any loss or damage which may have been sustained by reason or in consequence of the notice of intended acquisition.

[Ch5804s16]16. Service of notice not an admission

The fact that a notice has been served or published in terms of this Act shall not be regarded as an admission by the Minister that the person named in any such notice or the person on whom any such notice was served or any other person has any interest in the land specified in the notice or any part thereof, or debar the Minister from alleging in any proceedings under this Act or otherwise that all rights in or in relation to such land are vested in the President.

[Ch5804s17]17. Penalty for hindering or obstructing

(1) Any person who wilfully fails to comply with a notice to yield up possession, or who wilfully hinders or obstructs any duly authorized person taking possession of any land in terms of this Act or exercising any rights or performing any functions under this Act in relation thereto, shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for six months.

(2) If any person hinders or obstructs any duly authorized person from taking possession of any land in terms of this Act, the Minister may issue an order of ejectment addressed to any officer of the court or to any police officer and such officer or police officer shall forthwith eject any person so withholding possession.

[Ch5804s18]18. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act and in particular, but without derogating from the generality of the foregoing, may make regulations prescribing anything which in terms of this Act may be prescribed.

[Chap5805]CHAPTER 58:05

ADJUDICATION OF TITLE

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY AND APPLICATION

1. Short title
2. Interpretation
3. Application

## PART II

### OFFICERS

4. Appointment and general powers of officers

## PART III

### CLAIMS AND DEMARCATION

5. Adjudication sections
6. Notices by Adjudication Officer
7. Staying of land suits
8. Claims and attendance
9. Safeguarding of rights of absent persons and minors
10. Notice of demarcation and recording
11. Indication of land claimed
12. Special powers of Demarcation Officer
13. Duties of the Survey Officer
14. Duties of the Recording Officer
15. Disputes

## PART IV

### PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD

16. Principles of adjudication
17. Rules to be followed in adjudication
18. Adjudication Record

19. Notice of completion of Adjudication Record

## PART V

### OBJECTIONS AND FINALITY

20. Objection to the Adjudication Record
21. Procedure in hearing objections
22. Correction of Adjudication Record
23. Finality of Adjudication Record

## PART VI

### APPEALS

24. Appeals

## PART VII

### MISCELLANEOUS

25. Fees
26. Offences
27. Indemnity of officers
28. Regulations

18 of 1971

26 of 1988

An Act to provide for the adjudication of rights and interests in land, other than customary land, and for matters connected therewith and incidental thereto

[10TH AUGUST 1971]

## PART I

### PRELIMINARY AND APPLICATION

[Ch5805s1]1. Short title

This Act may be cited as the Adjudication of Title Act.

[Ch5805s2]2. Interpretation

In this Act, except where the context otherwise requires—

“adjudication area” means an area to which this Act has been applied under section 3;

“Adjudication Officer” means an Adjudication Officer appointed under section 4;

“Adjudication Record” means the Adjudication Record prepared in accordance with the provisions of section 18 in respect of an adjudication section;

“adjudication section” means an adjudication section declared under section 5;

“charge” bears the meaning ascribed to that word by the Registered Land Act; Cap. 58:01

“Deeds Registrar” bears the meaning ascribed to that term by the Deeds Registration Act; Cap. 58:02

“Demarcation Map” means a demarcation index map prepared under section 13 in respect of an adjudication section;

“Demarcation Officer” means a Demarcation Officer appointed under section 4;

“easement” bears the meaning ascribed to that term by the Registered Land Act; Cap. 58:01

“guardian” means any person (whether under customary law or otherwise) responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“interest in land” means any right or interest in or over land which is capable of being recorded under the provisions of this Act;

“land” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“piece” means a piece of land separately shown on a Demarcation Map and thereon given a number;

“profit” bears the meaning ascribed to that word by the Registered Land Act;

“Recording Officer” means a Recording Officer appointed under section 4;

“the register”, “to register”, “registered” and “registration” bear the meanings ascribed to those terms by the Registered Land Act;

“Registrar” bears the meaning ascribed to that term by the Registered Land Act;

“Survey Officer” means a Survey Officer appointed under section 4.

[Ch5805s3]3. Application



(1) Whenever it appears expedient to the Minister that the adjudication and registration of rights and interests in land, not being customary land, in any area, should be effected the Minister may, by Order published in the Gazette, declare that this Act shall apply to that area and thereupon that area shall become an adjudication area.

(2) Any Order under this section shall define the situation and limits of the adjudication area to which it relates either by means of a plan or by a description, or by both, and the Minister may at any time, by Order published in the Gazette, vary the limits of the adjudication area.

## PART II

### OFFICERS

#### [Ch5805s4]4. Appointment and general powers of officers

(1) Whenever an Order made under section 3 is published, the Minister shall appoint an Adjudication Officer for the adjudication area it declares and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act in relation to such area.

(2) The Adjudication Officer shall, subject to the directions (whether general or special) of the Minister, be in charge of the adjudication under this Act of rights and interests in land in the area for which he is appointed and may issue such general or special directions as he thinks necessary to the other officers appointed under subsection (1) for such area, and may himself perform and exercise all or any of the duties given under this Act to Demarcation Officers and Recording Officers.

(3) The Adjudication Officer shall be competent to administer oaths and take affidavits in any inquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for carrying out the adjudication.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the adjudication area for the purpose of demarcating or surveying any piece therein and may summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

## PART III

### CLAIMS AND DEMARCATION

#### [Ch5805s5]5. Adjudication sections

The Adjudication Officer shall divide each adjudication area into two or more adjudication sections or declare the whole area to be a single adjudication section, and shall give each such adjudication section a distinctive name.

#### [Ch5805s6]6. Notices by Adjudication Officer

(1) The Adjudication Officer shall prepare a separate notice in respect of each adjudication section, and in such notice shall—

- (a) specify the situation and limits of the adjudication section;
- (b) declare that all interests in land in such section will be ascertained and recorded in accordance with the provisions of this Act;
- (c) require any person who claims any interest in land within the adjudication section to make a claim thereto either in person or by agent within the period, to the person, at the place and in the manner specified in the notice;
- (d) require all claimants to land, or to any interest in land, within the adjudication section to mark or indicate the boundaries of the land in such manner and before such date as shall be required by the Demarcation Officer.

(2) The Adjudication Officer shall as soon as possible after preparing a notice under subsection (1)—

- (a) cause such notice to be published in the Gazette and at such administrative and other offices as he thinks fit; and
- (b) cause the substance of such notice to be made known throughout the adjudication section and elsewhere in such manner as he considers to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

[Ch5805s7]7. Staying of land suits

(1) Except with the consent in writing of the Adjudication Officer, no action concerning land or any interest in land in an adjudication section shall be begun in any civil court until proceedings under this Act with regard to such land or interest have been completed.

(2) Where at the time of the publication of a notice under section 6 an action concerning land, or an interest in land, in the adjudication section referred to in such notice is pending or in progress such action shall, where practicable, be determined before the adjudication under this Act of the land or interest therein is commenced:

Provided that it shall be lawful for the Adjudication Officer at any stage of such action to order that it shall be stayed and it shall be stayed accordingly.

[Ch5805s8]8. Claims and attendance

(1) Every person claiming an interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the relevant notice given under section 6.

(2) Every person whose presence is required by the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, shall attend, in person, or by agent, at the time and place specified. If any such person fails so to attend the demarcation, recording or other proceeding may continue in his absence.

[Ch5805s9]9. Safeguarding of rights of absent persons and minors

(1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, but shall not be bound to, proceed as if a claim had been made, and may call upon the Deeds Registrar to supply him with a certified copy of any document relevant thereto and registered under the provisions of the Deeds Registration Act. Cap. 58:02

(2) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that a claim might be established by a minor and no person has been appointed to represent the minor, he shall appoint a person to represent the minor, and shall proceed as if a claim by, or on behalf of, such minor had been made.

[Ch5805s10]10. Notice of demarcation and recording

(1) Not less than seven clear days before the demarcation of land in an adjudication section is begun, the Demarcation Officer shall give notice of such demarcation and of the time and place at which it will begin, in such manner as the Adjudication Officer shall deem to be most likely to bring the notice of the demarcation to the attention of the persons likely to be affected thereby.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

[Ch5805s11]11. Indication of land claimed

Subject to any general or particular directions issued by the Adjudication Officer, the Demarcation Officer shall within each adjudication section—

(a) ensure that the boundaries of each piece of land which is the subject of a claim are indicated or demarcated in accordance with the requirements of the notice given under section 10;

(b) indicate or cause to be indicated the boundaries of—

(i) any public roads, public rights of way and other public land;

(ii) any customary land; and

(iii) any unclaimed land.

[Ch5805s12]12. Special powers of Demarcation Officer

(1) The Demarcation Officer may—

(a) divide the adjudication section into blocks which shall be given such distinctive numbers or letters or combinations of numbers and letters as he may determine;

(b) with the consent in writing of all the persons having, or claiming, any interest in the land affected thereby, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision thereof.

26 of 1988(2) In exercising any powers under subsection (1) (b), the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning.

[Ch5805s13]13. Duties of the Survey Officer

Subject to any general or particular directions issued by the Adjudication Officer, the duties of the Survey Officer shall be—

(a) to carry out such survey work as may be required in the execution of the adjudication process; and

(b) to prepare or cause to be prepared a demarcation index map of the adjudication section on which shall be shown every separate piece of land identified by a distinguishing number, except that rivers and public roads shall not be required to be identified by a number.

[Ch5805s14]14. Duties of Recording Officer

The Recording Officer shall consider all claims to any interest in land and after such investigations as he considers necessary shall prepare in accordance with the provisions of section 18 an Adjudication Record in respect of every piece of land shown on the Demarcation Map.

[Ch5805s15]15. Disputes

(1) If in any case—

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer, as the case may be, shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a brief record of the proceedings.

PART IV

PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD

[Ch5805s16]16. Principles of adjudication

(1) In preparing an Adjudication Record—

(a) if the Recording Officer is satisfied that a person—

(i) has a good documentary title to the land, not being customary land, referred to in such Record and that no other person has acquired a title to such land under any law; or

(ii) has acquired ownership of the land, not being customary land, referred to in such Record by prescription by virtue of the principles set out in Part IX of the Registered Land Act, Cap. 58:01

the Recording Officer shall record such person as the owner of the land;

(b) if the Recording Officer is satisfied that a person is in possession of, or has a right to possession of the land, not being customary land, referred to in such Record, but is not satisfied that such person is entitled to be recorded under paragraph (a) as the owner of the land, the Recording Officer may record such person as provisional owner of the land and, if he does so, shall also record—

(i) the date on which the possession, if any, of that person began, or is deemed to begin or have begun;

(ii) particulars of any deed, instrument or other document under or by virtue of which some estate, right or interest in such land adverse to or in derogation of the entitlement of that person might exist; or

(iii) any qualification which affects the title;

(c) if the Recording Officer is satisfied that any land, other than customary land, referred to in such Record is subject to any right which is registrable as a lease, charge, easement, profit or restrictive agreement under the Registered Land Act, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be registered under the said Act; Cap. 58:01

(d) if the Recording Officer is satisfied that any land, other than customary land, referred to in such Record is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to record any person as provisional owner under paragraph (b), he may record such land as public land.

(2) In performing his duties under this section the Recording Officer shall observe the rules contained in section 17.

(3) In this section, the term “good documentary title” means a title founded on documentary evidence which—

(a) consists of, or commences with—

(i) a written law;

(ii) a grant or conveyance from the State; or

(iii) a grant, conveyance, assignment or mortgage which is more than thirty years old; and

(b) establishes that a person is entitled to land as owner in freehold.

[Ch5805s17]17. Rules to be followed in adjudication

(1) All unoccupied land, other than customary land, shall be deemed to be public land until the contrary is proved.

(2) The exercise by any person of any rights in or over one or more pieces of land shall not be taken as a presumption in his favour of any rights in or over any greater extent of land than that in or over which such rights are exercised.

(3) Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Act, the Recording Officer shall record such persons as joint owners or owners in Common, as the case may be, and if owners in common, the share of each such owner. Cap. 58:01

#### [Ch5805s18]18. Adjudication Record

(1) The Adjudication Record shall consist of a form in respect of each piece of land, which form shall show—

- (a) the number and approximate area of the piece as shown on the Demarcation Map;
- (b) either the name and description of the person entitled to be registered as the owner of the piece with particulars of his entitlement and of any restriction affecting his power of dealing with it, or the fact that the piece is public land or customary Land;
- (c) such particulars of any right registrable under the Registered Land Act as shall enable it to be registered as a lease, charge, easement, profit or restrictive agreement, as the case may be, affecting the piece together with the name and description of the person entitled to the benefit thereof and particulars of any restriction affecting his power of dealing with it; Cap. 58:01
- (d) if any person shown in the Adjudication Record is under a disability, whether by reason of age, unsoundness of mind or otherwise, the name of his guardian;
- (e) a list of the documents, if any, produced to the Recording Officer and retained by him;
- (f) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of privately owned land, shall, where possible, include an acknowledgment signed by the owner of the piece or by his agent, and by any person recorded under the provisions of subsection (1) (c) as having an interest in such piece, that such owner and every such person accepts the Record.

#### [Ch5805s19]19. Notice of completion of Adjudication

When the Adjudication Record in respect of any adjudication section has been completed, the Adjudication Officer shall sign and date a certificate to that effect and shall forthwith, by Notice published in the Gazette, give notice of the completion thereof and of the place or places at which the same can be inspected together with the relevant Demarcation Map.

#### PART V

## OBJECTIONS AND FINALITY

### [Ch5805s20]20. Objection to the Adjudication Record

(1) Any person named in, or claiming an interest in any land referred to in, any Adjudication Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Adjudication Record is published, inform the Adjudication Officer stating the grounds of his objection.

(2) The Adjudication Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

### [Ch5805s21]21. Procedure in hearing objections

(1) In hearing an objection the Adjudication Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

(2) Any proceedings conducted under this Act by the Adjudication Officer shall be deemed to be a judicial proceeding for the purposes of Chapter XI of the Penal Code. Cap. 7:01

(3) A record of all proceedings on an objection shall be made or caused to be made by the Adjudication Officer.

### [Ch5805s22]22. Correction of Adjudication Record

(1) Any correction in the Adjudication Record required by a decision of the Adjudication Officer given under section 20 shall be made by the Recording Officer, and any alteration in the Demarcation Map required by such decision shall be made by the Survey Officer.

(2) At any time before the Adjudication Record becomes final the Recording Officer may—

(a) correct any error or omission not materially affecting the interests of any person;  
and

(b) with the consent of every person whose interest is affected, make in the Adjudication Record any alteration which in his opinion is necessary.

### [Ch5805s23]23. Finality of Adjudication Record

After the expiry of sixty days from the date of the publication of the notice of completion of the Adjudication Record, or on determination of all objections in accordance with section 20, whichever shall be the later, the Adjudication Record shall, subject to the provisions of the Registered Land Act, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the Adjudication Record and the relevant Demarcation Map to the Registrar, together with all documents received by him in the process of adjudication. Cap. 58:01

## PART VI

### APPEALS

#### [Ch5805s24]24. Appeals

(1) Any person, including the Minister, who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Act, may within three months from the date of the certificate of the Adjudication Officer under section 23 or within such extended time as the High Court, in the interests of justice, may allow, appeal to that Court in the prescribed form.

(2) On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Act, make such order or substitute for the decision of the Adjudication Officer such decision as it may consider just and may order rectification of the register, and the order or decision of the High Court shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(3) Notwithstanding the provisions of section 140 of the Registered Land Act no indemnity shall be payable to any person by reason of any rectification of the register under subsection (2).  
Cap. 58:01

(4) A decision of the Court on appeal under subsection (1) shall be in writing and copies of it shall be furnished by the Court to the Registrar, to the appellant and to all other parties to the appeal and, by the Registrar, to all other parties who, in his opinion, may be affected by the appeal.

(5) Any person, including the Minister, appealing under subsection (1) shall give notice to the Registrar of his intention to appeal and the Registrar shall enter a restriction under section 131 of the Registered Land Act in every register affected by the appeal.

## PART VII

### MISCELLANEOUS

#### [Ch5805s25]25. Fees

Every person who is a party to any proceedings under section 20 shall be required to pay such fees in respect of the proceedings as may be prescribed.

#### [Ch5805s26]26. Offences

Any person who—

(a) after the delivery of a summons issued under the provisions of this Act, wilfully neglects or refuses to attend in pursuance of such summons, or to produce any document which he is required to produce;



(b) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him under this Act by any officer;

(c) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required under this Act to do so by a Demarcation Officer,

shall be guilty of an offence and liable to a fine of one hundred Kwacha or to imprisonment for six months.

[Ch5805s27]27. Indemnity of officers

No officer shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act.

[Ch5805s28]28. Regulations

The Minister may make Regulations for the purpose of carrying into effect the provisions and purposes of this Act.

#### SUBSIDIARY LEGISLATION

#### ADJUDICATION OF TITLE (LILONGWE AREA) ORDER

under s. 3

G.N. 2/1973

58/1985

124/1985

#### 1. Citation

This Order may be cited as the Adjudication of Title (Lilongwe Area) Order.

#### 2. Application of Act

The Adjudication of Title Act, is hereby applied to all land, not being customary land, in the areas more particularly described in the Schedule hereto. Cap. 58:05

#### SCHEDULE

Those areas of land designated as part of the Capital City of Lilongwe by the Capital City Development Corporation Designation Order, 1968, and by the Capital City Development Corporation (Supplemental Designation) Order, 1972, and by the First Schedule to the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order, 1980, the boundaries of which areas are more particularly described and delineated on Survey Department Sketch Plans Nos. 80/68,92/71,93/71,4/78,9/78 and 125/83 thereon edged with red colour. Cap. 39:02, sub. leg. p. 12, G.N. 40/1972, 86/1983

#### ADJUDICATION OF TITLE (LILONGWE AGRICULTURAL DEVELOPMENT AREA) ORDER

under s. 3

G.N. 17/1976

1. Citation

This Order may be cited as the Adjudication of Title (Lilongwe Agricultural Development Area) Order.

2. Application of Act

The Adjudication of Title Act is hereby applied to all land, not being customary land, in the areas more particularly described in the Schedule hereto.

SCHEDULE

All customary land lying within the following boundary:

Commencing at the confluence of the Lingadzi River and the Kamankuku Dambo at Grid Reference WV 807582, which point lies on the Capital City Designated Area boundary (Government Notice 160/68) follow the western boundary of the Capital City Designated Area to the point where it meets the Chinsapo Local Authority Forest boundary at Grid Reference WV 798510, on the Lilongwe/Likuni road; thence following the western boundary of the Chinsapo Local Authority Forest to the point where that boundary meets the Kadakala Stream at Grid Reference WV 799493, which point lies on the Capital City Designated Area boundary; thence following the southern boundary of the Capital City Designated Area to the point where it meets the Lilongwe/Dedza road (MI) at Grid Reference WV 851488; thence following the Lilongwe/Dedza road to the point where it crosses the Nathenje River at Grid Reference WV 985436; thence up the Nathenje River to its source at Grid Reference WV 974285; thence in a straight line for approximately one mile to Grid Reference WV 987288, which point lies at the head of an unnamed dambo; thence down that dambo to its confluence with the Diampwe River at Grid Reference XV 026294; thence up the Diampwe River to its confluence with the Kanjuli Dambo at Grid Reference WV 932165; thence up the Kanjuli Dambo to the point where it is crossed by the Chikandira-Gomesi track at Grid Reference WV 923142; thence along the Chikandira-Gomesi track in a southerly direction to the point where it meets the Dzalanyama Forest Reserve boundary at Grid Reference WV 942093; thence along the eastern boundary of the Dzalanyama Forest Reserve to the point where it meets the Malawi/Mozambique international boundary at Grid Reference WU 933957; thence in a general westerly and then north-westerly direction along the Malawi/Mozambique international boundary to the point where the northern boundary of the Dzalanyama Forest Reserve leaves the said international boundary at Grid Reference WV 332412; thence along the northern boundary of the Dzalanyama Forest Reserve to the point where it is crossed by the Namitete Stream at Grid Reference WV 381329; thence down the Namitete Stream to its confluence with the Bua River; thence down the Bua River to its confluence with the Nambuma Stream; thence up the Nambuma Stream to the point where it is crossed by the Nambuma Mission track at Grid Reference WV 645850; thence along the Nambuma Mission track and the Nambuma-Dangaliro road in an easterly direction to Grid Reference WV 702859; thence along the old road from Nambuma to Jumpha in an easterly direction to the point where it crosses the Mapanda Dambo at Grid Reference WV 730863; thence down the Mapanda Dambo to the confluence with the unnamed dambo at Grid Reference WV 742843; thence upstream

to the head of the dambo at Grid Reference WV 737842; thence across the watershed on a south-westerly direction to Grid Reference WV 732836, which is the head of an unnamed dambo; thence down the dambo to its confluence with the Chiwangombe Stream at Grid Reference WV 728807; thence down the Chiwangombe Stream to its confluence with the Mteza Stream at Grid Reference WV 751778; thence down the Mteza Stream to its confluence with the Lingadzi River at Grid Reference WV 786607; thence down the Lingadzi River to its confluence with the Kamankuku Dambo, being the point of commencement. GN. 93/1963

ADJUDICATION OF TITLE (BLANTYRE CITY WEST) (ADJUDICATION AREA) ORDER

G.N. 52/1976

(Revoked by G.N. 88/1987)

ADJUDICATION OF TITLE (BLANTYRE CITY EAST) (ADJUDICATION AREA) ORDER

G.N. 53/1976

(Revoked by G.N. 88/1987)

ADJUDICATION OF TITLE (BLANTYRE CITY) (ADJUDICATION AREA) ORDER

under s. 3

G.N. 88/1987

1. Citation

This Order may be cited as the Adjudication of Title (Blantyre City) (Adjudication Area) Order.

2. Application of Cap. 58:05

The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Blantyre City Adjudication Area.

3. Revocation of Cap. 58:05 sub. leg. p. 14

The Adjudication of Title (Blantyre City West) (Adjudication Area) Order and the Adjudication of Title (Blantyre City East) (Adjudication Area) Order are hereby revoked.

SCHEDULE G.N. 47/1974, G.N. 127/1974, G.N. 132/1975

The areas of land comprised in the Wards of Michiru, Chilomoni, Blantyre West, Nancholi, Likubula, Blantyre Central, Blantyre East, Soche West, Soche East, Misesa, Nyambadwe, Ndirande West, Ndirande North, Ndirande South, Chichiri, Limbe Central, Limbe East, Limbe West, Nkolokoti, Mapanga, Mzedi, Bangwe, Namyango, Chigumula and South Lunzu, the said Ward areas being more particularly described in the Second Schedule to the Municipal Councils (Composition of Councils, Terms of Office, Nomination and Appointment of Councillors) Order, 1984, together with such other Lands as were added to and embodied in the City of Blantyre by virtue of the provisions of the Local

Government (Urban Areas) (City of Blantyre) (Alteration of Boundaries) Order, 1974, and the Municipal Councils (Composition of Councils, Terms of Office, Nomination and Appointment of Councillors) (Amendment) (No. 3) Order, 1975.

#### ADJUDICATION OF TITLE (MUNICIPALITY OF ZOMBA) ORDER

G.N. 30/1994

1. Citation

This Order may be cited as the Adjudication of Title (Municipality of Zomba) Order.

2. Application of Cap. 58:05

The Adjudication of Title Act is hereby more applied to all land in the area more particularly described in the Schedule hereto, which area shall, for the purposes of the Act, be known as the Municipality of Zomba Adjudication Area.

#### SCHEDULE para. 2

Commencing at the point where the northern boundary of Changalume-Zomba Road (S73) crosses the Satema Stream at G.R. 461973 the boundary follows the Satema Stream upstream to where it is crossed by the Zomba Mountain Road (S65) at G.R. 459994; thence in an easterly direction along the northern boundary of the said road to the point where it crosses an unnamed stream at G.R. 478990; thence up the said unnamed stream to its source at G.R. 478991; thence in a straight line to beacon C39 of plot No. 195 as delineated on Department of Surveys Plan S.D. 4446; thence along the boundary of the said plot on a bearing of 44°.37'.20" for a distance of 109.90 metres to beacon C41 of the said plot; thence in a straight line on a bearing of 41°.01'.00" for a distance of 416.91 metres to beacon H8 at the north-east corner of the Zomba Hospital plot No. 93 as delineated on Department of Surveys Plan SD. 3722; thence along the northern boundary of the said plot on a bearing of 80°.38'.50" for a distance of 123.04 metres to beacon H9 of the said plot; thence in a straight line on a bearing of 64°.56'.00" for distance of 115.11 metres to the point of commencement.

#### ADJUDICATION OF TITLE (KARONGA TOWNSHIP) ORDER

G.N. 15/1996

1. Citation

This Order may be cited as the Adjudication of Title (Karonga Township) Order.

2. Application of Cap. 50:07

The Adjudication of Title Act is hereby applied to all land, not being customary land, in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Karonga Township Adjudication Area.

#### SCHEDULE

All that piece of land as shown on Survey Department Sketch Plan No. 1443/89 commencing at G.R. 032971 on Map Sheet No. 0933D4 being a point on the shore of Lake Malawi, the boundary follows a straight line on a bearing of 276°. 10' for a distance of approximately 1,650 metres to a point where it meets the Kadikira Stream to its source G.R.016973; thence by the Kadikira Stream to its source G.R. 998964; thence in a south-westerly direction on a bearing of 261°.00' for a distance of approximately 1,500 metres to a confluence of two unnamed streams G.R.983962; thence by the stream downstream to its confluence with Phopa Stream G.R.983969; thence by the Phopa Stream upstream to a point G.R.975972; thence of north-westerly direction on bearing of 327°.00' for a distance of approximately 1,700 metres to the source of Chilambiro Stream G.R.968986; thence by the Chilambiro Stream downstream to its confluence with North Rukuru River G.R.961021; thence along the left bank of the North Rukuru River downriver to its mouth on Lake Malawi; thence along the lakeshore in a southerly direction to the point of commencement.

#### ADJUDICATION OF TITLE (CITY OF MZUZU) ORDER

G.N. 16/1996

1. Citation

This Order may be cited as the Adjudication of Title (City of Mzuzu) Order.

2. Application of Cap. 58:05

The Adjudication of Title Act is hereby applied to all land, not being customary land, in the area more particularly described in the Schedule hereto, which said area shall, for the purposes of the Act, be known as the City of Mzuzu Adjudication Area.

#### SCHEDULE para. 2

All that piece of land representing approximately 11,200 hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 54/80.

#### ADJUDICATION OF TITLE (SALIMA TOWNSHIP) ORDER

G.N. 74/1997

1. Citation and commencement

This Order may be cited as the Adjudication of Title (Salima Township) (Adjudication Area) Order, and shall come into operation on the 1st August, 1997.

2. Application of Cap. 58:05

The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall, for the purpose of the Act, be known as the Karonga Township Adjudication Area.

#### SCHEDULE

All that piece of land representing approximately 900.00 (nine hundred decimal point nought nought) hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 180/75.

#### ADJUDICATION OF TITLE (KASUNGU TOWNSHIP) ORDER

G.N. 75/1997

1. Citation and commencement

This Order may be cited as the Adjudication of Title (Kasungu Township) (Adjudication Area) Order, and shall come into operation on the 1st August, 1997.

2. Application of Cap. 58:05

The Adjudication of Title Act is hereby applied to all land, not being customary land in the area more particularly described in the Schedule hereto, which said area shall for the purpose of the Act be known as the Kasungu Township Adjudication Area.

#### SCHEDULE

All that piece of land representing approximately 3,548.00 (three thousand, five hundred and fourty eight decimal point nought nought) hectares in extent and which is more particularly delineated and shown on Department of Surveys Sketch Plan No. 166/78.

#### ADJUDICATION OF TITLE REGULATIONS

under s. 28

G.N. 3/1973

105/1982

100/1989

1. Citation

These Regulations may be cited as the Adjudication of Title Regulations.

2. Form of claim

The form set out in the First Schedule shall be used for the purposes of any claim pursuant to sections 6 and 8 of the Act made by a person respecting an interest in land.

3. Form of Adjudication Record

An Adjudication Record shall be in the form set out in the Second Schedule.

4. Fees

(1) Subject to subregulation (2), the fees specified in the second column of the Third Schedule shall be paid in respect of the corresponding matters specified in the first column of that Schedule: G.N. 105/1982, 100/1989

Provided that such fees shall not be payable by the Government.

(2) The Minister may, in respect of any adjudication area or a section of any adjudication area, suspend, for a definite or an indefinite period, payment of the fees payable under subregulation (1); and the Minister shall cause notice of such suspension to be published in the Gazette.

FIRST SCHEDULE

MALAWI GOVERNMENT ADJUDICATION OF TITLE ACT

(CAP. 58:05)

ADJUDICATION OF TITLE REGULATIONS

Form I

CLAIM TO AN INTEREST IN LAND

(Sections 6 and 8)

Note: Please complete in BLOCK LETTERS

1. Adjudication Area:

2. Adjudication Section:

3. Full name and address of claimant:

4. If claim submitted by an agent, name and address of agent:

.....

.....

5. Plot No. or other description of land over which claim is made:

.....

.....

6. Details of interest claimed (Note: claims may only be submitted as owner or as a person entitled to the benefit of a lease, charge, easement, profit or restrictive agreement):

.....

7. List of documents upon which the claim is based. The original title deeds should, if possible, be attached to this form.

Date    Deed No.    Type of document    Parties

8. If the claim is not based on documentary evidence, full details must be supplied together with the date on which it is claimed that the interest arose:

.....  
.....

Date .....

Signature of Claimant or Agent

SECOND SCHEDULE

MALAWI GOVERNMENT

ADJUDICATION OF TITLE ACT

( CAP. 58:05)

ADJUDICATION OF TITLE REGULATIONS

Form II

ADJUDICATION RECORD

1. Adjudication Area:
2. Adjudication Section:
3. Number of Approximate Area of piece:
4. Description of piece: Private Land/Public Land (delete whichever is not applicable).

5. (a) If the piece is private land, state full names, address and description of the owner, and, where two or more persons are entitled, whether they are joint owners or owners in common, the share of each owner. State also details of title i.e. Absolute/ Provisional (delete whichever is not applicable) listing all documents in support, and if provisional state reasons:

Description    Date    Consideration (if applicable)    Parties

.....



(b) If any person shown on this record is under a disability by reason of age, unsoundness of mind or otherwise, the name of his guardian.

.....

(c) Particulars of rights registerable under the Registered Land Act affecting the piece such as a lease, mortgage, charge, easement, profit, or restrictive agreement together with the name and description of the person entitled to the benefit thereof (and particulars of any restriction on his power of dealing with it).

.....

6. List of documents, if any, produced to the Recording Officer and retained by him:

.....

Date .....

Recording Officer

Signatures of all persons whose names appear in paragraph 5 (a) and 5 (c) above accepting this record as correct .....

THIRD SCHEDULE G.N. 105/1982, 56/1983

FEES reg. 4

First Column    Second Column

K            t

1.    On a claim in respect of an interest in land—

(a)    where the value of the interest in land does not exceed K20,000 or where the annual rent or other annual payment reserved does not exceed K100    40    00

(b)    in any other case            80    00

2.    On a claim in respect of a mortgage, charge, easement, profit or restrictive agreement    10  
00

[Chap5901]CHAPTER 59:01

CUSTOMARY LAND (DEVELOPMENT)

ARRANGEMENT OF SECTIONS

## SECTION

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2. Interpretation
3. Application

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5 of 1967

26 of 1988

An Act to provide for the Ascertainment of Rights and Interests in Customary Land, for the Better Agricultural Development of Customary Land and for Purposes connected therewith and Incidental thereto

[9TH MAY 1967]

PART I

PRELIMINARY AND APPLICATION

[Ch5901s1]1. Short title

This Act may be cited as the Customary Land (Development) Act.

[Ch5901s2]2. Interpretation

In this Act, except where the context otherwise requires—

“Allocation Officer” means an Allocation Officer appointed under section 4;

“agent” means an agent duly authorized by law, including customary law;

“Committee” means a Land Committee appointed under section 5;

“customary land”, “private land” and “public land” bear the same meaning as in section 2 of the Land Act; Cap. 57:01

“Demarcation Officer” means a Demarcation Officer appointed under section 4;

“Demarcation Map” means a Demarcation Map prepared under section 14;

“development area” means an area to which this Act has been applied under section 3;

“development section” means a development section declared under section 7;

“family land” means customary land which is held, occupied or used by members of a family on the allocation of the head of that family;

“guardian” means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“interest in land” means any right or interest in or over land which is capable of being recorded under this Act;

“land” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“piece” means a piece of land separately shown on the Demarcation Map and given a number;

“Recording Officer” means a Recording Officer appointed under section 4;

“Survey Officer” means a Survey Officer appointed under section 4.

[Ch5901s3]3. Application

(1) Whenever it appears expedient to the Minister that the ascertainment of interests in customary land and the better agricultural development of such land in any area should be effected the Minister may, by order, declare that this Act shall apply to such area. In such order or in a further order, the Minister may prescribe a development scheme for such area.

(2) Where, on the date on which this Act is applied to any area of land, any demarcation and recording of rights and interests in such land and development of such land have been carried out, then, if the Minister is satisfied that such demarcation, recording and development have been carried out substantially in accordance with the principles of this Act he may, by order, declare that such demarcation, recording and development shall be deemed to have been carried out under this Act and may in such order make such transitional provisions as may be necessary to effect the completion of the allocation process and development of such land in accordance with this Act. Any Allocation Record or Demarcation Map prepared in accordance with such order shall be deemed to have been prepared under this Act.

(3) Any order under this section shall define the situation and limits of the area to which it relates either by means of a plan or by description, or by a combination of plan and description.

(4) If the Allocation Officer at any time considers that it is impracticable or undesirable to carry out this Act in any part of the development area because it is not yet ready or for any other reason is unsuitable, he shall refer the matter to the Minister who may by order declare that such land shall be excluded from the area declared under subsection (1).

PART II

OFFICERS AND COMMITTEE

[Ch5901s4]4. Appointment and general powers of officers

(1) On or after the publication of an order made under section 3, there shall be appointed an Allocation Officer for the development area and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act.

(2) The Allocation Officer shall, subject to the directions of the Minister, be in charge of the allocation and may issue instructions to the officers subordinate to him. The Allocation Officer may himself exercise all or any of the powers given under this Act to Demarcation Officers and Recording Officers.

(3) The Allocation Officer shall be competent to administer oaths in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the allocation.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the development area for the purpose of demarcating or surveying any piece therein and may

summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

[Ch5901s5]5. Appointment of Land Committee

(1) For any development section or part of a development section within the development area the Allocation Officer, after consultation with the District Commissioner within whose District the development area is situated, may appoint not less than six persons resident within the development area to form a panel from which he may from time to time select not less than five persons to form a Land Committee.

(2) The Allocation Officer shall appoint an executive officer for each Committee who shall attend, and may speak, at any meeting of the Committee, but shall not vote.

(3) The executive officer shall keep a record of the proceedings of the committee in such form as the Allocation Officer shall direct.

[Ch5901s6]6. Functions of the Committee

The Committee appointed for a development section shall have the powers conferred by section 16 and in addition shall—

(a) advise the Allocation Officer or Demarcation Officer or Recording Officer upon any point of customary law on which he has sought their guidance;

(b) represent the interest of absent persons, minors and persons under disability, where no guardian or other representative has been appointed;

(c) bring to the attention of officers engaged in the allocation any potential claim which for any reason may not have been made;

(d) assist generally in the allocation process.

PART III

CLAIMS AND DEMARCATION

[Ch5901s7]7. Development sections

The Allocation Officer shall divide the development area into two or more development sections or declare the whole area to be a single development section, and shall give each development section a distinctive name.

[Ch5901s8]8. Notice by Allocation Officer

A separate notice shall be published in respect of each development section, and in each such notice the Allocation Officer—

(a) shall specify as nearly as possible the situation and limits of the development section;

(b) shall declare that interests in land within the development section will be ascertained and recorded and provision made for the development of the land in accordance with this Act; and

(c) shall fix a period within which any person claiming any interest in land within the development section is required to make his claim either in person or by his agent.

[Ch5901s9]9. Cesser of powers of customary authorities

(1) As from the date of a notice under section 8, a 'mwini dziko' or other customary authority shall, in relation to land within the development section, cease to have and exercise any customary functions and the right if any, to monetary or other payment in respect of the performance of such functions:

Provided that, upon the Allocation Record becoming final in accordance with section 27, such functions shall revert in the 'mwini dziko' or other customary authority in relation to land recorded as customary land in the Allocation Record.

(2) Except with the consent in writing of the Allocation Officer, no person shall proceed with, and no customary authority shall take cognizance of, any dispute concerning any interest in land in a development section after publication of a notice under section 8:

Provided that, upon the Allocation Record becoming final in accordance with section 27, this subsection shall cease to apply to any dispute concerning an interest in land recorded as customary land in the Allocation Record.

(3) The hearing of any such dispute which was begun before the publication of the notice mentioned in section 8 shall, where practicable, be determined before the allocation of the land affected by such dispute is commenced.

(4) Any such hearing which has not been completed before such allocation is commenced shall, unless the Allocation Officer otherwise directs, be stayed.

[Ch5901s10]10. Notice of demarcation and recording

(1) Not less than seven clear days before the demarcation of any development section is begun, the Demarcation Officer shall give notice of the intended demarcation of land in that section, and of the time and place at which it will begin, in such manner as the Allocation Officer shall deem to be most likely to bring the matter to the knowledge of the persons to be affected by that demarcation.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

[Ch5901s11]11. Claims and attendance

(1) Every person claiming any interest in land within a development section shall make his claim in the manner and within the period fixed by the notice given under section 10.

(2) Every person whose presence is required by the Allocation Officer, Demarcation Officer, Recording Officer or by the Committee, as the case may be, shall attend in person or by agent at the time and place specified.

(3) If any such person fails to attend in person or by agent, the demarcation, recording or other proceeding may continue in his absence.

(4) If the Allocation Officer, Demarcation Officer, Recording Officer or Committee is satisfied that any person who has not made a claim has a claim to any interest in land within the development section then the Adjudication Officer, Recording Officer or Committee may, but shall not be bound to, proceed as if a claim had been made.

[Ch5901s12]12. Indication of land claimed

Subject to any instruction issued by the Allocation Officer, the Demarcation Officer shall first within each development section—

(a) see that the boundaries of any land which is the subject of a claim are indicated in accordance with the requirements of the notice given under section 10;

(b) indicate or cause to be indicated the boundaries of other land referred to in sections 20 and 21.

[Ch5901s13]13. Demarcation of pieces

26 of 1988(1) The Demarcation Officer shall then proceed to demarcate or cause to be demarcated any land which in his opinion should appear as a piece on the Demarcation Map, and in so doing may—

(a) set aside out of land in the development section such land as may in his opinion be required for the present or future needs of the community as roads, sites for villages, schools, public buildings, graveyards and open places, and any detriment caused to owners of pieces by such setting aside shall be shared as equitably as possible between all owners in the development section:

26 of 1988 Provided that in such case the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning;

(b) effect or cause to be effected such measures as shall be required by any development scheme prescribed by the Minister;

(c) if he considers the existing layout of the land to be uneconomic or inconvenient for the use of the land or inconsistent with the development scheme, prepare a fresh layout and by exchange of land or otherwise adjust the existing layout;

(d) demarcate any right of way necessary to give access to a public road or water in favour of any piece completely surrounded by other pieces;

(e) terminate any such customary right as is referred to in section 19 (2) if he considers such right unnecessary or inconsistent with any development scheme prescribed by the Minister;



(f) make such alignment of boundaries of land adjoining a public road as may be required in the public interest;

(g) clear any boundary or other line which it may be necessary to clear for the purpose of such demarcation.

(2) The Demarcation Officer may request any person having an interest in any land to assist in the demarcation of such land in such manner as the Demarcation Officer may require.

#### [Ch5901s14]14. Duties of the Survey Officer

Subject to any instructions issued by the Allocation Officer, the duties of the Survey Officer shall be—

(a) to carry out such survey work as may be required in the execution of the allocation process;

(b) to prepare or cause to be prepared a Demarcation Map of each development section, on which shall be shown every piece identified by a distinguishing number, except that public roads and rivers shall not require to be identified by a number.

#### [Ch5901s15]15. Duties of the Recording Officer

The Recording Officer shall consider all claims to any interest in land and after such investigation as he considers necessary shall prepare in accordance with section 22 a record in respect of every piece shown on the Demarcation Map.

#### [Ch5901s16]16. Disputes

(1) If in any case—

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Committee.

(2) The Committee shall adjudicate upon and determine any dispute referred to them under subsection (1), having due regard to any customary law which may be applicable.

#### [Ch5901s17]17. Procedure in Committee

(1) If a member of a Committee has an interest, direct or indirect, in any land the subject of a claim or a dispute referred to the Committee under section 16, and is present at a meeting of the Committee at which the determination of that claim or dispute is under consideration, he shall, at the meeting as soon as practicable after its commencement, disclose the fact and shall not take part

in the consideration or discussion of, or vote on any question with respect to, the determination of that claim or dispute.

(2) Each Committee shall elect one of its members to be chairman, who shall preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside at that meeting.

(3)(a) The quorum of a Committee where the total number of members is an even number shall be one-half of that number, and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

(b) In the event of an equality of votes the chairman or other member presiding shall have a casting as well as an original vote.

(4) Any decision of a Committee shall be signified in writing and signed by the chairman or executive officer.

(5) A committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership; and any proceedings therein shall not be invalid by reason only that some person, who was not entitled to do so, took part in the proceedings.

[Ch5901s18]18. Reconsideration of decisions by Committee

(1) Any person named in or affected by a decision of the Committee who considers himself aggrieved thereby may, within fourteen days of such decision, lodge an objection with the executive officer of the Committee concerned stating in what manner the decision is alleged to be incorrect.

(2) Upon receipt of an objection, or if in any case the Allocation Officer so directs, the Committee shall reconsider their decision and shall thereafter submit their finding to the Recording Officer who shall make any entry in or alteration to the Allocation Record as may be required to give effect to the decision of the Committee.

#### PART IV

#### PRINCIPLES OF ALLOCATION AND ALLOCATION RECORD

[Ch5901s19]19. Intended private land

(1) If the Recording Officer is satisfied—

(a) that any person has customary rights in a piece which entitle that person to be registered as the proprietor of land under the Registered Land Act he shall record that person as the owner of that piece; Cap. 58:01

(b) that two or more persons have customary rights in a piece which entitle those persons to be registered as joint proprietors or proprietors in common under the Registered Land Act he shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner;

(c) that any family has customary rights in a piece which entitle the head of that family to be registered as the proprietor of family land under the Registered Land Act he shall record the head of such family as owner of family land. Cap. 58:01

(2) Subject to section 13 (1) (e), if the Recording Officer is satisfied that any piece recorded under subsection (1) is subject to a customary right which is registrable as a lease, charge, easement, restrictive agreement or profit under the Registered Land Act he shall record such particulars as may be necessary to enable the right, and the name of the person entitled to the benefit thereof, to be registered, and shall so record any easement demarcated under section 13 (1) (d).

[Ch5901s20]20. Recorded customary land

If the Recording Officer is satisfied that any piece falls into the category of—

- (a) village residential land;
- (b) “dambo” land;
- (c) unallocated garden land; or
- (d) land used for any other special purpose of the community,

he shall record such piece as customary land, together with a note of the category of such piece:

Provided that nothing in this section shall operate to prevent such piece being allocated at any later time under this Act.

[Ch5901s21]21. Intended public land

(1) The Recording Officer shall record any land set aside by the Demarcation Officer under section 13 (1) (a) for the needs of the community as intended public land, and shall specify the purpose for which the land is used or reserved.

(2) Upon the Allocation Record becoming final in accordance with section 27, land recorded as public land shall be deemed to have been declared public land under section 27 (1) of the Land Act. Cap. 57:01

[Ch5901s22]22. Allocation Record

(1) The Allocation Record shall consist of a form in respect of each piece, which form shall show—

- (a) the number and approximate area of the piece as shown on the Demarcation Map;
- (b) the owner of the piece, or that the piece is recorded customary land or intended public land;
- (c) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of intended private land, by the owner of the piece and by any person recorded under section 19 (2) as having an interest in such piece.

[Ch5901s23]23. Notice of completion of Allocation Record

When the Allocation Record in respect of any development section has been completed the Allocation Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the Demarcation Map.

PART V

OBJECTIONS AND FINALITY

[Ch5901s24]24. Objection to the Allocation Record

(1) Any person named in or affected by the Allocation Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Allocation Record is published, inform the Allocation Officer stating the grounds of his objection.

(2) The Allocation Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

[Ch5901s25]25. Procedure in hearing objections

(1) In hearing an objection the Allocation Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

(2) Any proceeding conducted under this Act by the Allocation Officer shall be deemed to be a judicial proceeding for the purpose of Chapter XI of the Penal Code. Cap. 7:01

(3) A record of all proceedings on an objection shall be made or caused to be made by the Allocation Officer.

[Ch5901s26]26. Correction of Allocation Record

(1) Any correction in the Allocation Record required by a decision of the Allocation Officer given under section 24 shall be made by the Recording Officer, and if necessary the Survey Officer shall alter the Demarcation Map to give effect to such decision.

(2) At any time before the Allocation Record becomes final the Recording Officer may correct any error or omission not materially affecting the interests of any person and may, with the consent of every person whose interest is affected, make in the Allocation Record any alteration which in his opinion is necessary.

[Ch5901s27]27. Finality of the Allocation Record

After the expiration of sixty days from the date of the publication of the notice of completion of the Allocation Record, or on determination of all objections in accordance with section 24, whichever shall be the later, the Allocation Record shall, subject to the Registered Land Act be final and the Allocation Officer shall sign a certificate to that effect and shall deliver the Allocation Record and the Demarcation Map to the Registrar of the registration district in which the development section is situated. Cap. 58:01

PART VI

MISCELLANEOUS

[Ch5901s28]28. Charge on land

(1) Every piece of intended private land in an Allocation Record may from the date of such Record becoming final be charged in favour of the Government, if the Minister so prescribes, with an amount which shall represent the proportionate cost of the allocation of land in the development section in which the piece is situated and of any development or fresh lay-out of the piece made in accordance with section 13.

(2) The amount of such charge shall be recoverable from the owner of the piece in such manner and over such period as may be prescribed by the Minister, but nothing in this section shall prevent the exercise of the remedies of the Government as chargee under the Registered Land Act: Cap. 58:01

Provided that if such charge is calculated upon the area of the piece as shown in the Demarcation Map and such area exceeds by more than ten per cent the actual area of the piece, then the amount of the charge shall be reduced accordingly and any overpayment resulting from such reduction shall be refunded to the owner of the piece.

[Ch5901s29]29. Fees

Every person who is a party to any proceedings before the Committee or the Allocation Officer shall be required to pay such fees in respect of the proceedings as may be prescribed.

[Ch5901s30]30. Offences

(1) Any person who—

(a) after the delivery of a summons issued under this Act, wilfully neglects or refuses to attend in pursuance of such summons, or to produce any document which he is required to produce;

(b) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him by an officer or the Committee;

(c) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required to do so by a Demarcation Officer; or

(d) fails to comply with the requirements of section 17 relating to persons having an interest in the proceedings of the Committee,

shall be liable to a fine of K100 and to imprisonment for six months.

(2) No prosecution for an offence contrary to subsection (1) (d) shall be instituted except with the consent of the Director of Public Prosecutions.

[Ch5901s31]31. Indemnity of Officers

No officer, or member of the Committee, shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act or any regulations made thereunder.

[Ch5901s32]32. Regulations

The Minister may make regulations for carrying into effect the provisions and purposes of this Act.

SUBSIDIARY LEGISLATION

LILONGWE AGRICULTURAL DEVELOPMENT AREA ORDER

under s. 3

G.N. 250/1967

29/1969

123/1969

107/1971

108/1971

1. Citation

This Order may be cited as the Lilongwe Agricultural Development Area Order.

2. Application of Act

The Act shall apply to all customary land within the area of the Lilongwe District described in the Schedule.

SCHEDULE

All customary land lying within the following boundary—

Commencing at the confluence of the Lingadzi River and the Kamankuku Dambo at Grid Reference WV 807582, which point lies on the Capital City Designated Area boundary (Government Notice 160/68) follow the western boundary of the Capital City Designated Area to the point where it meets the Chinsapo Local Authority Forest boundary at Grid Reference WV 798510, on the

Lilongwe/Likuni road; thence following the western boundary of the Chinsapo Local Authority Forest to the point where that boundary meets the Kadakala Stream at Grid Reference WV 799493, which point lies on the Capital City Designated Area boundary; thence following the southern boundary of the Capital City Designated Area to the point where it meets the Lilongwe/Dedza road (M1) at Grid Reference WV 851488; thence following the Lilongwe/Dedza road to the point where it crosses the Nathenje River at Grid Reference WV 985436; thence up the Nathenje River to its source at Grid Reference WV 974285; thence in a straight line for approximately one mile to Grid Reference WV 987288, which point lies at the head of an unnamed dambo; thence down that dambo to its confluence with the Diampwe River at Grid Reference XV 026294; thence up the Diampwe River to its confluence with the Kanjuli Dambo at Grid Reference WV 932165; thence up the Kanjuli Dambo to the point where it is crossed by the Chikandira-Gomesi track at Grid Reference WV 923142; thence along the Chikandira-Gomesi track in a southerly direction to the point where it meets the Dzalanyama Forest Reserve boundary (Government Notice 93/63) at Grid Reference WV 942093; thence along the eastern boundary of the Dzalanyama Forest Reserve to the point where it meets the Malawi/Mozambique international boundary at Grid Reference WU 933957; thence in a general westerly and the north-westerly direction along the Malawi/Mozambique international boundary to the point where the northern boundary of the Dzalanyama Forest Reserve leaves the said international boundary at Grid Reference WV 332412; thence along the northern boundary of the Dzalanyama Forest Reserve to the point where it is crossed by the Namitete Stream at Grid Reference WV 381329; thence down the Namitete Stream to its confluence with the Bua River; thence down the Bua River to its confluence with the Nambuma Stream; thence up the Nambuma Stream to the point where it is crossed by the Nambuma Mission track at Grid Reference WV 645850; thence along the Nambuma Mission track and the Nambuma-Dangaliro road in an easterly direction to Grid Reference WV 702859; thence along the old road from Nambuma to Jumpha in an easterly direction to the point where it crosses the Mapanda Dambo at Grid Reference WV 730863; thence down the Mapanda Dambo to the confluence with the unnamed dambo at Grid Reference WV 742843; thence upstream to the head of the dambo at Grid Reference WV 737842; thence across the watershed on a curve in a south-westerly direction to Grid Reference WV 732836, which is the head of an unnamed dambo; thence down the dambo to its confluence with the Ciwangombe Stream at Grid Reference WV 728807; thence down the Ciwangombe Stream to its confluence with the Mteza Stream at Grid Reference WV 751778; thence down the Mteza Stream to its confluence with the Lingadzi River at Grid Reference WV 786607; thence down the Lingadzi River to its confluence with the Kamankuku Dambo, being the point of commencement.

[Chap5902]CHAPTER 59:02

LOCAL LAND BOARDS

ARRANGEMENT OF SECTIONS

SECTION

PART I

## PRELIMINARY

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2. Interpretation
3. Application
4. Local Land Boards
5. Board procedure

## PART II

### CONSENT TO TRANSACTIONS

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7. General consent and no consent
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## PART III

### FAMILY LAND MATTERS

10. Partition of family land
11. Replacement of family representative

## PART IV

### OTHER POWERS OF THE BOARD

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## PART V

### MISCELLANEOUS

13. Review
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## 15. Regulations

7 of 1967

6 of 1987

An Act to provide for the Establishment and powers of Local Land Boards, and for matters incidental thereto and connected therewith

[9TH MAY 1967]

PART I

PRELIMINARY

[Ch5902s1]1. Short title

This Act may be cited as the Local Land Boards Act.

[Ch5902s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Board” means a Local Land Board appointed by the Minister under section 4;

“Division” means a Land Control Division declared by the Minister in accordance with section 3;

“family land” means land of which the proprietor is registered as family representative under the Registered Land Act; Cap. 58:01

“interest in land” means any right or interest in or over land which is capable of being registered under the Registered Land Act;

“land” includes land covered with water, all things growing on land, and buildings and other things permanently fixed to land;

“Registrar” means the Land Registrar or Assistant Registrar in charge of the Registry established under the Registered Land Act for the registration district in which the Land Control Division is situated.

[Ch5902s3]3. Application

The Minister may, by order, declare that a land registration district constituted, under the Registered Land Act shall be a Land Control Division for the purposes of this Act. Cap. 58:01

[Ch5902s4]4. Local Land Boards

6 of 1987(1) There shall be established for each Division a Local Land Board which shall consist of—

- (a) the District Commissioner in whose District the Division is situated, who shall be Chairman;
- (b) not more than two public officers appointed by name or by office by the Minister;
- (c) two persons appointed by the Chiefs of the Division; and
- (d) such number of persons, being not less than five nor more than nine, as the Minister shall appoint, from residents within the Division.

(2) The Registrar shall be the executive officer of the Board, who shall attend and may speak at any meeting of the Committee, but shall not vote.

(3) A member of the Board who fails to attend three consecutive meetings of the Board without proper cause shall, if the Board so recommends to the Minister and the Minister so approves, cease to be a member of the Board.

(4) A member of the Board appointed pursuant to paragraphs (b), (c) or (d) of subsection (1) may at any time resign his membership by giving notice in writing to the Minister, and from the date specified in the notice he shall cease to be a member of the Board.

[Ch5902s5]5. Board procedure

(1) The Chairman shall preside at all meetings of a Board at which he is present and, if he is absent, the members of the Board present at a meeting shall elect one of themselves to preside at that meeting.

(2)(a) The quorum of a Board, where the total number of members of the Board is an even number, shall be one-half of that number and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

(b) In the event of an equality of votes the Chairman or other member presiding shall have a casting as well as an original vote.

(3) If a member of the Board has an interest, direct or indirect, in any matter before the Board, and is present at a meeting of the Board at which the matter is under consideration, he shall, at the meeting, as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that matter.

(4) The Board may require the attendance of any party to, or any person interested in or affected by, any matter before the Board and may demand the production of any document or other evidence relating to the matter.

(5) Where any person whose presence is required is not present, or any document, the production of which has been demanded, is not produced, the Board may postpone hearing the matter to give a reasonable opportunity for the appearance of such person or the production of such document.

PART II

## CONSENT TO TRANSACTIONS

### [Ch5902s6]6. Restriction on land transactions

(1) No person shall, in respect of land situate in a Division, except with the consent of the Board, or by virtue of a general consent given by the Minister in accordance with section 7—

(a) sell, lease, charge, exchange, partition, subdivide or in any way dispose of or deal with any such land or any interest in such land; or

(b) acquire any such land or any interest in such land (otherwise than by prescription) on behalf of himself or on behalf of any other person:

Provided that nothing in this subsection shall apply to—

(i) a transmission (within the meaning of the Registered Land Act) any such land or of an interest in any such land on the death of the owner, unless such transmission involves a subdivision of the land; Cap. 58:01

(ii) any transaction made by or in favour of the Government.

(2) Any agreement for sale, leave, charge, exchange, partition or subdivision or for any other transaction to which subsection (1) applies, shall be unenforceable—

(a) subject to subsection (3), if the Board has refused its consent thereto, as from the date of such refusal; or

(b) if the application to the Board for its consent thereto has not been made within a period of thirty days from the date of the making of such agreement, as from the expiry of such period,

and if any money or other valuable consideration has been paid under any agreement which becomes unenforceable as aforesaid, such money or consideration shall be a civil debt recoverable from the person to whom it has been paid by the person who paid the same.

(3) Notwithstanding subsection (2), when the consent of a Board to any dealing has been refused and such refusal is reversed by Order of the Minister upon review under section 13, then any agreement which has become unenforceable by reason of subsection (2), shall, subject to any conditions in the Order, be enforceable.

### [Ch5902s7]7. General consent and no consent

(1) The Minister may, by order—

(a) give general consent in respect of all transactions or of any specified class of transaction in a Division or part of a Division;

(b) direct the Board that consent shall not be given to any transactions in a part of a Division or to any class of transaction in the Division or part of a Division.

(2) A copy of every order under subsection (1) shall be sent to the Registrar and to the District Commissioner of the District in which the land to which it relates is situated.

(3) An order under this section need not be published in the Gazette but shall be published in the Division or part of the Division to which it relates in such manner as the District Commissioner considers will bring it to the knowledge of the persons likely to be affected by the order.

[Ch5902s8]8. Submission and disposal of applications

(1) Every application for consent under this Act shall be made in duplicate in the prescribed form, shall be signed by the applicant or by a person lawfully authorized to act on his behalf and shall be submitted to the appropriate board through the Registrar.

(2) Every decision of a Board shall be noted on the application to which it relates together with—

- (a) the reasons for refusal where consent has been refused; or
- (b) any conditions which may have been imposed where consent has been granted.

(3) One copy shall be returned to the applicant and the other shall be sent to the Registrar.

[Ch5902s9]9. Consent upon condition

A Board may, in granting consent, impose such conditions not inconsistent with the Registered Land Act as the Board thinks fit. Cap. 58:01

### PART III

#### FAMILY LAND MATTERS

[Ch5902s10]10. Partition of family land

(1) When an application made under section 101 of the Registered Land Act for the partition of family land has been referred to the Board by the Registrar, the Board shall first ascertain the names of the members of the family entitled to a share of the land and the size of each such share, and then shall effect the partition of the land with the agreement of the members or in the absence of agreement in such manner as the Board may order having due regard to the rules of customary law affecting the land. Cap. 58:01

(2) Sections 98, 99 and 100 of the Registered Land Act (which relate to the partition of land owned in common, when the Registrar may order sale and the procedure where a share is small) shall apply with necessary modifications and the Board shall perform the duties and exercise the powers of the Registrar provided for in those sections as if the members of the family entitled to a share of the land were proprietors in common.

(3) The partition agreement or order when completed shall be forwarded to the Registrar.

[Ch5902s11]11. Replacement of family representative

(1) Where the Registrar has made reference to a Board under section 122 of the Registered Land Act for the replacement of a family representative, then, on proof to the satisfaction of the Board— Cap. 58:01

(a) of the death of the family representative;

(b) that the family representative is unable to act by reason of mental or physical incapacity, absence from Malawi, imprisonment or detention; or

(c) that the family representative is no longer acceptable to the majority of the members of the family,

the Board shall nominate a new family representative.

(2) In nominating a new family representative the Board shall have due regard to the wishes of the members of the family and any custom affecting the land.

(3) The nomination of a new family representative shall be reported by the Board to the Registrar in writing.

#### PART IV

##### OTHER POWERS OF THE BOARD

###### [Ch5902s12]12. Land use

The Board shall perform such functions in relation to the powers of control of user of land vested in the Minister by Part VI of the Land Act as may be conferred upon the Board by regulations, directions or instructions issued by the Minister under such Part. Cap. 57:01

#### PART V

##### MISCELLANEOUS

###### [Ch5902s13]13. Review

(1) Any person whose application for consent to any transaction has been refused by the Board, or who considers himself adversely affected by a condition imposed by the Board in granting consent or by a decision of the Board given under section 10 or section 11 may, within fifteen days of such refusal, by notice in writing, require the Board to refer the matter for review by the Minister.

(2) Upon receipt of such notice, or of a notice by the Minister that the Minister intends to review a decision of the Board, the Board shall forthwith refer the matter for review by the Minister, who shall review the matter and make such order therein as he thinks fit.

(3) Section 5 (4) and (5) shall, with any necessary modifications, apply to a review under this section as they apply to the hearing of an application or other proceeding before the Board.

###### [Ch5902s14]14. Offences

(1) Any person who takes part or attempts to take part in a transaction which is unenforceable under section 6 or aids or abets such transaction or who contravenes a condition imposed by the Board or the Minister shall be liable to a fine of K200 and to imprisonment for one year.

(2) A court which convicts a person under subsection (1), shall have the power to order the eviction of such person from any land occupied by him in pursuance of an unenforceable transaction or as a result of a contravention of a condition imposed by a Board or the Minister.

(3) Any person who is required to attend before the Board or the Minister or produce any document or other evidence, and who fails to attend or produce such document or other evidence, shall be liable to a fine of K40 and to imprisonment for three months.

[Ch5902s15]15. Regulations

The Minister may make regulations for the better carrying out of this Act.

SUBSIDIARY LEGISLATION G.N. 129/1970

LOCAL LAND BOARDS (LILONGWE LAND CONTROL DIVISION) ORDER

under s. 3

G.N. 133/1970

1. Citation

This Order may be cited as the Local Land Boards (Lilongwe Land Control Division) Order.

2. Constitution of the Lilongwe Land Control Division

The area constituted as the Lilongwe Land Registration District under the Registered Land (Lilongwe Land Registration District) Order, shall be the Lilongwe Land Control Division for the purposes of the Local Land Boards Act.

LOCAL LAND BOARDS REGULATIONS

under s. 15

G.N. 180/1970

163/1983

1. Citation

These Regulations may be cited as the Local Land Boards Regulations.

2. Form of application for consent

Every application for consent under the Act shall be made in duplicate in Form I set out in the Schedule to these Regulations.

3. Fee

There shall be payable on every application for consent referred to in regulation 2 a fee of K3. G.N. 163/1983

4. Form of application for replacement of family representative

Every application for replacement of family representative under this Act shall be in duplicate in Form I set out in the Schedule to these Regulations. G.N. 87/1987

5. Fee for an application under reg. 4

There shall be payable on every application for replacement of a family representative referred to in regulation 4 a fee of K3. G.N. 87/1987

SCHEDULE regs. 2 and 4)

LOCAL LAND BOARDS ACT

APPLICATION FOR CONSENT OF LOCAL LAND BOARD

(To be submitted in duplicate in respect of each transaction and sent to or left at the appropriate District Registry)

To: The Local Land Board.

I Hereby apply to the ..... Local Land Board for its consent to the transaction described below and give the following information—

- 1.— (a) Present registered proprietor of interest (full name in block letters).
- (b) Nationality.
- (c) Address.

- 2.— (a) Proposed purchaser, transferee, chargee, etc. (full name in block letters).
- (b) If a company or other incorporated association, names of directors or principal officials, authorized and issued share capital and principal shareholders or members.
- (c) Nationality.
- (d) Address.

3. Nature of transaction (e.g. sale, gift, lease, charge, etc.).

4. If the land affected is leasehold, or the proposed transaction is a lease, give the date of expiry of the lease.

5. Description of land—

Title Number.

Area.

Locality.

- 6.— (a) Purchase price or annual rent.  
Estimated value of the land (if a gift).  
Amount of loan (if a charge).  
Rate of interest (if a charge).

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the dealing.

(b) Full description and approximate value of improvements on land included in the dealing.

(c) Any other consideration passing between the parties.

7. If a transfer or lease of the land, proposed development programme of purchaser or lessee, including funds available and approximate timetable.

Does the purchaser/lessee intend to reside on the land?

8.— (a) Other agricultural land registered in the name of the proposed purchaser or lessee, or in which he has an interest (indicate whether contiguous to land being purchased or leased).

(b) Particulars of agricultural land held and disposed of by proposed purchaser or lessee in the last three years.

9. Farming experience of proposed purchaser/lessee.

We hereby declare that the above information is true to the best of our knowledge and belief.

.....

Signature of registered proprietor or authorized agent    Signature of intending purchaser, lessee, chargee, etc., or authorized agent

Date .....                      Date .....

DECISION OF LOCAL LAND BOARD

(To be completed and signed by the Chairman of the Board)



(a) Application approved/refused.

(b) If application approved, set out below any conditions to which the approval is subject—

(c) If application refused, set out below or on a separate paper which should be attached to this application the reasons for such refusal.

Date .....

.....

Chairman Local Land Board

LOCAL LAND BOARDS ACT

APPLICATION FOR REPLACEMENT OF FAMILY REPRESENTATIVE

(To be submitted in duplicate)

TITLE NO. ....

I/We .....

.....

of .....

.....

pursuant to section 11 of Local Land Boards Act (Cap. 59:02) HEREBY apply for the replacement of a family representative.

Fee paid .....

G.R. Receipt No.....

Dated this ..... day of .....,19 .....

Signed .....

Applicant(s)

Signed .....

Secretary

DECISION OF LOCAL LAND BOARD

(To be completed and signed by the Chairman of the Board)

(a) Application approved/refused.

(b) If application approved, set out below any conditions to which the approval is subject—

(c) If application refused, set out below or on a separate paper which should be attached to this application the reasons for such refusal.

Date.....

.....

Chairman Local Land Board

[Chap5903]CHAPTER 59:03

LAND SURVEY

ARRANGEMENT OF SECTIONS

SECTION

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PART II

ADMINISTRATION

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An Act to make better provision for Land Surveys and the Licensing and Control of Land Surveyors and for matters incidental thereto and connected therewith

[8TH JULY 1955]

## PART I

## PRELIMINARY

### [Ch5903s1]1. Short title

This Act may be cited as the Land Survey Act.

### [Ch5903s2]2. Interpretation

In this Act, unless the context otherwise requires—

24 of 1986“Board” means the Land Surveyors Registration Board established under section 4A;

“customary land” means customary land vested in the Government, and not the subject of a lease or right of occupancy;

“Commissioner” means the Commissioner of Surveys;

“Government surveyor” means the Commissioner or, as the case may be, any officer of the Survey Department who is authorized in writing by the Commissioner to perform the duties of a surveyor under this Act;

24 of 1986“graduate surveyor” means a Government surveyor or a registered assistant surveyor employed or engaged as an assistant to a Government surveyor or licensed surveyor and who fulfils the requirements of section 5 (1) (b) (i) and (iv) but who is not a licensed surveyor;

“land” includes land covered with water;

“licensed surveyor” means the land surveyor duly licensed as a surveyor under this Act;

“owner” includes—

(a) every lessee, tenant or licensee of land and his successors in title and every occupier of land, whether as supervisor, overseer or manager or otherwise;

(b) any agent who receives rents or profits on behalf of any such person;

“plan” includes any map, chart, diagram or aerial photograph where such aerial photograph is approved by the Commissioner suitable for survey purposes, and any photographic copy of any such plan, map, chart, diagram or aerial photograph;

24 of 1986“register” means the register of licensed surveyors or of graduate surveyors kept and maintained by the Board under section 7;

“survey” means every type of land survey, including cadastral surveys and aerial surveys and “to survey” with its grammatical variations and cognate expressions shall be so construed;

21 of 1996“surveyor” means a Government surveyor or a licensed surveyor where such licensed surveyor is duly registered under this Act.

“survey mark” means any trigonometrical station, signal station, benchmark of whatever type, reference mark, boundary beacon, peg, picket, mark or pole, whether above or below the

surface of the ground, which is fixed, placed or set up by or under the direction of, a surveyor, for the purpose of any survey and includes, when so fixed or placed, a properly cut survey point on any rigid building or structure of permanent material and construction.

## PART II

### ADMINISTRATION

#### [Ch5903s3]3. Appointment of other officers

24 of 1986There shall be a Commissioner of Surveys who shall have charge of the administration of this Act, and there shall be such other officers as the Minister may deem necessary, who may, if so authorized by the Commissioner, either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Commissioner.

#### [Ch5903s4]4. Rules

24 of 1986The Minister may make Rules prescribing anything which by this Act may be or is to be prescribed and generally as to any matter relating to the surveying of land and for the purpose of carrying this Act into effect, and in particular but without prejudice to the generality of this section, may make Rules prescribing the following matters—

(a) the method of executing surveys, the information to be recorded in the plans, survey data and other records of surveys and the manner and form in which such information is to be recorded;

(b) the persons who, and the times at which such persons, may have access to any plans, survey data or other records in the office of the Commissioner and the fees which may be charged in connexion therewith;

(c) the degree of accuracy to be attained and the limit of error to be allowed in the execution of surveys and the preparation of plans, survey data and other records;

(d) the method in which surveys shall be based upon existing secondary and tertiary triangulations;

(e) the method of surveying land in any Municipality; Township or Planning Area or any part thereof;

(f) the plans, survey data and other records which are required to be deposited with the Commissioner;

(g) the plans, survey data and other records which are required to be examined and approved by the Commissioner and the method of such examination and approval;

(h) the method to be employed by the Commissioner to test the accuracy of surveys the results of which are recorded on plans, survey data and records deposited with the Commissioner at the date of the commencement of this Act;

- (i) the method of correcting any inaccuracy or error in any plan, survey data or any record of any survey;
- (j) the form and dimensions of survey marks, the manner of marking survey marks for identification and the manner of their construction, erection, protection, inspection, maintenance and repair;
- (k) the material from which survey marks are to be constructed and the method of fixing, placing and setting up of survey marks;
- (l) the unit of measure to be used on any specified plans;
- (m) the fees, charges or expenses to be paid for any survey or class of survey or for the demarcating and measuring the boundaries of any land, and the person or authority responsible for the payment of, and the method of recovering, such fees, charges or expenses;
- (n) the fees, charges and expenses to be paid for the examination and approval by the Commissioner of plans, survey data and other records required to be examined and approved under this Act and for any other work undertaken by the Commissioner in connexion therewith;
- (o) the fees to be paid in respect of the licensing and registration of licensed surveyors and the annual fee to be paid for the renewal of any such licence;
- (p) the fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under the authority of this Act or in respect of any act done under such authority;
- (q) the fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer of the Survey Department;
- (r) the control and conduct of trigonometrical, topographical and level surveys and such geodetic geophysical operations as are required in Malawi;
- (s) recording and preserving all information relating to surveys and operations executed under paragraph (r);
- (t) the preparation of maps from the data derived from any surveys, and the compilation and revision of such maps from time to time as may be required;
- (u) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys.

24 of 1986PART IIA

LAND SURVEYORS REGISTRATION BOARD

[Ch5903s4A]4A. Establishment of the Board

There shall be a board to be known as the Land Surveyors Registration Board.

[Ch5903s4B]4B. Composition of the Board

The Board shall consist of the following members—

- (a) the Commissioner, who shall—
  - (i) be the Chairman of the Board;
  - (ii) be a member ex officio;
- (b) two licensed surveyors, appointed by the Minister;
- (c) one licensed surveyor in private practice nominated by the Surveyors Institute of Malawi and appointed by the Minister;
- (d) one member, being a person who is a full member of the Surveyors Institute of Malawi in good standing, nominated by that Institute from amongst land surveyors and appointed by the Minister.

[Ch5903s4C]4C. Disqualification

Any person who—

- (a) is an undischarged bankrupt;
- (b) has been convicted, at any time, of an offence under this Act;
- (c) has, within the preceding three years, been convicted of an offence under any written law and sentenced to imprisonment for not less than six months; or
- (d) has been convicted, within the preceding six years, of an offence involving fraud or dishonesty,

shall be disqualified from appointment to, or continuing to hold office as a member of, the Board.

[Ch5903s4D]4D. Tenure of office and vacancies

(1) A member of the Board, not being a member ex officio, shall hold office for two years and shall be eligible for reappointment.

(2) The office of a member of the Board, not being a member ex officio, shall become vacant—

- (a) if the member dies;
- (b) if the member resigns by notice in writing to the Minister;
- (c) if the Minister so directs;
- (d) if, in accordance with section 4C, he becomes disqualified from continuing to hold office.

(3) A vacancy on the Board shall be filled by a person appointed in accordance with the provisions of section 4B under which the former member was appointed.



(4) The Minister shall cause a notice of every appointment to the Board to be published in the Gazette and shall, in such notice, publish resultant membership of the Board.

[Ch5903s4E]4E. Secretary

(1) The Minister shall designate as Secretary to the Board a public officer serving with the Department of Surveys.

(2) The Secretary shall keep records of all the proceedings of the Board and shall perform such other duties as the Board or the Chairman may assign to him.

[Ch5903s4F]4F. Meetings and quorum

(1) The Board shall meet at least once every year and all meetings of the Board shall be convened by the Chairman either on his own initiative or at the request of any two other members. If convened upon request by two members, the meeting shall be held within thirty days of the request.

(2) At any meeting of the Board, any three members thereof shall constitute a quorum and in the absence of the Chairman the members present shall elect one of their number to preside.

(3) The Board shall have power to regulate its own procedures.

[Ch5903s4G]4G. Committees

(1) The Board may establish committees and may assign to such committees such of its functions and powers as it may consider appropriate.

(2) The Board may request any surveyor or other person to attend any meeting of the Board, but such person shall not be entitled to vote.

[Ch5903s4H]4H. Powers and duties of the Board

(1) The Board shall be the sole authority for licensing and registering surveyors in Malawi and shall have the following powers and duties—

- (a) to approve minimum qualifications acceptable for registration as a surveyor;
- (b) to set up and conduct such tests as may be required for the the purpose of section 5 (2);
- (c) to grant licences;
- (d) to keep and maintain a register of licensed surveyors and graduate surveyors;
- (e) to advise the Minister on policies relating to technical and professional matters within the scope of this Act;
- (f) to advise the Minister as to the professional fees and other charges to be prescribed under section 4 (m);

(g) from time to time, to prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;

(h) to exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors.

(2) The Board shall publish in the Gazette, once in every year, lists of surveyors registered under this Act.

### PART III

#### LICENSING, REGISTRATION AND DUTIES OF SURVEYORS

##### [Ch5903s5]5. Qualifications of licensed surveyor

(1) No person shall be licensed as a surveyor unless—

22 of 1974, 24 of 1986(a) he is immediately prior to the 1st day of January, 1975, a licensed surveyor duly licensed under section 6 of this Act; or

(b) (i) he has attained the age of twenty-one years;

(ii) he furnishes testimonials or other evidence of good character to the satisfaction of the Board;

24 of 1986(iii) he produces evidence that he has served at least two years as an assistant in practical field surveys to a Government surveyor or licensed surveyor in, Malawi or in any other country approved for the purposes of this paragraph;

(iv) he either—

(aa) holds a degree in land surveying from a university approved for the purposes of this subparagraph;

(bb) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country approved for the purposes of this subparagraph;

(cc) is the holder of the qualification of fellow or professional associate of the Royal Institute of Chartered Surveyors of the United Kingdom in land surveying; or

(dd) has successfully passed any examination which the Board has declared to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (aa), (bb) and (cc) of this paragraph.

24 of 1986(c) he satisfies the Board by examination, or by other method prescribed by the Board that he is familiar with the provisions of this Act and of all other written laws of Malawi relating to land survey.

In this subsection, the expression “approved” means approved by the Board by notice published in the Gazette.

24 of 1986(2) Notwithstanding subsection (1) the Board may, in its discretion, require any person who applies to be licensed as a surveyor to satisfy the Board, either by carrying out to the satisfaction of the Board a trial survey, or by such other evidence as the Board may think fit, that he is capable of conducting surveys in accordance with this Act.

[Ch5903s6]6. Licensing of surveyors

(1) Any person—

24 of 1986(a) who is qualified to be licensed as a surveyor under section 5 (1), and

(b) who, if required by the Board so to do under section 5 (2), has satisfied the Board that he is capable of conducting surveys under this Act,

shall be entitled, upon application to the Board, accompanied by the prescribed declaration and upon payment of the prescribed fee, to receive a licence as a surveyor in such form as may be prescribed.

(2) Every licence issued under subsection (1) shall, unless suspended or cancelled under this Act, remain valid until the 31st December next following the date of such issue and thereafter shall, subject to any suspension or cancellation as aforesaid, be renewable each year upon payment of the prescribed annual fee. Notification of every licence issued shall be published in the Gazette.

24 of 1986(3) The Board may require a licensed surveyor who wishes to practise but who, for a period of five years or more, has not submitted a survey to the Commissioner to satisfy the Board as to his ability to practise under this Act before his licence is renewed.

[Ch5903s7]7. Registers

24 of 1986The Board shall keep and maintain—

(a) a register of all licensed surveyors;

(b) a register of all graduate surveyors,

which shall contain their names, addresses and qualifications and the respective dates of their registration and any other particulars which may be prescribed.

[Ch5903s8]8. Surveying instruments and measuring tapes to be accurate

24 of 1986(1) It shall be the duty of every surveyor to assure himself that all surveying instruments used by him for the purpose of carrying out surveys are in a proper state of adjustment and that all measuring tapes so used have been properly standardized.

(2) It shall be the duty of every surveyor, when called upon so to do by the Commissioner, to produce to the Commissioner any such surveying instrument or measuring tape and the Commissioner may apply such test to such surveying instrument or measuring tape as he may think fit.

(3) If the Commissioner finds that any such surveying instrument or measuring tape is defective or inaccurate, the Commissioner may order such surveyor to remedy such defect or to rectify such inaccuracy and such surveyor shall not use such surveying instrument or measuring tape until such defect is remedied or inaccuracy rectified.

(4) If the Commissioner is of the opinion that any such surveying instrument or measuring tape is in such a condition as to render it impossible to remedy such defect or to rectify such inaccuracy the Commissioner may condemn such surveying instrument or measuring tape and thereafter such surveyor shall no longer use such surveying instrument or measuring tape for the carrying out of any survey, or the Commissioner may by order in writing specify the class of work upon which such surveying instrument or measuring tape may be used.

[Ch5903s9]9. Duties of surveyor

Every surveyor shall—

24 of 1986(a) carry out every survey undertaken by him in accordance with this Act and in such a manner as will ensure the accuracy of such survey and of any plan, survey data, or other record of such survey;

(b) deposit with the Commissioner for filing in the Commissioner's office such plans, survey data and records of survey as he may be required to do under this Act;

(c) when required by the Commissioner, without delay—

(i) correct, in conformity with this Act, any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error prescribed under this Act to be allowed in the execution of surveys and the preparation of plans, survey data and other records;

(ii) adjust the position of any survey mark which has been fixed, placed or set up in accordance with any incorrect survey.

[Ch5903s10]10. Complaint against surveyor

24 of 1986(1) Every complaint against a surveyor shall be submitted in writing to the Board and shall be signed by the person making the complaint and, if it appears to the Board that such complaint makes it desirable for it to inquire into the matter regarding which the complaint has been made, it shall, in the case of a complaint against a surveyor, fix a time and place for the purpose of holding an inquiry.

(2) At least thirty days prior to the date fixed for such inquiry, notice in writing shall be sent by the Board by registered post to the last known address of the surveyor against whom the complaint is made, informing him of the time and place fixed for the inquiry and supplying him with a copy of the complaint.

(3) At such inquiry the surveyor against whom the complaint is made shall be entitled to be heard in his defence, either personally or by a legal practitioner.

(4) The findings and decision of the Board on such inquiry shall be made in writing.

(5) Within thirty days of the date of the findings and decision of the Board on any such inquiry the surveyor with regard to whom such findings and decision were made may appeal to the Minister whose decision upon such appeal shall be final and conclusive.

[Ch5903s11]11. Power of Board to deal with offences by surveyor

24 of 1986(1) Upon a complaint duly made and after inquiry under section 10, if it is shown beyond reasonable doubt to the satisfaction of the Board that any surveyor—

(a) has signed any plan, survey data or other record of any survey relating to any land in respect of which he has not carried out or personally supervised the whole of such survey and examined and satisfied himself of the correctness of the entries in any field book, and the calculations, working plans and other records in connexion therewith which may have been made by any other person:

Provided that in the case of an aerial survey a surveyor shall not be required to carry out or personally to supervise the taking or processing of any aerial photograph;

(b) has signed a plan which he knows or ought, by the exercise of reasonable care, to have known, is incorrect;

(c) has performed through negligence or incompetence an incorrect survey;

(d) has made any entry in a field book or other document which purports to have been made as a result of actual observation or measurement in the field when it was not so made;

(e) has supplied erroneous information to the Board in connexion with any survey mark or boundary which he knows, or ought, by the exercise of reasonable care, to have known was erroneous;

(f) has demanded or received a sum for fees, charges or expenses either less or more than the amount prescribed under this Act;

(g) has been guilty of any felony or misdemeanour involving moral turpitude, or of such improper conduct as, in the opinion of the Board, renders him unfit to practise as a surveyor;

(h) has obtained his licence by misrepresentation, or has had his licence or commission in any country mentioned in section 5 (1) (b) (iv), or his qualification of fellow or professional associate mentioned in such subparagraph, suspended or cancelled;

(i) has failed to obey any order or instruction given to him by the Board under the provisions of this Act or to carry out any duty imposed upon him under the provisions of this Act or to comply with any of such provisions,

the Board may—

(i) caution such surveyor in writing; or

(ii) suspend such surveyor from practice as a surveyor for any period not exceeding three years, and enter the reasons for such suspension in the register; or

(iii) remove the name of such surveyor from the register.

(2) The Board may, in its absolute discretion—

(a) reinstate any surveyor whose name has been removed from the register;

(b) terminate or reduce the period of suspension of a surveyor who has been suspended from practice.

(3) Where the Board has suspended a surveyor from practice or has removed the name of a surveyor from the register, such surveyor shall deliver to the Board his licence and the Board may retain such licence either until such licence has expired or until the name of the surveyor has been reinstated on the register or until the period of his suspension is terminated, as the case may be.

(4) There shall be published in the Gazette a notification of—

(a) the removal of the name of a surveyor from the register;

(b) the suspension from practice of a surveyor;

(c) the reinstatement in the register of the name of a surveyor or the termination or reduction of the period of suspension of a surveyor.

(5) The Board may order any surveyor found guilty by it of culpable negligence to pay the cost of any correction which his negligence may have necessitated.

[Ch5903s12]12. Persons other than surveyors forbidden to survey

(1) After the commencement of this Act no person other than a surveyor shall—

22 of 1974, 24 of 1986, 21 of 1996(a) carry out any survey for the purpose of preparing any plan, survey data or other record required under the provisions of this Act to be deposited with, examined and approved by, the Commissioner, or to be referred to in any manner whatsoever in any other document to be so deposited or examined and approved;

(b) carry out any survey affecting the delimitation of the boundaries or the location of the beacons or other boundary marks of any land;

(c) hold himself out or act in any manner whatever as a surveyor or perform any of the functions of a surveyor: Provided that nothing in this Act contained shall preclude—

(i) any person from demarcating and measuring the boundaries of any land and from preparing a sketch plan in connexion with—

(a) any lease to be granted by the Minister responsible for Land, where such lease makes specific provision for a subsequent survey by a surveyor of the land demised by such lease;

- (b) any acquisition or occupation of customary land for public purposes;
  - (c) any exclusive prospecting licence, claim or water right to be granted under the Mining Act or any application for a mining lease to be granted under such Act; Cap. 61:01
  - (d) any order to be made under the provisions of sections 3 (2) and 10 (1) of the Public Roads Act; Cap. 69:02
- (ii) any person from preparing a sketch plan of any land for inclusion in an agreement for sale or an agreement for lease or in an option to purchase or lease or in any other preliminary agreement affecting land or any interest in land or in a grant of an easement, way-leave or licence affecting land or any interest in land;

26 of 1996(2) Any person who contravenes any of the provisions of subsection (1) shall be liable to a fine of K2,000 or, in default of payment, to imprisonment for six months.

[Ch5903s13]13. Survey plans to be deposited with the Commissioner and to become the property of the Government

22 of 1974, 24 of 1986, 21 of 1996(1) All plans, survey data and records of surveys deposited with the Commissioner in pursuance of any requirements imposed by this Act or any Rules made thereunder shall become the property of the Government.

(2) No plan, survey data or other record deposited in the office of the Commissioner by virtue of this Act shall be altered or amended in any way without the permission in writing of the Commissioner.

(3) Any person who alters or amends in any way any plan, survey data or other record deposited in accordance with this Act without the permission in writing of the Commissioner shall be guilty of an offence and shall be liable to a fine of K2,000 and to imprisonment for six months.

[Ch5903s14]14. Aerial surveys

22 of 1974, 24 of 1986, 21 of 1996(1) Before any aerial survey of any land in Malawi is made, the person responsible for the making of such survey shall, at least one month before any aerial photography in connexion with such survey is carried out, notify the Commissioner in writing of his intention to cause such survey to be made.

(2) At the conclusion of such aerial survey such person shall, as soon as may be, supply the Commissioner with one contact print of every photograph taken for the purpose of such aerial survey together with one copy of any plan made as the result of such aerial survey.

(3) Any person who fails to comply with subsection (1) or subsection (2) shall be liable to a fine of K1,000 or, in default of payment, to imprisonment for three months.

[Ch5903s15]15. Commissioner may cancel approval of plan

24 of 1986(1) Where any plan is approved by the Commissioner under this Act and such plan is found to be incorrect by reason of any error or omission in the survey the Commissioner may

cancel his approval of such plan and in every such case shall cause to be made and to be deposited a corrected plan.

(2) The Commissioner shall forthwith upon the cancellation of any plan as aforesaid notify in writing—

(a) the owner of the land to which such plan relates or, in the case of customary land or public land, the Minister;

(b) the appropriate registrar, if any.

#### PART IV

#### SURVEY MARKS AND BOUNDARIES

##### [Ch5903s16]16. Survey marks and boundaries lawfully established

24 of 1986(1) Notwithstanding anything contained in any law, the position of any survey mark fixed, placed or set up for the purpose of denoting the boundaries of any land and which is deemed under this section to have been lawfully established, shall not be brought into question in any court of law or by any person in any circumstances.

(2) A survey mark fixed, placed or set up for the purpose of denoting a boundary of any land shall be deemed to have been lawfully established—

(a) when its position is in agreement with its position established in any other survey and when a plan based on such survey has been approved for the purpose of establishing such survey mark by the Commissioner;

(b) when its position is in agreement with an order of the High Court.

##### [Ch5903s17]17. Sites of trigonometrical stations and fundamental benchmarks reserved to Government

22 of 1974, 24 of 1986Every trigonometrical station or fundamental benchmark shall be deemed to comprise the land within five metres of the centre-mark of such station or within five metres of the centre of the pillar of such fundamental benchmark as the case may be, together with a right-of-way to and from the same and shall, notwithstanding any alienation thereof, be reserved to the use of the Government and be deemed to have been and to be excepted out of such alienation.

##### [Ch5903s18]18. Blasting of rock within area reserved for fundamental benchmark prohibited

24 of 1986, 21 of 1996(1) No person shall carry out rock blasting operations within a radius of one hundred metres from any trigonometrical station or fundamental benchmark without the authority in writing of the Commissioner first had and obtained.

(2) Any person who contravenes this section shall be liable to a fine of K4,000 and to imprisonment for twelve months.



[Ch5903s19]19. No posts or fences to be placed near survey mark

22 of 1974, 24 of 1986 Except with the permission in writing of the Commissioner in that behalf it shall not be lawful for any person to place any fence, post or fence anchor or any other erection or to make any excavation, within one metre of any survey mark:

Provided that this section shall not apply to—

- (a) any land in a Municipality or Township;
- (b) any land not exceeding four hectares.

[Ch5903s20]20. Preservation and maintenance of survey marks

22 of 1974, 24 of 1986, 21 of 1996(1) Every owner of land shall preserve and maintain in proper order and repair, in such manner as may be prescribed, every survey mark fixed, placed or set up on such land for the purpose of denoting the boundary of such land, and every survey mark defining a corner point of such land, whether such survey mark was erected for the purpose of or in connexion with a survey of such land under this Act or of any other law, or for the purpose of, or in connexion with, a survey of any land contiguous to the land upon which such survey mark is situate, and shall forthwith report to the Commissioner if any such survey mark cannot be found or is obliterated, removed or injured or requires repair.

(2) Any person who fails to comply with any of the provisions of subsection (1) shall be liable to a fine of K1,000 or in default of payment to imprisonment for three months.

[Ch5903s21]21. Commissioner may call upon owner to restore survey mark

24 of 1986(1) If any survey mark has not been maintained in proper order or repair, or has been removed or obliterated, the Commissioner may serve upon the owner of the land upon which such survey mark is, or has been situated, either by delivering the same to such owner or by transmitting it in a registered letter through the post, a notice in writing calling upon such owner to restore such survey mark to the condition prescribed for such a survey mark or to cause it to be replaced in the prescribed manner, as the case may be.

(2) Where any survey mark is restored or re-erected such restoration or re-erection shall be carried out by a surveyor.

(3) If any survey mark is not restored or re-erected within six weeks of the date upon which any such notice was delivered or posted, the Commissioner may cause such survey mark to be restored or re-erected and in such case the owner of the land, and the owners of all land jointly affected by this section, shall be liable in equal shares for the cost of such restoration or re-erection and the Commissioner may recover from every such owner his share of all costs incurred by the Commissioner under this subsection:

Provided that—

(a) if any such owner or the servant or agent of such owner has damaged, removed or obliterated any such survey mark, the entire cost of the repair, restoration or re-erection of such survey mark shall be borne by such owner;

(b) where a survey mark which requires restoration or re-erection or any part of such survey mark is on customary land or public land or on land contiguous to customary land or public land, the Commissioner may, in his discretion, exercise his powers under this subsection without waiting for the expiration of such period of six weeks.

(4) In the case of a Municipality the Municipal Council and in the case of a Township the Town Council shall be responsible for the maintenance of all survey marks erected in accordance with this Act on all roads, lands and premises in respect of which the Council is responsible for the upkeep and maintenance, and any destruction or damage to any such survey mark may be made good by the Commissioner at the expense of such Council.

#### [Ch5903s22]22. Offences and compensation

24 of 1986(1) Any person who, without lawful excuse (the burden of proof whereof shall be upon him)—

(a) alters, moves, disturbs or wilfully damages or destroys any survey mark, whether permanent or temporary and erected for the purpose of or in connexion with any survey operations, whether such survey mark is upon his own land or not and whether above or below the surface of the land; or

(b) fixes, places or sets up any such survey mark except under the supervision of a surveyor or anyone authorized by the Commissioner in that behalf, whether or not his intention is to alter the boundary line of any piece of land or to deceive any person as to the position of a boundary line,

shall be liable to imprisonment for twelve months.

(2) The removal or disturbance of any survey mark for the purpose of erecting another survey mark in its place shall not constitute a lawful excuse under this section unless a surveyor or a person authorized in writing by the Commissioner in that behalf personally superintends such removal or disturbance and the erection of such other survey mark.

(3) Nothing in this section contained shall be construed as exempting any person from being charged and punished under the Penal Code or any other written law in respect of any such act or omission as is described in this section. Cap. 7:01

(4) For the purpose of awarding compensation under the law relating to criminal procedure in respect of any damage caused by the commission of an offence against subsection (1), any survey mark in connexion with which such offence was committed shall be deemed to be the property of any person upon whose land or upon a boundary of whose land such survey mark was situate; and any fundamental benchmark, reference mark or trigonometrical station, in connexion with which any such offence was committed, shall be deemed to be the property of the Commissioner.

#### [Ch5903s23]23. Authority to remove survey marks

24 of 1986 Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to remove or disturb any survey mark, may apply to the Commissioner for authority to effect such removal or disturbance, and the Commissioner may thereupon authorize in writing such removal or disturbance and, in his discretion, may, at the expense of such applicant, employ any surveyor or any authorized officer personally to effect or supervise the removal or disturbance and subsequent replacement of such survey mark or the erection or placing of any other survey mark to indicate the position of such removed or disturbed survey mark, in such manner as the Commissioner may direct.

## PART V

### MISCELLANEOUS

#### [Ch5903s24]24. Government not liable for incorrect survey

24 of 1986 Neither the Government nor any officer thereof shall be liable for any incorrect survey or work appertaining thereto performed by a surveyor, notwithstanding that such survey or work or any plans, survey data or other record appertaining thereto has been approved by the Commissioner.

#### [Ch5903s25]25. Plans and records, etc., prima facie evidence

24 of 1986 A survey plan, survey data or other record relating to the survey of any land purporting to be signed by a surveyor and approved by the Commissioner shall be admitted as prima facie evidence of the contents thereof in all courts and proceedings.

#### [Ch5903s26]26. Power to enter upon land and to use material thereon

24 of 1986, 21 of 1996(1) The Commissioner and any person generally or specially authorized by the Commissioner in writing and any surveyor may, for the purpose of performing any duties imposed by or in pursuance of this Act or any other law—

(a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of such duties;

(b) fix, place or set up any survey mark, whether permanent or temporary, upon such land;

(c) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature upon which no work has been expended by the owner of such land without tender or payment by way of compensation to any person, and, except within a Municipality or Township, of any water, whether conserved or not, found upon or in such land;

(d) cut and remove or destroy all such trees, branches, underwood, growth or vegetation of any kind whatsoever in the vicinity of any survey mark as may interfere or be likely to interfere with the functions of such survey mark; and

(e) enter at all reasonable hours any building or enclosed place:

Provided that—

(i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of such land or in the case of customary land to the appropriate Chief;

(ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, and such owner or occupier shall be entitled to compensation for any avoidable damage caused to or in any building or caused to any other property belonging to such owner or occupier.

21 of 1996(2) Any person who in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1) or who moves, obscures, damages or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on any land in connexion with any surveying operations before the completion of such operations, shall be liable to a fine of K500, or, in default of payment, to imprisonment for one month or to both such fine and imprisonment.

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### LAND SURVEY RULES

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LAND SURVEY RULES

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PART I

APPLICATION AND INTERPRETATION

1. Citation and application

(1) These Rules may be cited as the Land Survey Rules.

(2) These Rules shall not apply to any survey the field work of which was commenced before the coming into force of these Rules or to any plan framed in accordance with rules in force at the date of such survey.

2. Interpretation

In these Rules, unless the context otherwise requires—

“angle” when used in relation to a figure on a plan, means the internal angle at the intersection of two adjacent sides; or the angle made by the intersection of an indicatory line and an adjacent side, or by two indicatory lines.

“arc” means the mean of a round of observations taken in clockwise order and a round of observations taken in anti-clockwise order with the telescope reversed.

“Commissioner” means the Commissioner of Surveys;

“figure of regular shape” means a rectangular figure, a parallelogram, a right angled triangle, a right angled trapesium or any one of these figures of which one or more of its corners has been cut off by an isosceles triangle;

“fixed boundary” means a boundary of a piece of land accurately determined by survey in accordance with these Rules.

“left bank of river” means that bank of the river which is on his left when the observer is looking downstream;

“original plan” means the registered plan of the property being surveyed, re-surveyed or subdivided;

“right bank of a river” means that bank of the river which is on his right side when the observer is looking downstream;

“round of observations” means a single series of observations to surrounding stations;

“side” when used in relation to a figure on a plan, means the length of a straight boundary line represented thereon, or the length of an imaginary line joining any two beacons between which the boundary is curvilinear;

“subdivision” means a piece of a property a title to which is registered in the Deeds Registry or Lands Registry;

“subdivisional plan” means the plan of a subdivision;

“trigonometrical station” means a station of the primary, secondary or tertiary triangulation.

## PART II

### CHECKING OF SURVEY WORK

#### 3. Commissioner may check field work

(1) The Commissioner may at any time depute an officer in the public service, being a surveyor, to check in the field any survey made by a surveyor under the Act or any information recorded in connexion with such survey or to test any surveying instruments or measuring bands used by such surveyor.

(2) The Commissioner may likewise depute any officer in the public service, being a surveyor, to inspect and report upon the erection and maintenance of beacons in accordance with the Act and these Rules.

#### 4. How the Commissioner may test surveys of doubtful accuracy

(1)(a) Should the Commissioner have any reason to doubt the accuracy, within the limits prescribed in rule 13, of any survey made under the Act, he may call on the surveyor responsible, in writing, to admit or deny the inaccuracy within a period of 30 days.

(b) If the surveyor admits the inaccuracy, he shall, without delay, take action as provided in section 9 (c) (i) and (ii) of the Act to rectify his error.

(c) If the surveyor denies the inaccuracy, he and the Commissioner may agree upon a surveyor (who may be an officer in the public service) to be appointed to test the accuracy of the survey in question.

(d) The surveyor, should he so desire, may be present at his own expense during the testing of the survey.

(2) Should the surveyor, when called upon by the Commissioner neglect either to admit or deny, within the said period, the inaccuracy of his work, or should no agreement be come to within a period of 30 days as to the surveyor to be appointed, the Commissioner may, without further reference to the surveyor, appoint a surveyor to make the necessary investigation.

(3)(a) In the event of the work proving inaccurate, the Commissioner may reject the whole survey or any portion of it, and charge the cost of the investigation to the surveyor concerned.

(b) Should the survey prove to be within the prescribed limits of accuracy and to have been carried out in accordance with these Rules, the surveyor concerned shall not be liable for any portion of the costs of the investigation.

### PART III

#### FIELD WORK

##### 5. Information previous to survey

Before carrying out any survey, a surveyor shall provide himself with all available information in respect of any previous survey of the piece of land to be surveyed and of the adjoining pieces of land. The Commissioner shall furnish this information to surveyors free of charge if he is able to do so.

##### 6. Testing of measuring bands and adjustment of instruments

(1) Every surveyor shall assure himself that the measuring bands and other instruments which he uses for the purpose of base or other measurements have been properly tested and their error ascertained and that his theodolite and other survey instruments are in a proper state of adjustment and have been registered at the Commissioner's office.

(2) Unless there is a standard base approved by the Commissioner available for the testing of his measuring bands, every surveyor shall reserve at least one measuring band of a type approved by the Commissioner as a standard to be used solely for the checking of the bands which he has in general use. The standard band shall be submitted to the Commissioner before use in Malawi, and thereafter at least once every 10 years, to be tested or re-tested, which testing or re-testing shall be done free of charge.

(3) When called upon by the Commissioner to do so, a surveyor shall as soon as possible submit his standard or other measuring bands to the Commissioner for testing.

(4) A surveyor may if he so desires, at any time submit one or more of his measuring bands to the Commissioner to be tested free of charge.

(5) The Commissioner may condemn any instrument or measuring band which he considers is not fit for survey work, or he may prescribe on what class of survey work any particular instrument may be used and the number of repeat observations which must be made with any particular instrument.

(6) It shall not be lawful for a surveyor to use, in any survey made under the Act, any instrument or measuring band condemned under subrule (5).

(7) The Commissioner may assign a distinctive number to each of the measuring bands and instruments tested or registered by him, and a surveyor shall quote such number in the field book and calculations relating to each survey he makes.

7. Field book observations, etc.

(1) Observations shall be made with a telescope in both direct and reversed positions, and these observations shall be separately entered in the field book:

Provided that it shall not be necessary to reverse the telescope in making vertical observations over distances of less than one kilometre when the depression or elevation angle is not more than 10 degrees.

(2) Rounds of observations from any point shall be made alternatively in clockwise and in anti-clockwise order.

(3) In the first round of observations, at each observing point the instrument shall be set, when possible, in the direction which is to be used throughout the survey and computations.

(4) Each round of triangulation observations from a station shall be concluded by sighting on the first object observed on the round and the resultant readings shall be entered in the field book.

(5) All angular observations, measurements of length, the slope, and when necessary the temperature and the distance to be corrected for sag shall be separately entered in the field book. Where a measurement of length exceeds the length of the tape used, each tape length shall be recorded in the field book.

(6) The date on which the observations are made at each observing point shall be recorded in the field book above the column of bearings. In addition, any special circumstances which may adversely affect the quality of any observations shall be recorded in an appropriate position on the same page if possible.

(7) A full description of all beacons, whether placed, found or adopted, and other marks used in the course of the survey, shall also be entered in the field book.

It shall be clearly stated whether the beacon was found or placed and in the former case a description of its condition when found shall be given.

(8) All field books, used in surveys of land shall be in the form prescribed in the Second Schedule (save where electronic distance measurement methods are used) and all observations and measurements shall be recorded clearly and legibly in pencil, and in the manner indicated therein.

(9) Any entries in the field book, other than those of actual observations or measurements made in the field, shall be written in ink unless under exceptional circumstances this is impracticable. Entries of data setting out beacons shall be written in ink and be cross-referenced to the pages in the computations from which such data were extracted.

(10) On no account shall erasures be made in the field book. Alterations shall be made by drawing a line through the erroneous entry in such a way that the original entry remains legible. The correct value of the entry shall be written outside the erroneous entry and never across it. Such alterations must be made in the field as the result of actual direct re-observations or re-measurements, and at the time such re-observations or re-measurements were made.

(11) Every surveyor shall enter in his field book the type of instruments and particulars of the measuring bands used in the survey.

(12) The letters or numbers by which the beacons or other marks are recorded in the field book shall be in plain Roman or Italic type. Digits by themselves shall not be used to designate beacons or stations except in the case of International Boundary Beacons.

#### 8. Surveys to be based on trigonometrical surveys

(1) The survey of any piece of land shall be based upon the stations of the national triangulation if surrounded by such stations or situated within 3,000 metres of any such station:

Provided that—

(i) If a traverse be necessary for such basing, the prescribed distance shall be 800 metres;

(ii) if within a Municipality or Township a reference mark survey exists the survey shall be based upon such reference marks in accordance with rule 19;

(iii) it shall not be necessary to base the survey of a piece of land on the national triangulation if such piece of land is represented on an approved plan of any Municipality, Township or agricultural holding which is legally established and for which accepted co-ordinates are available.

(2) The Commissioner may, in exceptional circumstances and subject to such conditions as he may deem necessary, exempt any survey from the operation of this rule.

#### 9. Position of triangulation stations shall be determined

(1) The position of any primary, secondary or tertiary trigonometrical station which falls within the limits of the land under survey shall be determined accurately and indicated on the plan of such land.

(2) The position of any primary, secondary or tertiary trigonometrical station which falls outside the limits of the land under survey but which is within 100 metres of any beacon thereof shall be accurately determined and indicated on the plan of such land.

10. Base line and tape measurements

(1) If in any survey it is necessary to measure a base, the length of such base shall not be less than 10 per cent of the perimeter of the land under survey:

Provided that—

- (i) the length of a base need not exceed 1,000 metres;
- (ii) the Commissioner may, in exceptional circumstances, approve the use of a shorter base.

(2) A base line shall have intervisible terminals and shall be measured—

- (a) once in each direction; or
- (b) once in two sections of more or less equal length, which shall be compared through subsidiary triangles.

(3) The difference between any two measurements of a base or between a measurement and a derived distance shall not exceed 1 in 10,000.

(4) Measured distances shall be corrected for slope and for all factors to enable the correct reduced project distance to be obtained.

11. Determination of true north

When the survey of any piece of land is not based on trigonometrical stations the direction of true north shall be determined as accurately as possible by astronomical observations or by magnetic needle, if not derived from other sources. The manner in which true north has been determined shall be recorded in the field book and stated in the report on survey.

12. Determination of points

(1) The position of a point shall not be determined—

- (a) by triangulation or trilateration when the apex angle of the fixing rays is less than 30 degrees or greater than 150 degrees;
- (b) by resection from less than four points favourably situated
- (c) by intersection from less than three points favourably situated.

(2) The position of a point may be determined—

- (a) by single bearing and measured distance from a survey station if such position is adequately checked in some other manner to the satisfaction of the Commissioner;

(b) by resection from stations of the national triangulation if the observations for such resection have been taken on at least two arcs;

(c) by a single closed triangle if the observations at all three points have been made on at least two different parts of the circle and the angles of the triangle are taken out directly and a comparison given with those obtained from the directions used in the computations.

13. Checking of surveys and limits of allowable error

(1) Every surveyor shall always perform sufficient field work to enable him to apply a thorough check to every part of his survey.

(2)(a) For the purposes of this rule—

“Class A” refers to surveys to determine the position of town control or reference marks.

“Class B” refers to surveys in townships. “Class C” refers to surveys not included in Class A or Class B.

(b) Triangulation.

The difference between the observed and calculated bearing of any ray used in fixing a point by triangulation shall not exceed—

(i) For Class A surveys  $1 + \frac{15,000}{S}$  seconds;

S+300

(ii) For Class B surveys  $1 + \frac{30,000}{S}$  seconds;

S+300

(iii) For Class C surveys  $1 + \frac{60,000}{S}$  seconds;

S+300

where “S” is the length of the ray in metres.

(c) Trilateration and Fixation by Electronic Distance Measurement.

The difference between the measured and calculated length of any ray used in fixing a point using electronic distance measurements shall not exceed—

(i) For Class A surveys  $0.075S$  metres;

S+300

(ii) For Class B surveys 0.15S metres;  
S+300

(iii) For Class C surveys 0.30S metres;  
S+300

where "S" is the length of the ray in metres.

(d) Traverse.

The misclosure in a traverse shall not exceed—

- (i) For Class A, 1:12,000
- (ii) For Class B, 1:8,000
- (iii) For Class C, 1:4,000:

Provided that a reasonable misclosure shall be allowed in the case of short traverses.

(iv) For a traverse made solely to survey a curvilinear boundary or a photo-control point, the misclosure shall be commensurate with the plottable accuracy that can be achieved at the scale of the final plan.

(3) Notwithstanding the provisions of this rule, the Commissioner may stipulate in writing other standards of accuracy in special cases.

#### 14. Beacons on or near boundaries

(1) In the survey of a piece of land any beacon of which is supposed to be on a straight line boundary common to such piece of land and other properties, the surveyor shall investigate the position in regard to such beacon and thereafter proceed as follows—

(a) When the terminals of the common boundary are established beacons, or are well ascertained beacons recognized by all parties, the beacons if not on the straight line joining the terminals shall be replaced on line, unless it is an established beacon, in which case it shall be adopted as a beacon of the land under survey;

(b) when the terminals of the common boundary line are not established beacons and the position of one or both is doubtful, the beacon if not on line may be adopted provided it is a beacon recognized by all parties and in respect of which an agreement substantially in accordance with Form 3 in the Seventh Schedule signed by all parties concerned, as lodged with the Commissioner.

(2) In the survey of a piece of land, when any beacon of an adjoining piece of land which is supposed to be on the common boundary referred to in subrule (1) is found to be not on line, it need not be dealt with:



Provided that—

(a) if it is an established beacon it shall be adopted as a beacon of the land under survey;

(b) if it is a well ascertained beacon recognized by all parties and in respect of which an agreement substantially in accordance with Form 3 in the Seventh Schedule signed by all parties concerned, is lodged with the Commissioner, it may be adopted as a beacon of the property under survey.

(3) In cases not provided for in subrules (1) and (2) the surveyor shall—

(a) investigate the matter thoroughly and collect all available information and evidence to enable him to place the beacons in their most likely positions;

(b) lodge an agreement as mentioned in subrules (1) and (2), if such agreement is deemed necessary by the Commissioner; and

(c) submit a full report detailing all the evidence on which he based his action with the relative survey records.

(4) In correcting the alignment of a beacon as provided for in this rule such beacon shall normally be placed at the intersection of the boundary line of which it forms a terminal and the straight line on which it is supposed to be.

(5) In this rule “established beacon” means a beacon established in terms of section 16 of the Act, and a survey includes a resurvey.

(6) Should there be any uncertainty whether a beacon or boundary has been lawfully established or consented to as provided in subrule (1), the surveyor shall apply to the Commissioner for information on this point.

(7) For the purpose of this rule a beacon shall be deemed to be not on the true and correct boundary when its displacement exceeds—

$0.05 + 0.0005 d$  metres (with a maximum of 1 metre) where  $d$  is the distance in metres between such beacon and the nearer terminal beacon of the said boundary line.

#### 15. Railway curves as boundaries

(1) When the centre line of a railway, or a line at a uniform distance from a railway forms, or defines an existing boundary, the intersections of such line with the rectilinear boundaries, and where necessary, the ends of straights, shall be accurately determined.

(2) The position of a railway curve defining an existing boundary may be determined by any survey method; provided that such determination conforms with the standard of accuracy prescribed in rule 13 (2)(d)(iv), provided further that, unless the elements of the curve are accurately determined, or the curve is determined by photogrammetric methods, points surveyed on such curve shall not be more than 30 metres apart.

(3) Notwithstanding the provisions of paragraph (2), it shall not be necessary to re-determine the radius and the centre of a circular curve which forms or defines an existing boundary, when such curve has previously been accurately determined.

16. Unacceptable boundaries

(1) Wire fences, roads, railway lines, streams which are liable to change their courses, and any other natural or artificial features which are not clearly and permanently defined shall not be adopted as curvilinear boundaries in any fixed boundary survey unless they are shown as boundaries in the original plan or deed of the property being surveyed or of the adjoining piece of land.

(2) Except as provided in rule 15(2), a regular curve which is not clearly and permanently defined on the ground shall not be adopted as a new boundary in the survey of any land.

(3) In survey of any land, no new linear side shall exceed 3,000 metres in length:

Provided that, in exceptional circumstances, the Commissioner may sanction a larger side.

17. Curvilinear boundaries

(1) The only irregular curvilinear boundaries which are normally permitted are the middle, right bank or left bank of clearly defined and permanent watercourses, provided that for surveys undertaken in association with the Registered Land Act, any natural or artificial feature or contour line, may, with the approval of the Commissioner, be used. Cap. 58:01

(2) Photogrammetric methods, acceptable to the Commissioner, may be used for determining the position of any curvilinear boundary.

(3) The position of a curvilinear boundary, other than a circular curve, may be adopted from plans or maps approved by the Commissioner.

(4) The average difference between the actual position of a curvilinear boundary when plotted on a plan and its erroneous representation thereon shall not exceed one millimetre.

(5) Where an irregular curvilinear boundary is depicted on an existing plan but is not readily determinable, then a linear boundary may be substituted with the approval of the Commissioner, providing that the two boundaries are so nearly coincident that no material alteration in area of land has taken place by reason of substitution and providing that the contiguous owners of the land have agreed. Steps must be taken to ensure that plans and documents affected by the substitution are amended accordingly.

18. Topographical features to be surveyed

In the survey of any land a surveyor shall make sufficient observations, measurements and sketches in the field to enable him to fill in with reasonable accuracy on the plans and deed plans the topographical features of the land surveyed, particularly prominent hilltops, water courses, buildings, bridges, dams, springs, roads and railways. The topography in the neighbourhood of beacons is to be determined with special care.

19. Township surveys to be based on reference marks

In the survey, re-survey or subdivision of any plot in a Municipality, Township or Village, in which reference marks have been established, every surveyor shall base his survey on at least two such reference marks or on beacons previously fixed from such reference marks provided that where the land is situated more than 500 metres from the nearest reference mark a connexion shall be optional.

#### PART IV

#### BEACONS

##### 20. Beacons to be placed

Save as is provided in rule 22, the corner points of every piece of land surveyed, for the purpose of registration shall be marked with beacons, which beacons shall be built under the supervision of the surveyor responsible for the survey.

##### 21. Types of beacons

(1) The standard beacon shall consist essentially of an iron peg at least 12 millimetres in diameter, or an iron pipe at least 12 millimetres in internal diameter, and at least 45 centimetres in length, driven vertically into the ground so that the top is flush with the surface of the ground. The iron peg or pipe shall be set in a cylindrical concrete block 20 centimetres in diameter and 30 centimetres in depth. The name or number of the beacon shall be clearly and permanently marked on the surface of the concrete:

Provided that—

(a) Where the ground is soft or sandy the iron peg or pipe shall be at least 60 centimetres in length; and

(b) Where the ground is rocky and it is not possible to drive in an iron peg at least 45 centimetres in length, a shorter peg may be grouted into the rock or a hole at least 12 millimetres in diameter and 20 millimetres in depth may be drilled in solid rock.

(2) For plots less than one hectare in extent the standard beacon shall be used.

(3) For areas between one and one hundred hectares in extent a cairn of stones, bricks or concrete not less than 30 centimetres in diameter and height shall be erected over the standard beacon.

(4) For areas more than one hundred hectares in extent, a cairn of stones, bricks or concrete not less than 75 centimeters in diameter and height shall be erected over the standard beacon.

(5) In locations where stones or bricks are not available the cairns referred to in subrules (3) and (4) may be replaced by excavating a circular trench, at a radius of one metre from the beacon to a depth and width of at least 30 centimetres and the excavated earth shall be piled in a symmetrical mound over the beacon, and a hardwood pole at least one and a half metres in length and 15 centimetres in diameter shall be planted in the middle of the mound.

(6) Where a post, of whatever nature, forming part of a properly erected fence, occupies a corner point of the land being surveyed, it may be adopted as a beacon provided that this post shall be distinguished from other fence posts by the erection of cairns or mounds as provided in subrules (3) and (4).

(7) When in the survey of a piece of land a beacon which should define one of its corner points is missing or is in a dilapidated condition or is of a type decidedly inferior to those described in this rule, the surveyor shall rebuild or repair it in its original position so as to bring it into conformity with the requirements of these Rules.

(8) The erection of beacons of types other than those specified in this rule is not expressly forbidden, but a surveyor wishing to erect other types of beacons shall first obtain the consent in writing of the Commissioner.

## 22. When beacons are not required

(1) Where the corner point of a piece of land coincides with the corner of a building, the corner of the building shall be adopted as the beacon.

(2) Where the corner point of a piece of land does not coincide with the corner of a building, but is in such close proximity to it that a beacon cannot conveniently be placed in position, the relative positions of the corner of the building and of the point which the beacon should occupy shall be ascertained and clearly indicated on the plan by numerical data in an inset drawn to an enlarged scale.

(3) When the purpose of the beacon will fall away by consolidation of title or by common ownership of the land under survey, the beacon need not be placed.

(4) Easements or rights of way which are clearly visible on the ground need not be beacons.

(5) Easements or rights of way which are not clearly visible on the ground shall be beacons, save that if the easement or right of way is of a strip of uniform width not exceeding 100 metres, only one side of such strip need be beacons.

(6) The Commissioner may waive the requirement to erect or restore any beacon, when it is evident that such beacon would serve no useful purpose.

## 23. Indicatory beacons

(1) When a corner point of a property falls within inaccessible ground, or where it is inadvisable to place a beacon, or when the position for an original beacon of a property under survey falls in an inaccessible or unsuitable place, such as a river, stream, dam, dambo, railway track, road or street, its position shall be indicated on the ground by beacons erected on the straight boundary lines meeting at this point and as near as possible thereto as will be consistent with their safety and the distance between such indicatory beacons and the inaccessible corner point of the property shall be furnished on the plans:

Provided that where indicatory beacons if placed in a municipality or township are likely to be mistaken for corner beacons, they shall not be placed.

(2) A beacon placed by a surveyor to define a rectilinear boundary terminating at a curvilinear boundary shall be erected on or as near to the curvilinear boundary as the nature of the land will permit without endangering the permanency of the beacon, and the distance from the indicatory beacon to the corner point it indicates shall be furnished on the plans to the nearest metre.

Wherever practicable, the beacon shall be on the same side of the curvilinear boundary as is the land of which it is a beacon provided that, when a line at a uniform distance from a curvilinear line forms the boundary, the point of intersection of such boundary with a rectilinear boundary shall be beacons.

(3) When a beacon has been removed under the authority of the Commissioner in accordance with section 23 of the Act and it is not possible or advisable to replace it in its original position an indicatory beacon shall be placed on each of the straight boundary lines meeting thereat. The placing of these beacons shall be effected under the supervision of a surveyor who shall furnish the Commissioner with such information as he may require to enable him to record the positions of the indicatory beacons on the relative plans.

#### 24. Moving of beacons

(1) Subject to rule 14, the Commissioner may, when he deems it necessary, alter the position of, remove or destroy a beacon or landmark erected to define, or recognized as defining a boundary of any land of which a plan or description is attached to a deed registered in the Deeds or Lands Registry, or may, by writing under his hand, depute a surveyor to do so.

(2) Save as provided in subrule (1), no surveyor shall alter the position of, remove or wilfully destroy any beacon or landmark erected to define, or recognized as defining a boundary of any land of which a plan or description is attached to a deed registered in the Deeds or Lands Registry.

#### 25. Damage to beacons and trigonometrical stations

If it should come to the knowledge of a surveyor in the course of his work that any benchmark, reference mark, beacon or trigonometrical station has been damaged, destroyed, removed, altered in position or fallen into disrepair, he shall immediately report the circumstances to the Commissioner.

### PART V

#### DEED PLANS

#### 26. Deed plan forms

(1) Subject to subrule (2) the forms to be used in the preparation of deed plans shall be the forms set out in the Fifth Schedule.

(2) Notwithstanding anything to the contrary in subrule(1) if it is necessary to frame a deed plan for some special purpose not fully provided for in the forms set out in the Fifth Schedule, the Commissioner may, on the application of the surveyor required to frame any such deed plan, and on the submission by such surveyor of a description of what is required to be included, direct that a form other than one set out in the Fifth Schedule be used in the preparation of such deed plan.

27. Quality and size of material

(1) All deed plans shall be framed on good quality tracing linen or on durable transparent plastic material approved by the Commissioner.

(2) Deed plans shall be framed on rectangular sheets measuring 297 millimetres X 210 millimetres or on rectangular sheets of which one side shall be 297 millimetres, so that cross-folding may be avoided when the deed plans are bound with their relative deeds.

(3) The above dimensions shall not be departed from except in special cases and with the previous approval of the Commissioner.

28. Margin

A marginal space shall be left along all four edges of the paper used in framing any deed plan; that along the left and top edges shall be not less than 25 millimetres in width and that along the other edges shall be not less than 12 millimetres in width. These marginal spaces shall be free of all writing and shall not be encroached upon in any way in the framing of the deed plan.

29. Ink

The ink used in the preparation of deed plan shall be the best India waterproof ink. The signature shall be in black ink of good quality.

30. Geometrical figure

(1) On every deed plan the land surveyed shall be represented by a geometrical figure.

(2) All the boundaries of such land, including curvilinear boundaries, shall be represented by continuous black lines.

(3) The plot of the figure shall agree with the results of the survey within a limit of 1 millimetre.

31. How to indicate beacon and stations

(1) The position of each beacon shall be indicated on a deed plan by a small black circle.

(2) A trigonometrical station, such as is referred to in rule 9, shall be indicated by a small circle inscribed within a triangle, both in black ink.

(3) When two or more beacons are in such close proximity to one another that their relative positions cannot be clearly shown on the deed plan, they shall be plotted to a larger scale in an insert thereon.

32. Colouring

On prints made from the original deed plan, the figure shall be marked by a uniform coloured red border running along the inner side of the boundary line. The colour should not be so dark as to obscure any necessary details.

33. Lettering

(1)(a) The letters or numbers used to designate beacons on a deed plan shall be the same as those used in the field book, which letters or numbers shall be written wherever possible outside the figure but as near as possible to the point indicated.

(b) Where a piece of land has a curvilinear boundary, each intersection of the straight with the curved boundary shall be indicated by a lower case letter.

(2) No letters or numbers other than those which can be reproduced by an ordinary typewriter shall be used in a field book, working plan or deed plan:

Provided that a trigonometrical station may be described by a small triangle and the official number of such station.

34. How to indicate contiguous properties

(1) The direction of the boundaries of contiguous properties shall be indicated by broken black lines drawn from the point representing common beacons or, in the case of river boundaries from the common intersection points, and the designation of such contiguous properties shall be written in their respective positions:

Provided that—

(a) When such contiguous properties and the property under survey are subdivisions of the same parent property, it shall be sufficient to refer to them by their subdivisional number or letter omitting all reference to earlier parentage; and

(b) in the case of lots in one and the same Municipality, Township or Trading Centre, it shall be sufficient to describe contiguous lots by their numbers only.

(2) The boundaries of contiguous lots shall reflect the position at the date of the survey.

35. Unit of measure

The sides and co-ordinates recorded on a deed plan shall be expressed in metres.

36. Scales

(1) The scale to which the figure on a deed plan is plotted shall be recorded immediately below the deed plan number.

(2) The figure on a deed plan shall be plotted to one of the following scales—

1:1,250

1:2,500

1:5,000

1:10,000

or any of the scales mentioned in which the denominator is multiplied or divided by an integral power of 10:

Provided that the size of the figure shall not be less than 10 square centimetres, nor so small as to be unnecessarily cramped or that any essential information would be inadequately represented on it, except as provided in rule 31.

(3) The Commissioner may in his discretion authorize a departure from the provisions of this rule.

37. Numerical data to be recorded on a deed plan

(1) A deed plan intended for attachment to a deed to be registered in the Deeds or Lands Registry shall contain—

(a) the rectangular co-ordinates to two decimal places of every beacon of the piece of land represented on such deed plan;

(b) the rectangular co-ordinates to two decimal places of all unbeaconed points defining the rectilinear figure and of the centre of any circular curve bounding the property and of the tangent points of any such circular curve; if determined during the course of survey;

(c) the rectangular co-ordinates to two decimal places of every trigonometrical station mentioned in rule 9;

(d) the sides to two decimal places;

(e) the bearing to the nearest 10 seconds of arc of each straight boundary line or imaginary line joining two beacons between such boundary line or imaginary line which is less than 2,000 metres in length;

(f) the bearing to the nearest second of arc of each straight boundary line or imaginary line which exceeds 2,000 metres in length:

Provided that, when the bearing of a boundary line is given to single seconds, the bearings of any parts of that line less than 2,000 metres in length may be given to the nearest 10 seconds;

(g) the angle at each beacon or the bearing of each straight boundary or imaginary line joining any two beacons to the nearest 10 seconds when co-ordinates are not furnished on the deed plan;

(h) the co-ordinates of the centre and tangent points of each circular curve forming a boundary if determined during the course of a survey;



(i) the distance and the bearing from the beacon to the intersection of the straight and curvilinear boundary, where a piece of land has a curvilinear boundary and the beacon has not been placed on such curvilinear boundary;

(j) the area expressed in—

(i) hectares to three decimal places if the land is more than one hectare in extent; or

(ii) hectares to four decimal places if the land is one hectare or less in extent.

(2) The numerical data mentioned in rule (1) shall not be inscribed within the figure itself, but shall be neatly tabulated in the columns provided on the deed plan form. In the tabulation of the numerical data, the corner points of the figure shall be referred to consecutively in clockwise order.

### 38. Co-ordinates

(1) Co-ordinates furnished on one and the same document shall, in all cases, be referred to the same origin and axes.

(2) Co-ordinates given on any document shall be expressed in the same unit of measure as that in which the sides are expressed.

(3) In the statement of co-ordinates the Eastings shall always appear in the left hand column and the Northings in the right hand column.

(4) On a deed plan of any land the survey of which has been based on trigonometrical stations, such fact shall be recorded against the co-ordinate column by the letters U.T.M.

(5) If the co-ordinates recorded on a deed plan have been reduced by a constant quantity, such constant, shall be inserted above the column containing the correspondingly reduced co-ordinates.

(6) When the survey of the land is not based on trigonometrical stations the co-ordinates shall be computed using the bearing of true north, determined as prescribed in rule 11, as one of the axes of the system and as the zero bearing.

### 39. When Co-ordinates are not required

Co-ordinates need not be stated on a deed plan—

(a) of a rectangular plot, which is one of a series of such plots, in a rectangular layout the block corners of which are co-ordinated; or

(b) at the discretion of the Commissioner.

### 40. Limits of inconsistency

Sides, bearings and area given on any deed plan shall be numerically consistent with the co-ordinates recorded thereon as far as the limitations prescribed in rule 37 and rule 39 will allow.

41. How to indicate true north

The bearing of true north shall be indicated on every deed plan by a straight line and shall be designated by the words "True North" or the letters "TN". The north bearing shall point as nearly as possible at right angles to and towards the top of the deed plan and the line indicating it shall be drawn, if possible to the left and clear of the figure.

42. Topography

In all cases, the topographical features mentioned in rule 18 shall be—

- (a) clearly and carefully shown on the deed plan;
- (b) represented with special care in the neighbourhood of beacons; and
- (c) represented in the manner prescribed in the Third Schedule.

43. Names of rivers, etc., to be given

The names of all important rivers and mountains within or adjacent to the limits of the land surveyed shall be given on the deed plan.

44. Direction of rivers

When a river, stream or water furrow is taken as a boundary of the property being surveyed, the direction of the flow of the water shall be indicated by an arrow head.

45. Direction of roads and railways

Where a main road, railway or important thoroughfare is shown by a surveyor on a deed plan of any land surveyed by him, he shall state against the lines representing it, but not within the figure, the name of the nearest town or place of importance in each direction through which such road, railway or important thoroughfare passes, indicating by an arrow the direction in which such town or place of importance lies.

46. Irregular boundaries

(1) Where a river, stream, watercourse, wall, cliff or other permanent natural or artificial feature of the ground forms a boundary of a piece of land, it shall be distinctly recorded in the verbal definition of the figure whether the right or left bank or the middle of such river, stream or watercourse, the north, east, south or west edge or middle of the wall or upper or lower edge of a cliff is the boundary.

(2) Where a boundary between two pieces of land is ill-defined or unsatisfactory and it is in the interests of all parties concerned that a boundary of another character be substituted for it, the Commissioner may permit such last named boundary to be adopted in a survey for registration purposes in lieu of the first named boundary, provided that he is satisfied that it is so close thereto that no material alteration in the area of either piece of land shall have taken place by reason of the substitution, and provided further that the owners of all properties contiguous to that boundary

have signed an agreement, as nearly as practicable in accordance with Form 3 in the Seventh Schedule accepting the new boundary.

47. Limits of figure to be verbally defined

Every deed plan shall contain a clear verbal definition of the limits of the figure representing the land. In such definition shall be recited, clockwise in the order in which they occur, the name of each of the beacons at the corner points and a description of the curvilinear boundaries if any.

48. Land to be designated by a name or number

(1) The land represented shall be distinguished on a deed plan—

(a) in the case of a piece of land which is the subject of a deed not previously registered in the Deeds of Lands Registry and not being a lot in a Municipality or Township, by a name, letter or number to be approved by the Commissioner;

(b) in the case of a lot in a Municipality or Township which is not a subdivision of an existing lot, by a number which shall be allotted by the Commissioner; and

(c) in the case of a subdivision of a piece of land in respect of which a deed has been registered in the Deeds or Lands Registry, by the name of the parent property and by a lot number, which number shall be distinct from the number allotted to any other subdivision of the same parent property.

(2) The name or number by which a lot is designated shall be quoted on the deed plan in the space provided and not written within the figure.

49. Locality to be stated

It shall be clearly stated on any deed plan, in what Region, District and locality the land is situated and the number of the sheet of the 1:50,000 map series which depicts the area, or in the case of a plot in a Municipality or Township to the number of the sheet in the 1:5,000 or 1:2,500 map series, where such exist.

50. Easements and rights of way

Where any part of a piece of land depicted on a deed plan is subject to an easement or right of way, such easement or right of way shall be clearly depicted on such deed plan.

51. Beacons to be described

As a help to its future identification there shall be given a concise description of each beacon of the figure and of each beacon to which it is connected, e.g.—

(a) 12 mm iron peg in concrete and cairn,

(b) drilled hole in rock and cairn,

(c) 12 mm iron peg in concrete near fence post,

(d) iron standard (corner fence post).

52. Connecting data

(1) When no rectilinear boundary of a subdivision coincides, in whole or in part, with a boundary of the land being divided and the surveyor does not submit, at the same time, deed plans of adjoining subdivisions from which connecting data can be deduced, there shall be furnished on the deed plan of the subdivision, in addition to the other data required, the sides and angles of direction of a quadrilateral figures formed by connecting two beacons of the subdivision to two suitably situated beacons of—

(a) the subdivided property; or

(b) a former subdivision of the subdivided property; or

(c) a railway, road or easement traversing the subdivided property, if a survey of such property is filed in the Commissioners' office:

Provided that, if the survey of the subdivision is based on the trigonometrical control and the survey of the land being divided was also based on the trigonometrical control, such connexion need not be shown.

(2)(a) When a subdivisional beacon is placed on a boundary of a piece of land being subdivided and the surveyor does not submit at the same time deed plans of adjoining subdivisions from which connecting data can be deduced, the distances to both terminals shall be recorded on the deed plan:

Provided that a beacon of adjoining land, such as is referred to in rule 14 (1) (a) and (b) shall rank as a terminal for the purposes of this subrule.

(b) In exceptional circumstances, if a surveyor is able to prove that a subdivisional beacon is on the boundary of the land being divided, and where the position of both terminals have not been determined by survey, the distance from the subdivisional beacon to the nearer terminal only need be recorded.

(3) The connecting figure prescribed in subrule (1) shall be indicated on the deed plan or plan by an inset. Sufficient information shall be given on this inset to ensure the identification of the beacons to which the survey is connected. The connecting data shall be shown either on the inset or tabulated. The plot of the connecting figures shall not necessarily be to scale and the connexions shall be indicated by dotted black lines.

53. Deed plans not to be composite

No subdivisional deed plan framed for transfer purposes shall represent portions of land represented on more than one original deed.

54. Erasures

(1)(a) Erasures shall not be allowed on any deed plan submitted for approval.

(b) Any alteration or amendment of the numerical data, or of the verbal definition of the figure, shall be effected by ruling out the incorrect data or words and by writing in the correct data or words above or next to those ruled out.

(c) Each amendment or alteration shall be initialled by the surveyor who has signed the deed plan, or, in a special case, by the Commissioner in his discretion. The Commissioner shall notify the surveyor of such alteration or amendment. The initials shall be placed in the margin opposite the correction, preferably in the right hand margin.

(2) In the framing of any deed plan, prick marks shall not be used for the purpose of transferring to it from any other plan or deed plan the positions of curvilinear boundaries or topographical features of the ground. The position of buildings and of beacons and stations used in the survey may, however, be transferred by means of a pricking needle.

#### 55. Approved deed plans

After a deed plan has been approved, no alteration of any nature whatever shall be made on it except by the Commissioner with the consent of the surveyor responsible.

#### 56. Untidy and dilapidated deed plans

The Commissioner may refuse to approve a deed plan should he consider that it is in a dilapidated condition or that it is framed in a careless or untidy manner, or on unsuitable material, or that by reason of amendments or by the addition of any matter other than that required by these rules, or for any other cause, its general appearance has been spoilt.

#### 57. Deed plans to be signed and dated

Every deed plan of land framed from survey shall bear the date of such survey and shall be signed by or shall indicate the surveyor who effected the survey.

### PART VI

#### WORKING PLANS

#### 58. When a working plan is required

A working plan shall be submitted for the purpose of record with every survey submitted for approval.

#### 59. Material to be used

(1) All working plans shall be framed on good quality tracing linen or other durable transparent material approved by the Commissioner.

(2) Working plans shall be framed on sheets of one or other of the following sizes—

40 centimetres by 50 centimetres; or

50 centimetres by 80 centimetres; or

80 centimetres by 100 centimetres.

60. Margins

A clear space of not less than 5 centimetres in width, unencumbered with writing of any kind, shall be left along the edges of a working plan.

61. Scales

A working plan shall be plotted on such scale as will permit all prescribed details to be clearly shown thereon, subject to the provision of rule 36 (2).

62. Data and details to be recorded on a working plan

(1) The provisions of rules 29 to 31, 33 to 52, and 54 to 57, which are applicable to a deed plan shall, mutatis mutandis, apply to the whole figure represented on a working plan and to figures representing several lots.

(2) In respect of figures representing several lots, the following shall apply—

(a) Sides and bearings shall be recorded within the figure when it is feasible to do so without endangering their legibility, provided that—

(i) it shall not be necessary to furnish data on both sides of a common boundary,

(ii) bearings may, if more convenient, be recorded on the street side of the line if common to a street, provided that the rule, which shall be applicable to all such bearings namely that the value of the bearing when recorded within any figure shall always be regarded as the clockwise direction of the relevant side of the figure, shall be observed.

(b) The designation of each lot shall be written within the figure representing it.

(c) The area of each lot shall be shown.

(d) The width of each street, roadway or lane when uniform shall be shown.

(3) The following information shall also be recorded on a working plan—

(a) the position and name or other designation of every station, traverse point and reference mark fixed or used in the survey;

(b) all lines used in the determination of a curvilinear boundary;

(c) the position of all beacons and land marks or other indications of corner points which the surveyor has determined or placed in the course of the survey;

(d) an explanatory inset where it is necessary to depict details which cannot be shown distinctly at the scale of the plan or which cannot be shown conventionally, e.g., fences other than those on boundaries, unsurveyed cemeteries, etc.

63. How to show data and details

(1) All boundaries shall be drawn on the working plan in black.

(2) All lines, the lengths of which have been measured, and all direction lines used in the determination of a curvilinear boundary shall be drawn in red. Where the measured line is a boundary line, the measured line shall be shown in red alongside the black.

(3) Beacons placed in the course of the survey shall be indicated by small black circles. All beacons found and adopted in a survey shall be indicated by two concentric circles in black. All beacons found and not adopted in a survey shall be indicated by two concentric circles in black with a line drawn through them.

(4) Traverse stations and survey stations shall be indicated by red circles, and where such points are permanent marks by two concentric circles in red.

(5) Any base measured for the purpose of the survey shall be indicated on the working plan by two parallel lines ruled close together in red.

(6) Each station of the trigonometrical survey shall be indicated by a small circle inscribed in a triangle both in black.

(7) Reference marks shall be indicated by crosses inscribed in circles both in black.

(8) The Easting and Northing co-ordinate axes of a survey based on triangulation shall be represented by well defined continuous fine blue lines at intervals of not more than 20 centimetres and the value of each line shall be stated at its extremities.

(9) Where two or more points are in such close proximity that the required details cannot be clearly shown on the working plan, they shall be plotted at a larger scale in an inset thereon.

(10) Conventional signs shall be used in accordance with Schedule 3.

64. Working plans to be signed and dated

Every working plan shall bear the date of the survey and shall be signed by the surveyor who made the survey under the following certificate—

“Surveyed in (month, year) .....

by me (or under my personal supervision) .....

Land Surveyor

Provided that the Commissioner may modify such certificate.

PART VII

SURVEY RECORDS

65. Survey records

The survey records referred to in section 9 (b) of the Act shall be—

- (a) the original field book;
- (b) the computations;
- (c) the working plan;
- (d) a report which shall be in the form prescribed in the Sixth Schedule;
- (e) such other plans, photographs and documents as the Commissioner may require.

66. Computations

(1) Computations in respect of surveys shall be made generally in the form prescribed in the Fourth Schedule.

(2) Every surveyor shall by his computations apply an efficient check to every part of his survey. These checks shall be clearly indicated by means of cross references or concise statements.

(3) Computations shall be clearly and legibly written in ink on only one side of the paper, whose dimensions shall approximate to 330 by 210 millimetres, save where electronic print out data is submitted.

(4) Each computation sheet shall be numbered and reference shall be made in the computations to the page or pages in the field book from which the data for the computations have been obtained. Electronic print out data should be supplemented or annotated where necessary to give a clear picture of the method of survey computation.

(5) The computations of a survey shall include—

(a) a complete list of final co-ordinates of every point fixed or adopted in the survey, and reference shall be made in this list to the page of the computations on which the co-ordinates have been computed and to the pages of the field book on which reference is made to the point, and

(b) a consistency calculation in respect of each parcel of land represented on the working plan or deed plan.

(6) The rectilinear, curvilinear and total areas shall be given with the consistency calculation.

67. Comparison of data

In all surveys which include previously surveyed rectilinear boundaries, a comparison shall be made between the data thereto as determined in the new survey and the respective data furnished on the original plans. Such comparison may be in the form of a drawing on which original data shall be shown in black and the data determined in the new survey shall be in red.

PART VIII

MISCELLANEOUS

68. Surveys of public land and customary land on behalf of Government



A survey of public land or customary land for grant, lease or easement purpose, or a survey of any land on behalf of the Government, shall not be undertaken except upon written instructions issued by the Commissioner.

69. Commissioner not liable for cost of any document officially required

Any deed plan, plan, report or other document required by the Commissioner in accordance with these Rules shall be deemed to be an essential part of the survey, and the cost thereof shall form a part of the cost of such survey.

70. Replacement of lost beacon to be reported by the surveyor

Where a surveyor has replaced a lost beacon he shall report forthwith the circumstances to the Commissioner, and shall submit to him for examination and permanent filing, the survey records to such replacement.

71. Sketch to be in duplicate when return is desired

Should a plan or sketch, of which the return is desired, be submitted to the Commissioner in illustration of a letter or a report, it shall be in duplicate, or shall be drawn on transparent material from which a print can be made.

72. Tariff for surveys

The charges for any services performed by a surveyor under these Rules shall be in accordance with tariff of fees prescribed in the First Schedule:

Provided that increased charges may be made by written agreement between the surveyor and his client.

73. Commissioner to be taxing officer

The Commissioner shall, in case of dispute, exercise all the functions of a taxing officer in relation to fees charged by surveyors for performing the several acts which are permitted or required under the Act or these Rules to be performed by surveyors.

74. Taxing fees

The taxing fee for each surveyor's account taxed by the Commissioner shall be K0.10 for each K1.00 or for a fraction of K1.00 of the taxed amount, provided that the minimum fee for taxation shall be K1.00.

75. Accounts for Government surveys to be in duplicate

Accounts for survey work done on behalf of Government shall be submitted in duplicate to the Commissioner and in such form as he may require.

76. Application for licence

(1) An application for a licence to practise as a surveyor shall be addressed to the Commissioner of Surveys, Blantyre.

(2) Every applicant shall forward with his application a fee of K2.00 together with a signed declaration as prescribed in Form 1 in the Seventh Schedule.

(3) The form of licence to be issued shall be as prescribed in Form 2 in the Seventh Schedule.

77. Licence to be personal

A licence shall not be transferable and shall be personal to the holder.

78. Annual fee

Every licensed surveyor shall pay to the Commissioner, in advance, an annual fee of K4.00. Such fee shall be due and payable on or before the 1st January of each year.

79. Notification of postal address and specimen signature

(1) Every licensed surveyor shall furnish the Commissioner with his address and shall promptly notify the Commissioner of change of address.

(2) Every licensed surveyor shall furnish the Commissioner with a specimen of his signature.

80. Notification of cessation to practise

In the event of a surveyor ceasing to practise in Malawi he shall notify the Commissioner to that effect and shall furnish an address for reference.

81. Preservation of beacons by landholders

Every surveyor shall, during the course of any survey being carried out by him, inform all owners and occupiers of the land which he is surveying and of any land contiguous to such land that it is their duty to take all necessary steps to preserve all survey marks, of whatsoever nature, situated within or on the boundaries of their land and that no such survey mark may be removed, damaged or destroyed.

82. Employment of unqualified assistants

(1) No surveyor shall employ an unqualified assistant without the written approval of the Commissioner. Every such approval shall be subject to the implied condition that the surveyor accepts full personal responsibility for all work performed by his unqualified assistant.

(2) Adequate checks must be applied to the work of such unqualified assistant by the surveyor, and if the Commissioner finds that an unqualified assistant has performed any work which has not been supervised and checked by the surveyor employing him, the written approval for the employment of such unqualified assistant may thereupon be rescinded.

G.N. 110/1991

34/1996

FIRST SCHEDULE

TARIFF OF FEES

PART I

BASIC CHARGE

1. The basic charges for the survey of pieces of land included in the same survey and surveyed at the same time, which shall include the charge for—

- (a) the construction of beacons as prescribed in these Rules;
- (b) clearing traverse lines and triangulation stations; and
- (c) the supply of survey records, reports, and plans as prescribed in these Rules, shall be—

Lot size	Charge	Basic sides
		K
1 ha or less	1,500	5
over 1 ha to 5 ha	2,200	7
over 5 ha to 25 ha	4,000	10
over 25 ha to 50 ha	5,500	15
over 50 ha to 100 ha	8,000	15
over 100 ha to 500 ha	10,500	20
over 500 ha to 1,000 ha	13,000	20
over 1,000 ha	15 per ha	20

These charges for plots with more sides than the basic will be increased by 5 per cent per side:

Provided that—

- (a) the charges for the survey of lots of 5 ha and less in areas outside municipalities and townships shall be reduced by 20 per cent;
- (b) the lot charge shall be reduced by—
  - (i) 20 per cent in the simultaneous survey of two lots;

- (ii) 30 per cent in the simultaneous survey of three to ten lots;
- (iii) 40 per cent in the simultaneous survey of eleven to twenty lots;
- (iv) 50 per cent in the simultaneous survey of twenty-one lots or more;

(c) if the combined area of several lots under simultaneous survey should exceed 1,000 ha then the charge for each lot shall be calculated at K15 per ha.

## PART II

### CHARGES FOR TRAVELLING, TRANSPORT AND SUBSISTENCE

1. Travelling: A charge for travelling shall be made at the rate of K200 per hour. For an assistant, the rate shall be K80 per hour.

2. Transport: A charge for transport shall be made at the rate of K4.50 per kilometre. This charge shall take into account the distance to and from the work from the surveyor's base and the distance necessarily travelled in the course of the survey.

3. Subsistence: A surveyor, when engaged in work away from his base, shall charge subsistence at the rate of K300 per day or transport charges to and from his headquarters and the site of the survey at the rate of K4.50 per kilometre, whichever is the lesser, provided that, unless the prior written consent of the client has been obtained, the subsistence charge shall not exceed 20 per cent of the basic survey charge.

#### 4. Additional charges—

(a) when the surveyor responsible for the survey is assisted by other surveyors a charge for travelling, transport and subsistence in terms of paragraphs 1, 2 and 3 may be made in respect of each assisting surveyor using a separate vehicle:

Provided that—

(i) the maximum number of assisting surveyors that may be charged for shall be two;

(ii) not more than one vehicle per surveyor shall be charged for; and

(iii) such a charge shall be made only by prior written agreement between the surveyor and his client;

(b) travelling and transport charges in accordance with paragraphs 1 and 2 shall be payable in respect of only one journey, unless substantial reasons exist for more than one journey being made:

Provided that, in a single survey of at least 30 days duration, a charge for travelling and transport at the prescribed rate may be made for one return journey to the headquarters of the surveyor for such journey actually made by the surveyor or by one of the assisting surveyors, for each period of 30 days duration of such survey.

### PART III

#### MISCELLANEOUS CHARGES

1. Payment for any professional work not specified in this Schedule, such as discussions with the client, relocation of lost beacons, clearing boundary lines, connexion and alignment investigations, location of fixed area and fixed distance calculations, mapping control, etc., shall be at the rate of K300 per hour or part thereof of the time the surveyor is engaged in such work. If an assistant is engaged in such work the charge will be at the rate of K80 per hour or part thereof.

2. The charges provided for in this Schedule for travelling, transport and subsistence, and for the actual cost of labour necessarily engaged, shall be in addition to the charge prescribed in paragraph 1.

3. The actual cost of the reproduction or purchase of maps, plans or documents necessary for the conduct of the survey or required to be provided to the client shall be payable by the client and in addition to all foregoing charges.

- (i) the supply of the survey records and reports as prescribed in these Rules; and
- (ii) the supply of the prescribed plans, shall be—

For Lots	Initial Charge	Per Lot	Per each additional boundary above six			
	K	K	K			
Under 0.1	ha		140.00	50.00	5.00	
Over 0.1	ha to	1 ha	150.00	55.00	5.00	
Over 1	ha to	5 ha	160.00	70.00	7.00	
Over 5	ha to	25 ha	170.00	80.00	8.00	
Over 25	ha to	50 ha	190.00	100.00	10.00	
Over 50	ha to	100 ha	200.00	110.00	11.00	
Over 100	ha to	200 ha	220.00	120.00	12.00	
Over 200	ha to	500 ha	290.00	170.00	17.00	
Over 500	ha to	1,000 ha		380.00	210.00	21.00
Over 1,000	ha to	2,000 ha		490.00	270.00	27.00
Over 2,000	ha to	3,000 ha		600.00	350.00	35.00
Over 3,000	ha to	5,000 ha		730.00	420.00	42.00
Over 5,000	ha		850.00	500.00	50.00	

G.N. 155/1976, 30/1980

Provided that—

- (a) the initial charge shall be made only once in each survey and shall be that applying to the largest area group in the survey;
- (b) the “per lot” charge shall be reduced by—
  - (i) K15.00 for each lot under 0.1 hectare in extent which is in excess of 10 such lots;
  - (ii) K1.00 for each copy of the deed plan not required in respect of a lot;
- (c) the “per lot” charge shall be increased by K30.00 for every 1,000 hectares or part thereof by which the area of a lot exceeds 5,000 hectares;
- (d) the boundaries of each lot shall be counted separately when determining the number of boundaries but an indicative line shall not be counted as a boundary.

## PART II

### OTHER CHARGES ADDITIONAL TO THOSE PROVIDED FOR IN PART I

#### A—Curvilinear Boundaries

1. For the survey of irregular curvilinear boundaries the charges shall be K5.00 plus K9.00 per 100 metres or part thereof of the curvilinear boundary. The initial charge of K5.00 may be made only once notwithstanding the number of properties abutting on such boundary. G.N. 155/1976, 30/1980

2. For the survey of irregular curvilinear boundaries by photogrammetric methods the charges shall be half the charges determined in paragraph 1:

Provided that if it is necessary for the surveyor to photograph the curvilinear boundary the full charge prescribed in paragraph 1 shall be made.

3. In the case of irregular curvilinear boundaries where the information is obtained from previous survey or plans the charge shall be 20 per cent of that prescribed in paragraph 1.

4. For the survey of a circular curve K45.00.

5. A surveyor shall not charge a second time for the survey of one and the same curvilinear boundary.

#### B—Charge for Beacons

1. For providing and erecting beacons in conformity with the requirements of the Rules, including supervision by the responsible surveyor, the charge shall be— G.N. 30/1980

- (a) K3.00 for a beacon conforming with the requirements of rule 21 (1);

- (b) K3.00 for a cairn conforming with the requirements of rule 21 (3);
- (c) K6.00 for a cairn conforming with the requirements of rule 21 (4);
- (d) K3.00 for a trench and mound conforming with the requirements of rule 21 (5).

2. For supervising the erection or repair of any beacon not provided by the surveyor responsible, the charge shall be K3.00. No charge shall be made for providing and placing survey stations.

#### C—Line Clearing

1. For clearing traverse and boundary lines whether supervised by the surveyor or not, the charge shall be K2.00 per 100 metres or part thereof. G.N. 155/1976, 30/1980

2. For clearing triangulation stations, whether supervised by the surveyor or not, the cleared area shall be converted into a lane 2 metres in width of equivalent area and the length thereof charged for in terms of paragraph 1.

#### D—Travelling, Transport and Subsistence

##### 1. Travelling— G.N. 155/1976, 30/1980

A charge for the time necessarily spent in travelling from the surveyor's headquarters, or from the place where the surveyor was last employed, to the land to be surveyed and back to his headquarters or onwards to other work shall be made at the rate of K24.00 per hour for the surveyor responsible for the survey:

Provided that if travelling is done by public transport the maximum time for which a travelling charge may be made shall be 8 hours per diem.

##### 2. Transport—

(a) When a land surveyor provides his own transport for the travelling referred to in paragraph 1 a charge of K0.40 per kilometre shall be made.

(b) When public transport is used for the travelling referred to in paragraph 1, a charge equivalent to the actual fare paid by the surveyor for himself and his assistants on the work shall be made.

(c) When a surveyor uses his own vehicle on a survey, the distance necessarily travelled for the purpose of carrying out such survey shall be charged at the rate of K0.40 per kilometre with a maximum of K17.00 per diem. G.N. 155/1976, 30/1980

##### 3. Subsistence—

A surveyor engaged on a survey away from his headquarters shall, when free accommodation is not provided by his client at the site of survey, charge either subsistence at the rate of K14.00 per day for himself or transport expenses to and from his headquarters and the site of the survey at the rate of K0.40 per kilometre whichever is the lesser. G.N. 155/1976, 30/1980

#### 4. Additional Charges—

(a) When the surveyor responsible for the survey is assisted by other surveyors a charge for travelling transport and subsistence in terms of paragraphs 1, 2 and 3 may be made in respect of each assisting surveyor using a separate vehicle: Provided that—

- (i) the maximum number of assisting surveyors that may be charged for shall be two;
- (ii) not more than one vehicle per surveyor shall be charged for; and
- (iii) such a charge shall be made only by prior written agreement between the surveyor and his client.

(b) Travelling and transport charges in accordance with paragraph 1 and paragraphs 2 (a) and (b) shall be payable in respect of only one journey, unless substantial reasons exist for more than one journey being made:

Provided that in a single survey of at least 30 days duration, a charge for travelling and transport at the prescribed rate may be made for one return journey to the headquarters of the surveyor for such journey actually made by the surveyor or by one of the assisting surveyors, for each period of 30 days duration of such survey.

#### E—Miscellaneous Work

1. Payment of any professional work not specified in this Schedule such as discussions with client, relocation of lost beacons, connexion and alignment investigations, location of fixed area and fixed distance beacons, mapping control, shall be at the rate of K24.00 per hour or part thereof of the time the surveyor is engaged on such work. G.N. 155/1976, 30/1980

2. The charges provided for in this Schedule for travelling and transport if not already charged for, and for the actual cost of labour necessarily engaged shall be in addition to the charge prescribed in paragraph 1.

#### SECOND SCHEDULE r. 7

FIELD BOOK S.R. No. ....

Surveyor: JOHN BANDAWE

P.O. Box 349, Blantyre

Theodolite:

Description Wild T2

Official No. 27138

Measuring Band:





Bore Hole	Purple
Bridge	River Purple, Road Brown, Bridge Black
Path	Brown
Building	Brown
Church	Brown
Dam	Water Purple, Wall Brown
North Point	Black
Pan or Lake	Purple
Party Wall	Brown
Pipe Line	Purple
Plantation	Green
Power Line	Brown
Railway Line	Black
Fences	Brown
Spring	Purple
Reference Mark	Black
River	Purple
River when Boundary	Boundary in Black, Other in Purple
Road	Brown
Roadway, Street or Lane	Brown
Servitude of Right of Way	Black
Subterranean Pipe Line	Purple
Telegraph or Telephone Line	Brown
Trig. Survey Station	Black
Dambo	Purple
Water Furrow	Purple
Well	Purple

Windmill Purple

Placed Beacons Black

Adopted Beacons Black

Beacons not Adopted Black

Traverse & Survey Station Red

Traverse & Survey Station adopted or permanent Red

Measured Base Red

E.D.M. Line Red

Measured Line Red

Observed Direction Blue

Contours Brown

Embankment Brown

FOURTH SCHEDULE r. 66

SKETCH

Page .....

Page .....

U.T.M.

LIST OF CO-ORDINATES

STATION	F. B.	CALCS.	EASTING	NORTHING	DESCRIPTION
---------	-------	--------	---------	----------	-------------

Page .....

ABSTRACT OF OBSERVATIONS

Station:—Bluff F. B. Pages 7, 8.

	o	'	"	"	"	"	"
Sanjika 149	41	38	38	38		38	
Lamp 154	48	43	45	45		44	
Nancholi	190	57	14	17	16		16
Y 120 234	33	05	04	06		05	
Michiru 359	49	06	09	08		08	
Nyambadwe	96	42	35	40	34		36-1
R.O. 149	41	49	40	38		39-1	

Page .....

BEARING SHEET

1	2	3	4	5	6	7	8	9		
o	'	"	"	"	"	"	"	"	"	"
Bluff										
Sanjika	149	41	38	+2	40	43	+03	42	0	40
Lamp	154	48	44	+2	46			48		
Nancholi	196	57	16	+4	20	21	+01	22	0	20
Y 120 234	33	05	+4	09				11	0	09
Michiru	259	49	08	-1	07			09	-3	04
Nyambadwe	96	42	35	+3	38			...	40	-1 37

+02

(1) Station

(2) Approx. spheroidal bearing

(3) t—T



Bluff 10 222.54 56 598.48

Page .....

TRAVERSE CALCULATION

F. B.	SIDE	BEARING/DISTANCE			SIN:	COS	E:	E	N:	N	POINT
73	F3—K1	353	51	55	-106	867	12	136.24	34	830.64	F3
79			610.10		+994	273		-65.84		+612.57	
										-03	
79	K1—K2	353	44	55	-108	891	12	070.40	35	443.18	K1
79			298.22		+994	054		-32.47		+296.45	
										-02	
79	K2—K3	173	18	05	+116	647	12	037.93	35	739.61	K2
79			295.98		-993	173		+34.53		-293.96	
										-02	
81	K3—F3	174	04	40	+103	178	12	072.46	35	445.63	K3
81			618.25		-994	663		+63.79		-614.95	
								-01		-04	
	F3						12	136.24	34	830.64	
Accuracy		1/17,000				E+0.01		+0.11			

CONSISTENCY CHECK AND AREA

Plot 2

M2—M3	297	28	30	-887	212	9	672.05	5	713.61	M2
-------	-----	----	----	------	-----	---	--------	---	--------	----

	60.00	+461	362						
M3—M4	198	19	20	-314	361	9	618.82	5 741.29	M3
	555.30	-949	304						
M4—M5	108	23	00	-948	968	9	444.25	5 214.14	M4
									6
	60.00	-315	373						
M5—M2	18	14	30	+313	026	9	501.19	5 195.22	M5
									0
	545.82	+949	745						
						9	672.05	5 713.61	M2
									6

2A=99 34 357.91

65 642.09

A=0.3282 ha.

FIFTH SCHEDULE r. 26

..... Region      Department of Surveys  
..... District                      Archive Reference  
..... Locality                      Original plan No. SD/  
Piece ..... DEED PLAN      of .....  
..... No. .... Surveyed .....  
Registry Map ..... SCALE ..... by .....

SIDES AND BEARINGS      CO-ORDINATES U.T.M.

Side	Distance	Bearing	Beacon	Easting	Northing	Beacon Description
------	----------	---------	--------	---------	----------	--------------------

The above figure marked .....

and edged red represents ..... Hectares of land Drawn  
by ..... I certify that this deed plan conforms with the Original Plan

No. SD/ .....

Checked by ..... approved by the Director of Surveys and that numerical  
data shown above are mutually consistent.

.....

Director of Surveys

Blantyre ..... 19 .....

SIXTH SCHEDULE r. 65

REPORT ON SURVEY

Land Surveyor: .....

S.R. No. ....

Date of Survey: .....

Survey:

- (a) Title (Land Settlement, Public, Township, Railway, etc.).
- (b) New (amended) Title.
- (c) Sub-division, with T.P.O. approval.
- 1. Purpose (d) Sub-division with owner's conditions (give particulars).
- (e) Replacement Beacons.
- (f) Servitude (access, irrigation, etc.).
- (g) .....
- (a) Triangulation based on (i) Trig.
- (ii) Previous survey.
- (iii) Measured base.



2. Method(b) Traverse based on (state closure) (i) Trig.
- (ii) Previous survey.
- (iii) Local system.
- (c) Combination of (a) and (b) .....
- (a) Co-ordinates (i) Trig.
- (ii) Previous survey.
- (iii) Local system.
3. Computation Basis
- (b) Bearings (i) Trig.
- (ii) Previous survey.
- (iii) Compass.
- (iv) Scaled.
- (v) Astro.
4. Found Beacons (a) Draw Attention to unusual Circumstances, e.g., scattered stones, no peg, concreted by owner, fence post, etc.
- (b) Full details of alignment tests and results of same. State what lines Adopted and Why.
- (a) Computation (i) Fixed on previous survey.
5. Placed Beacons including replacements (ii) On what line?
- (iii) How checked?
- (b) Field Work (i) Fixed on main survey.
- (ii) Direct observation.
- (iii) Subsidiary traverse.
- (iv) How checked?
6. Comparison of Data Give Sketch showing original data in Black of Data in Black and Survey Data in Red. Other data may be shown in any other colour except green.
7. Replaced Beacons Give details as for Placed Beacons and state reasons for choice of position. Include sketch especially if complicated, e.g., in Townships.

8. Curvilinear Boundaries (a) Field Contro (i) Taped traverse.
- (b) Computations (ii) Tachy Traverse.
- (iii) Aerial photos
- (iv) Various methods. (State traverse closures.)
9. Unusual Occurences (a) Field Give details of mishaps to Flags Instruments, alterations, etc.
- (b) Computations Give details of alterations, e.g. Re-orientations, etc.

10. Conclusion.

SEVENTH SCHEDULE r.r. 14, 46, 76

FORM 1

Declaration

I, ..... do solemnly and sincerely declare that I will discharge the duties of a land surveyor carefully and without partiality, fear, favour or affection, and will conform to all Rules defining those duties which are now in force, or shall hereafter be established by competent authority.

.....

Declared before me ..... at ..... this ..... day of ....., 19 .....

.....

Commissioner for Oaths

FORM 2

Land Surveyor's licence

This is to certify that ..... having satisfactorily proved his qualifications as a land surveyor is hereby licensed for the survey of land within Malawi under, and subject to, the Land Survey Act.

Dated this ..... day of ....., 19 .....

.....

Director of Surveys

FORM 3

Agreement as to Beacons and boundaries

We, the undersigned (a)

1 Owner of (b)

2 " "

3 " "

4 " "

5 " "

and ..... owner of the piece of land under survey called ..... certify that we have inspected the beacons and boundaries common to our said properties as adopted in the survey of the last-named piece of land by Mr. (Surveyor).

And we declare that we agree and consent to the positions of the beacons and boundaries as represented and described on the figure appearing on the opposite page, and consent to a deed plan being framed in accordance therewith.

Date Signature (c) and (d) Beacons and boundaries indicated on figure on opposite page and hereby agreed to (e) Witness to Signatures (f)

..... 1 .

..... 2 .

..... 1 .

..... 2 .

..... 1 .

..... 2 .

..... 1 .

..... 2 .

NOTES—

(a) Names in full (these should be clearly written in capital letters).

(b) Names of contiguous properties.

(c) Only one signature to be written within each compartment.

(d) Signature on behalf of estates, companies, municipalities or similar bodies must be duly authenticated by attachment of letters of administration, certified copies of resolutions of boards or councils or other similar documents. Signatures or powers of attorney must be accompanied by the actual powers of certified copies. Original documents will be returned after being noted by Commissioner for Surveys.

(e) Where a river forms the boundary, the left bank, right bank or middle of the river (as the case may be) must be indicated and signed for.

(f) Two witnesses are required to each signature.

The page containing the figure referred to in the agreement to be headed: Description of Beacons and Figure Representing Land under Survey and Common Beacons and Boundaries of Contiguous Properties; and at the foot the following note to be made:

NOTE—This page must be signed for by the surveyor performing the survey and the beacons and boundaries must be designated on the figure so as to correspond with the beacons and boundaries agreed to on the opposite page.

LAND SURVEY (QUALIFICATIONS OF LICENSED SURVEYORS) NOTICE

under s. 5 (1)

G.N. 85/1980

1. Citation

This Notice may be cited as the Land Survey (Qualifications of Licensed Surveyors) Notice.

2. Approved universities

The universities which are approved for the purposes of subparagraph (aa) of section 5 (1) (b) (iv) of the Act, are as listed in the First Schedule.

3. Approved countries

The countries which are approved for the purposes of subparagraph (bb) of section 5 (1) (b) (iv) of the Act, are as listed in the Second Schedule.

4. Examinations conferring equivalent qualifications

The examinations which are declared for the purposes of subparagraph (dd) of section 5 (1) (b) (iv) to confer equivalent qualifications, are as listed in the Third Schedule.

FIRST SCHEDULE (para. 2)

APPROVED UNIVERSITIES

Cape Town

Glasgow

Nairobi

Newcastle-upon-Tyne

Nottingham

SECOND SCHEDULE (para. 3)

APPROVED COUNTRIES

Australia

Canada

Ghana

Kenya

New Zealand

Nigeria

South Africa

South West Africa/Namibia

Tanzania

Uganda

Zimbabwe

THIRD SCHEDULE (para. 4)

EXAMINATIONS CONFERRING EQUIVALENT QUALIFICATIONS

Honours examination for Bachelor of Science in land survey at the North-East London Polytechnic

Degree examination for Bachelor of Science in geodetic engineering at the University of the Philippines, Metro-Manila

Certificate of successful completion of two-year Surveying Engineer Course at the Survey Training Institute, Hyderabad (Survey of India, Centre for Survey Training and Map Production)

TEMPORARY CONTROL OF PREMISES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Application
3. Interpretation
4. Establishment, membership and protection of tribunals
5. Proceedings of tribunal
6. General powers of tribunal
7. Orders of tribunal
8. Appeals
9. Statutory tenancies
10. Implied covenants in statutory tenancies
11. Powers of tribunal to vary terms of statutory tenancies
12. Order for possession of premises
13. Determination of statutory tenancy by tenant
14. Jurisdiction of courts
15. General law of landlord and tenant applicable
16. Penalties
17. Power of High Court to make Rules
18. Duration of Act

Schedule

G.N.22/1963

1/1965

An Act to Make Provision for the Temporary Control of Certain Premises and for Purposes connected therewith

[1ST JANUARY 1956]

[Ch6001s1]1. Short title

This Act may be cited as the Temporary Control of Premises Act.

[Ch6001s2]2. Application

13 of 1944 This Act shall apply to all premises to which the Rent and Mortgage Interest (Restriction) Ordinance, 1944 (now repealed) applied on the 31st December, 1955, and which were subject to a tenancy at such date:

Provided that this Act shall not apply to any such premises which are, on the 1st January, 1956, let under a tenancy agreement which—

- (a) has been drawn by a legal practitioner; and
- (b) has been duly stamped and registered before such date; and
- (c) has, at such date, at least one year to run.

[Ch6001s3]3. Interpretation

In this Act, unless the context otherwise requires—

“landlord” means any person other than a tenant who is, or would be but for this Act, entitled to possession of the premises and any other person from time to time deriving title under the original landlord, and includes a sublessor;

“let” includes sublet;

“order” includes any decision, determination, judgment or finding;

“premises” means any premises to which this Act applies;

“prescribed date” means the date prescribed by the Minister in accordance with section 11;

“statutory tenancy” means a tenancy created by operation of section 9;

“tenancy agreement” means any agreement between a landlord and a tenant whereby premises are let or agreed to be let;

“tenant” includes a subtenant and any person from time to time deriving title under the original tenant;

“tribunal” means a rent tribunal established under section 4.

[Ch6001s4]4. Establishment, membership and protection of tribunals

(1) The Minister may, by notice published in the Gazette, establish a rent tribunal for any area of Malawi.

(2) A tribunal shall consist of a chairman and such other members as the Minister may, by notice published in the Gazette, from time to time appoint.

(3) The Minister may appoint, either generally or for any period, a deputy chairman of a tribunal to act as chairman of such tribunal in the absence of the chairman.

(4) A tribunal may appoint and employ officers, valuers, inspectors, clerks and other staff for the better carrying out of this Act.

(5) No matter or thing done by any chairman, member, officer, or agent of a tribunal, if done bona fide in the execution or purported execution of this Act, shall subject any such person to any action, claim, liability or demand whatsoever.

[Ch6001s5]5. Proceedings of tribunal

(1) The chairman, or in his absence the deputy chairman, shall preside at all meetings of a tribunal.

(2) Three members shall constitute a quorum at any meeting of a tribunal.

(3) All matters considered by a tribunal shall be decided by the votes of a majority of the members present. In the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(4) A tribunal may take into consideration any evidence which it considers relevant, notwithstanding that such evidence would not be admissible in a court of law.

(5) All notices or other documents issued under the hand of the chairman of a tribunal shall be deemed to have been issued by such tribunal.

(6) The proceedings of a tribunal shall ordinarily be open to the public, but a tribunal may, in its discretion, direct that the public be excluded from any proceedings or part thereof.

(7) A record shall be kept of all proceedings of a tribunal, including a summary of any evidence given before it.

(8) A tribunal shall give at least seven days' notice of the date appointed for the hearing of any matter to all parties concerned.

(9) Before any decision of a tribunal is made, any person having an interest therein, or his representative, shall be given an opportunity to be heard.

(10) Any interested party may be represented before a tribunal by a legal practitioner or by any person whom the tribunal may, in its discretion, admit to be heard on his behalf.

(11) The proceedings of a tribunal shall be deemed to be judicial proceedings.



(12) In so far as no sufficient provision is made by Rules made in accordance with section 17 a tribunal may regulate its own procedure.

[Ch6001s6]6. General powers of tribunal

A tribunal shall have power to do all things which it is required or empowered to do by or under this Act, and in particular shall have power—

(a) to enter and inspect, or to authorize any person in writing under the hand of the chairman to enter and inspect, any premises for the purpose of enabling it to determine any question being considered by it;

(b) to administer oaths and to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;

(c) to award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed or to award a specific sum as costs, provided that each party to any such proceedings shall bear his own costs unless the tribunal shall for special reasons otherwise determine;

(d) to determine whether or not any premises are premises to which this Act applies;

(e) to determine the terms and conditions of a tenancy agreement or statutory tenancy;

(f) to make an order for the recovery of possession of premises, subject to section 12;

(g) upon such grounds as it may consider sufficient, to review once any order made by it within one month of the making of such order, except where an appeal or reference by way of case stated has been entered in the High Court, and on such review the tribunal may reopen and rehear wholly or in part the proceedings in respect of which such order was made and take fresh evidence and may reverse, vary or confirm its previous order.

[Ch6001s7]7. Orders of tribunal

(1) A certified copy of any order of a tribunal shall be admissible in evidence in the proceedings of any tribunal or any court as prima facie proof of such order.

(2) Any person, upon application to a tribunal, shall be entitled to a certified copy of any order made by such tribunal, upon payment of such fee as may be prescribed.

(3) Any order made by a tribunal under section 11 and 12 shall be registrable under the Deeds Registration Act as a document affecting land. The tribunal making such order shall cause the original order and a certified copy thereof to be transmitted to the Deeds Registrar for registration together with the appropriate fee. The original order shall, after registration, be returned to the Deeds Registrar to the tribunal. No stamp duty shall be chargeable upon such order. Cap. 58:02

(4) A certified copy of an order made by a tribunal may be filed in the High Court by any party to the proceedings before the tribunal in respect of which the order was made or by the tribunal of its own motion. Any such order, when filed, may be enforced in the same manner as an order of the High Court. Appeals

[Ch6001s8]8. Appeals

(1) Except as otherwise provided by section 6 (g) and by this section any order made by a tribunal shall be final and conclusive.

(2) An appeal shall lie to the High Court from any order of a tribunal on any point of law. Upon such appeal the High Court may make such order as it thinks proper, including any direction as to costs.

(3) A tribunal may, of its own motion, and shall, if so requested by a party to proceedings before it, state a case for the opinion of the High Court on any point of law. The High Court, upon delivering its opinion, shall have power to make such order as it thinks fit, including any direction as to costs.

(4) The High Court may make Rules governing appeals or references by way of case stated to the High Court providing for fees to be paid, scales of costs and the practice and procedure to be followed.

(5) An appeal shall lie to the Supreme Court of Appeal from the High Court on any point of law.

(6) Any order made by the High Court or the Supreme Court of Appeal shall, for the purposes of this Act, have the same effect as if it were the order of a tribunal.

[Ch6001s9]9. Statutory tenancies

Subject to this Act every tenancy of premises shall, on the 1st January, 1956, become a statutory tenancy for a term of four years certain from the said date upon the same terms and conditions as were subsisting on the 31st December, 1955.

[Ch6001s10]10. Implied covenants in statutory tenancies

There shall be implied in every statutory tenancy the covenants set out in the Schedule:

Provided that where such covenants are inconsistent with the terms and conditions of a tenancy agreement, the tenancy agreement shall prevail.

[Ch6001s11]11. Powers of tribunal to vary terms of statutory tenancies

Notwithstanding this Act a tribunal, upon the application, before such date as shall be prescribed by the Minister, of a landlord or tenant of any premises, or of its own motion shall have power—

- (a) to alter the rent payable and fix such rent as it may consider reasonable;
- (b) to alter the terms and conditions of a statutory tenancy in such manner as it may consider reasonable;

(c) to alter the term of a statutory tenancy to such period, not being less than two years not more than six years unless both landlord and tenant agree to the contrary, as it may consider reasonable:

Provided that where premises are, on the 1st January, 1956, let under a tenancy agreement for a term which would, but for this Act, have expired on or before the 31st December, 1957, a tribunal may order that the statutory tenancy of such premises shall determine upon the date upon which, but for this Act, the term granted under the tenancy agreement would have expired;

(d) where a landlord has failed to carry out any repairs for which he is liable—

(i) to have such repairs carried out at the cost of the landlord, and if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the tribunal or to the High Court for such period as is necessary to defray the cost of such repairs, and the receipt of the tribunal or the High Court shall be a good discharge for any rent so paid; or

(ii) to authorize the tenant to carry out such repairs and to deduct the cost thereof from the rent payable to the landlord.

[Ch6001s12]12. Order for possession of premises

(1) Notwithstanding section 9 an order for possession of premises may be made by a tribunal, upon application by a landlord before the prescribed date, upon any of the following grounds—

(a) that the rent lawfully due from the tenant has not been paid, or that any other covenant or obligation of the statutory tenancy has been broken or not performed;

(b) that the tenant or any licensee of or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose;

(c) that the condition of the premises has deteriorated owing to acts of waste by or the neglect or default of the tenant or any licensee of or any person residing with the tenant;

(d) that the tenant has given notice to quit;

(e) that, in the case of a dwelling-house, it is reasonably required by the landlord for occupation as a residence for himself or for his wife or children and the tribunal is satisfied that suitable alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns a dwelling-house suitable for his own accommodation which is available to him or will be available at the time the order takes effect, or would have been so available but for his own act;

(f) that the landlord owns premises which he has previously occupied as a residence and which he reasonably required for occupation as a residence for himself or his wife or his children and that he has complied with any term or condition of the tenancy agreement relating to notice or, if there is no such term or condition, has given the tenant one month's notice to quit in writing;

(g) that, in the case of a dwelling-house, it is reasonably required for occupation by some person in the whole time employment of the landlord;

(h) that, in the case of business premises, they are reasonably required by the landlord for his own occupation and the tribunal is satisfied that suitable alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns business premises suitable for his own accommodation which are available to him or will be available to him at the time the order takes effect or would have been so available but for his own act;

(i) that, in the case of a dwelling-house, it was let by the landlord before the 1st January, 1956, during the temporary absence of the landlord from Malawi either for a definite term which has expired or upon the condition that it should be vacated by the tenant upon the return of the landlord to Malawi;

(j) that the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case a tribunal may include in any order for possession an order requiring the landlord to grant to the tenant a new lease of the reconstructed or rebuilt premises or part thereof on such terms and conditions and for such period not exceeding three years as the tribunal thinks fit;

(k) that the tenant, where the same is his liability, has failed to keep the premises in good and tenantable repair:

Provided that no order for possession of such premises shall be made unless the tenant has failed to effect such repairs within one month of being requested in writing by the landlord to do so;

(l) that the tenant has, since the 1st January, 1954, assigned, sublet or transferred possession of the premises or any part thereof without the consent of the landlord;

(m) that the premises are reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, planning committee or other statutory body or for any purpose which, in the opinion of the tribunal, is in the public interest.

(2) No order for possession of premises shall be made in the exercise of the powers conferred by subsection (1) unless the tribunal considers it reasonable to make such an order.

(3) An order made against a tenant for possession of premises under this section shall not affect the rights under this Act of any subtenant to whom the premises or any part thereof have been lawfully sublet before proceedings for the recovery of possession were commenced nor be in any way operative against such subtenant who shall, subject to this Act, be deemed to become, from the date of such order, the tenant of the landlord upon the terms and conditions of his previous subtenancy.

(4) Upon the making of an order for the recovery of possession of premises, a tribunal may stay or suspend the execution of such order or postpone the date of possession for such period, not exceeding six months, as it thinks fit, and subject to such conditions, if any, in regard to payment by the tenant of arrears of rent or otherwise, as the tribunal thinks fit.

[Ch6001s13]13. Determination of statutory tenancy by tenant

The tenant of any premises may, at any time before the 1st April, 1956, or within three months of any order made in accordance with section 11, determine his statutory tenancy of such premises by giving one month's notice in writing to the landlord.

[Ch6001s14]14. Jurisdiction of courts

No order for possession of premises, except on the ground that rent lawfully due from the tenant has not been paid, shall be made by any court until after the prescribed date or until after the determination of any application made to a tribunal in respect of such premises, whichever is the later.

[Ch6001s15]15. General law of landlord and tenant applicable

Except as otherwise provided by this Act, the law relating to landlord and tenant for the time being in force in Malawi shall apply to all statutory tenancies.

[Ch6001s16]16. Penalties

(1) Any person who contravenes or fails to comply with any order made by a tribunal shall be liable to a fine of £100 and to imprisonment for six months.

(2) Any person convicted of an offence under subsection (1) may, in addition to or in lieu of any other punishment, be ordered to pay compensation to any person who has suffered loss or damage by reason of such offence.

[Ch6001s17]17. Power of High Court to make Rules

The High Court may make Rules prescribing anything which, under this Act, may be or is to be prescribed and generally for the better carrying out of the purposes of this Act.

[Ch6001s18]18. Duration of Act

This Act shall expire upon such date as the Minister may declare by order published in the Gazette.

SCHEDULE s.10

A. COVENANTS BY THE TENANT

1. To pay the rent on the first day of every calendar month in advance.
2. To bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions, outgoings and burdens whatsoever assessed, charged or imposed upon the premises or any part or parts thereof taken separately, or upon the owner or occupier in respect thereof.
3. To bear the cost of all electric light consumed upon the premises as and when supplied thereto.

4. To keep the interior of the premises and all additions thereto erections and structures, and the landlord's fixtures therein, in good and substantial repair and condition (fair wear and tear excepted).

5. Not to make or permit to be made any alteration in, or addition to, the premises without the previous written consent of the landlord, or to cut, maim or injure or suffer to be cut, maimed or injured any walls or timbers thereof.

6. To permit the landlord and his surveyor and agents at all reasonable times to enter upon the premises and to view the condition thereof, and upon notice being given by the landlord, to repair in accordance with the covenant hereinbefore contained.

7. To permit the landlord and his agents, together where necessary with workmen and appliances, at all reasonable times to enter upon the premises to take inventories of the fixtures thereof and to carry out repairs thereto or to adjoining premises.

8. Not to assign, underlet or part with the possession of the premises, or any part thereof, without the previous written consent of the landlord which consent shall not be unreasonably withheld in the case of a respectable and responsible person.

9. Not to permit or suffer any part of the premises to be used so as to cause a nuisance or annoyance to the occupier of adjoining premises or the neighbourhood.

10. To yield up the premises with all additions thereto being fixtures at the determination of the tenancy in good and substantial repair and condition in accordance with the covenants hereinbefore contained.

11. To pay all costs, charges and expenses (including legal practitioners' costs and surveyors' fees) incurred by the landlord for the purpose of or incidental to the preparation and service of a notice under section 14 of the Conveyancing and Law of Property Act, 1881, of the United Kingdom requiring the tenant to remedy a breach of any of the stipulations hereinbefore contained, notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court. 44 & 45 Vict. c. 41

12. In the case of a dwelling-house, not to use the premises for business, trade or professional purposes without the consent of the landlord.

#### B. COVENANTS BY THE LANDLORD

1. That the tenant paying the rent and rates hereby reserved and observing and performing the several stipulations herein on his part contained shall peaceably hold and enjoy the premises during the term, without interruption by the landlord or any person rightfully claiming under and in trust for him.

2. To keep the walls, main timbers, roof and structures of the premises in good and substantial repair and condition.

#### C. GENERAL COVENANTS

1. If any part of the rent shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if the tenant shall become bankrupt or make any assignment for the benefit of, or enter into any arrangement for composition with, his creditors, or if any covenant on the tenant's part herein contained shall not be performed or observed then, and in any of the said cases, it shall be lawful for the landlord at any time thereafter to re-enter in and upon the premises or any part thereof in the name of the whole and thereupon the lease shall absolutely determine, but without prejudice to the right of the landlord in respect of any breach of the tenant's covenants herein contained.

2. In the event of the premises being destroyed or damaged by fire then if the same shall be absolutely destroyed or so damaged as to render them unfit for occupation for a period of more than fourteen days, the rent therefor shall be suspended until the premises shall have been so far repaired by the landlord as to enable the same to be re-occupied.

3. Any request, consent or notice required to be made, given or served in the terms of the lease shall be sufficiently made, given or served to or upon the tenant if left addressed to the tenant on the premises, or forwarded by post to the tenant to his last known address in Malawi, and shall be sufficiently made, given or served to or upon the landlord if delivered to him personally or forwarded by post to his last known address in Malawi, and a request, consent or notice sent by post shall be deemed to be made, given or served at the time when, in due course of post, it would be delivered at the address to which it is sent.

#### SUBSIDIARY LEGISLATION

##### ESTABLISHMENT OF RENT TRIBUNALS

under s. 4 (1)

G.N. 8/1956

Rent tribunals have been established for the following areas—

- (1) The City of Blantyre.
- (2) Dedza District.
- (3) Mangochi District.
- (4) Lilongwe District.
- (5) Mulanje District.
- (6) Ncheu District.
- (7) Zomba District.

##### TEMPORARY CONTROL OF PREMISES (APPEALS) RULES

under s. 8 (4)

G.N. 138/1956

1/1965

1. Citation

These Rules may be cited as the Temporary Control of Premises (Appeals) Rules.

2. Time and fee for appeal

(1) Any appeal under section 8 (2), or request to state a case for the opinion of the High Court under section 8 (3) of the Act, shall be in writing signed by the party to the proceedings or his agent and shall be lodged with the Chairman of the tribunal whose order or determination is questioned within thirty days of such order or determination:

Provided that no notice of appeal, nor request to state a case, shall be received out of time without the leave of the High Court.

(2) The fee for such appeal or request to state a case shall be one Kwacha, excluding any service fee which may be payable.

3. Transfer of case upon appeal

On receiving an appeal under section 8 (2) of the Act the Chairman of the tribunal in question shall enter the appeal together with the date thereof upon the record and shall forthwith transmit the record of the proceedings in the case to the Registrar of the High Court with a certificate under the hand of the Chairman of the tribunal subjoined to the record.

4. Action on receipt of request to state a case

On receipt of a request to state a case under section 8 (3) of the Act the Chairman of the tribunal shall state and sign a case setting forth the facts and the grounds of the order or determination in question and shall transmit the same to the Registrar of the High Court.

5. Service of appeal

On the receipt of an appeal under section 8 (2) or case stated under section 8 (3) of the Act the Registrar of the High Court shall serve a copy of the said appeal or case stated upon the respondent.

6. High Court fees

The practice and procedure, fees to be paid and scales of costs in such appeals or references by way of case stated shall in so far as they are not inconsistent with these Rules be the same as in civil appeals to the High Court.

7. Supreme Court of Appeal fees

The practice and procedure, fees to be paid and scales of costs governing appeals to the Supreme Court of Appeal from the High Court under section 8 (5) of the Act shall be the same as those governing civil appeals to the Supreme Court of Appeal from the High Court.

NOTICE



under s. 11

G.N. 9/1956

The 1st May, 1956, has been prescribed as the date before which applications shall be made to a tribunal established under the Temporary Control of Premises Act.

#### TEMPORARY CONTROL OF PREMISES (FORMS AND FEES) RULES

under s. 17

G.N. 10/1956

##### 1. Citation

These Rules may be cited as the Temporary Control of Premises (Forms and Fees) Rules.

##### 2. Forms

Except as hereinafter provided the forms to be used in proceedings before a tribunal shall be the forms in use in the High Court from time to time with such modification as may be necessary or proper to adapt the same to the matter concerned.

##### 3. Applications

(1) Every application for the determination of a matter under the Act shall be made to the chairman of the tribunal established in the area in which the premises to which the application relates are situated.

(2) Every application shall be substantially in the form set out in the First Schedule or in such other form as the tribunal may allow; it shall be in triplicate and shall be signed by the applicant or his legal practitioner.

(3) The chairman shall cause a copy of such application to be served on the opposite party (hereinafter called "the respondent").

##### 4. Taxation of costs

Where a tribunal directs the costs of any proceedings before it to be taxed, the costs shall be taxed by the chairman on the scale applicable to civil proceedings in the High Court.

##### 5. Fees

The fees specified in the Second Schedule shall be payable in proceedings before a tribunal in respect of the several matters to which they relate.

##### 6. Remittance of fees

A tribunal may in its discretion for such reasons as it may think good and sufficient remit the whole or part of any fee.

FIRST SCHEDULE r.3(2)

TEMPORARY CONTROL OF PREMISES ACT

To the Rent Tribunal of ..... at .....

APPLICATION NO ..... OF ..... 19.....

APPLICATION

Full name of applicant .....

Occupation .....

Place of residence .....

Address for service .....

State whether Tenant or Landlord or otherwise  
.....

Full name of respondent .....

Occupation .....

Place of residence .....

Postal address .....

State whether Tenant or Landlord or otherwise  
.....

Full description of Premises concerned .....

.....

.....

Where situate .....

Were premises subject to the Rent and Mortgage Interest (Restriction) Ordinance, 1944 (No. 13 of 1944) on 31st December, 1955?

.....

Order or Relief sought .....

.....

.....

Plain and concise statement of the facts on which application is based

.....

.....

.....

.....

Signature of Applicant .....

Signature of Legal Practitioner (if any) .....

SECOND SCHEDULE r. 5

FEES

K t

- 1. On application for the determination of any matter or matters under the Act (including service of application and registration fee required by section 7 (3) of the Act), a separate fee to be payable in respect of each tenancy 3 50
- 2. On the issuing of every witness summons or notice at the request of a party 50
- 3. For service of summons, notice or other document on a party or other person at the request of a party 0 50
- 4. On taxation of any bill of costs, for every ten folios 0 50
- 5. For a certified copy of any order of a tribunal 0 50
- 6. For a certified copy of any record of document—
  - For the first folio of 100 words 0 50
  - For each subsequent folio 1 00
- 7. For an uncertified copy of any record of documents—
  - Per folio 0 03
- 8. On filing any document for the filing whereof no other special fee is prescribed in this Schedule 0 50

[Chap6002]CHAPTER 60:02

ENVIRONMENT MANAGEMENT

ARRANGEMENT OF SECTIONS

SECTION

## PART I

### PRELIMINARY

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23 of 1996

G.N. 14/1997

42/1998

An Act to make provision for the protection and management of the environment and the conservation and sustainable utilization of natural resources and for matters connected therewith and incidental thereto

[21ST OCTOBER 1996]

## PART I

### PRELIMINARY

[Ch6002s1]1. Short title

This Act may be cited as the Environment Management Act.

[Ch6002s2]2. Interpretation

In this Act unless the context otherwise requires—

“ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

“analysis” means the examination of any matter, substance or process for the purpose of determining its composition or quality or its effect (whether physical, chemical or biological) on any segment of the environment;

“analyst” means an analyst appointed under section 49;

“biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecological systems and the ecological complexes of which they are part, and includes diversity within or between species and of ecosystems;



“conservation” means the preservation of the natural resources and their protection from misuse, fire or waste;

“Council” means the National Council for the Environment established under section 10 (1);

“dangerous” means harmful or dangerous to public health, plant or animal life or to the environment and “danger” shall be construed accordingly;

“developer” means any person who has proposed or has undertaken to implement a project;

“Director” means the Director of Environmental Affairs appointed under section 9 (1);

“District Development Committee” means the District Development Committee established in every district to initiate, monitor and co-ordinate development policies and activities in that district;

“effluent” means waste water or other fluid originating from a domestic or an agricultural or industrial activity, whether treated or untreated and whether discharged directly or indirectly into the environment;

“environment” means the physical factors of the surroundings of the human being including land, water, atmosphere, climate, sound, odour, taste, and the biological factors of fauna and flora, and includes the cultural, social and economic aspects of human activity, the natural and the built environment;

“environmental audit” means the systematic documentation and periodic and objective evaluation of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“environmental impact assessment” means a systematic evaluation of a project to determine its impact on the environment and the conservation of natural resources;

“environmental impact assessment report” means the environmental impact assessment report required under section 25 (1);

“environmental monitoring” means the continuous or periodic assessment of the actual and potential impact of any activity on the environment;

“environmental planning” means planning that takes into account environmental issues;

“ex-situ” means conservation outside the natural habitat of a biological organism;

“genetic resource” means any genetic material of actual or potential value;

“hazardous substance” means any chemical, waste, gas or gaseous matter, medicines, drugs, plant, animal or microorganism which is injurious to human health or the environment;

“hazardous waste” means waste which is poisonous, corrosive, noxious, explosive, inflammable, radioactive, toxic or harmful to the environment;

“in-situ” means conservation within the natural ecological system and habitat of a biological organism;

“inspector” means an environmental inspector designated under section 45 (1);

“lead agency” means any public office or organization including every Ministry or Government department which is conferred by any written law with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malawi;

“licensing authority” means any person on whom is conferred power under any written law to issue licences in respect of any thing or activity required under that written law to be done or carried out otherwise than in accordance with a licence;

“National Environmental Action Plan” means the national environmental action plan launched by the Government in December 1994, outlining environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“natural resources” means the natural resources of Malawi wherever located;

“occupier” means a person in occupation or control of any premises, and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part;

“oil” includes—

(a) crude oil, diesel oil, fuel oil, lubricating oil, petrol and paraffin, and any other petroleum product capable of causing pollution whether in a solid or liquid form; and

(b) any other substance which may be prescribed by the Minister, by notice published in the Gazette, to be oil for the purposes of this Act;

“owner”, in relation to any premises, means—

(a) the registered owner of the premises in question;

(b) the lessee or sublessee of the premises in question;

(c) the agent, attorney or the personal representative of the owner of the premises;

(d) the person in actual possession of the premises or entitled to receive the rent of the premises, whether on his own account or as agent or trustee of any other person or as receiver;

(e) in relation to any vessel, includes the charterer, pilot or other person in actual control of the vessel, whether or not the vessel is registered in or outside Malawi;

“ozone layer” means the ozone layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“pollutant” means any substance whether in a liquid, solid or gaseous form which directly or indirectly—

- (a) adversely alters or destroys the quality of the environment; or
- (b) is dangerous or potentially dangerous to public health, plant or animal life,

and includes objectionable odours, radioactive substances or particles, noise, vibration, or any substance or particle that causes temperature change or physical, chemical or biological change to the environment;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of the environment caused by the discharge, emission or deposit of waste or a pollutant into the environment in such amounts and for such duration and under such conditions as to cause an actual or potential danger to the environment;

“premises” includes any land, whether covered by buildings or not, any place underground and any land covered by water and hereditament of any tenure and description;

“project” means a development activity or proposal which has or is likely to have an impact on the environment;

“project brief” means the project brief required under section 24 (2);

“proprietary information” means any proprietary information protected by law or by any international treaty or convention to which Malawi is a party;

“Public Appointments Committee” means the Public Appointments Committee established under section 56 (7) of the Constitution;

“segment” in relation to the environment, means any portion or part of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“sustainable utilization” means the use or exploitation of natural resources which guards against the extinction, depletion or degradation of any natural resource of Malawi and permits the replenishment of natural resources by natural means or otherwise;

“Technical Committee” means the Technical Committee on the Environment established under section 16;

“Tribunal” means the Environmental Appeals Tribunal established under section 69;

“vehicle” has the meaning ascribed to it in the Road Traffic Act; Cap. 69:01

“vessel” includes a ship, boat, floating structure or aircraft;

“waste” includes domestic, commercial or industrial waste whether in a liquid, solid, gaseous or radioactive form which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause pollution;

“water” includes surface and underground water, drinking water and water in a river, stream, watercourse, public reservoir, well, dam, canal, channel, lake, swamp or open drain and water in a gaseous or solid form.

## PART II

### GENERAL PRINCIPLES

#### [Ch6002s3]3. National environmental policy

(1) It shall be the duty of every person to take all necessary and appropriate measures to protect and manage the environment and to conserve natural resources and to promote sustainable utilization of natural resources in accordance with this Act and any other written law relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(2) Without prejudice to the generality of subsection (1), every person required under any written law to exercise power or perform functions relating to the protection and management of the environment or the conservation and the sustainable utilization of natural resources shall take such steps and measures as are necessary for—

- (a) promoting a clean environment in Malawi;
- (b) ensuring the sustainable utilization of the natural resources of Malawi;
- (c) facilitating the restoration, maintenance and enhancement of the ecological systems and ecological processes essential for the functioning of the biosphere, and the preservation of biological diversity;
- (d) promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government;
- (e) promoting cooperation with foreign governments and international or regional organizations in the protection of the environment and the conservation and sustainable utilization of natural resources;
- (f) promoting scientific research, technological development and training relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

#### [Ch6002s4]4. Natural and genetic resources

The natural and genetic resources of Malawi shall constitute an integral part of the natural wealth of the people of Malawi and—

- (a) shall be protected, conserved and managed for the benefit of the people of Malawi; and
- (b) save for domestic purposes, shall not be exploited or utilized without the prior written authority of the Government.

[Ch6002s5]5. Right to a decent environment

(1) Every person shall have a right to a clean and healthy environment.

(2) For purposes of enforcing the right referred to in subsection (1), any person may bring an action in the High Court—

(a) to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources;

(b) to procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment for which the public officer is responsible under any written law;

(c) to require that any on-going project or other activity be subjected to an environmental audit in accordance with this Act.

(3) Any person who has reason to believe that his or her right to a clean or healthy environment has been violated by any person may, instead of proceeding under subsection (2), file a written complaint to the Minister outlining the nature of his or her complaint and particulars, and the Minister shall, within thirty days from the date of the complaint, institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Minister has taken or shall take to restore the claimant's right to a clean and healthy environment, including instructing the Attorney General to take such legal action on behalf of the Government as the Attorney General may deem appropriate.

(4) Subsection (3) shall not be construed as limiting the right of the complainant to commence an action under subsection (2):

Provided that an action shall not be commenced before the Minister has responded in writing to the complainant or where the Attorney General has commenced an action in court against any person on the basis of a complaint made to the Minister.

[Ch6002s6]6. Role of lead agencies

Nothing in this Act shall be construed as divesting any lead agency of the powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources or limiting such powers, functions, duties or responsibilities.

[Ch6002s7]7. Inconsistent provisions in other written laws

Where a written law on the protection and management of the environment or the conservation and sustainable utilization of natural resources is inconsistent with any provision of this Act, that written law shall be invalid to the extent of the inconsistency.

PART III

ADMINISTRATION

[Ch6002s8]8. Duties and powers of the Minister

(1) It shall be the duty of the Minister to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the Minister shall, in consultation with lead agencies, take such measures as are necessary for achieving the objects of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister shall—

(a) formulate and implement policies for the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) co-ordinate and monitor all activities concerning the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(c) prepare plans and develop strategies for the protection and management of the environment and the conservation and sustainable utilization of natural resources, and facilitate cooperation between the Government, local authorities, private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) initiate, facilitate or commission research and studies on any aspect of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(e) prepare and lay before the National Assembly at least once in every year a report on the state of the environment;

(f) co-ordinate the promotion of public awareness on the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(g) monitor trends in the utilization of natural resources and the impact of such utilization on any segment of the environment;

(h) receive and investigate any complaint by any person relating to the protection and management of the environment and the sustainable utilization of natural resources;

(i) recommend to the Government, on the advice of the Council, international or regional treaties, conventions or agreements relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources to which Malawi should become party;

(j) promote international and regional cooperation in the protection and management of the environment and the conservation and sustainable utilization of natural resources shared between Malawi and other countries;

(k) on the recommendations of the Council, prescribe, by notice published in the Gazette, projects or classes or types of projects, for which environmental impact assessment is necessary under this Act;

(l) on the recommendations of the Council, prescribe, by notice published in the Gazette, environmental quality criteria and standards necessary for the maintenance of essential ecological processes and a healthy environment;

(m) carry out such other activities and take such other measures as may be necessary or expedient for the administration and achievement of the objects of this Act.

(3) In discharging his duties under this section, the Minister shall, where appropriate, consult the Minister responsible for any segment of the environment.

[Ch6002s9]9. Appointment of Director of Environmental Affairs

(1) There shall be appointed in the public service a Director of Environmental Affairs (in this Act otherwise referred to as the “Director”) and such other suitably qualified public officers as may be required for the proper administration of this Act.

(2) The Director shall—

(a) carry out the duties and functions provided under this Act and such other duties as the Minister may, from time to time, assign to him;

(b) be responsible to the Minister for the proper discharge of his functions under this Act and for the implementation of such policies relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister may determine;

(c) furnish the Council with such information or documents as the Council may require and, from time to time, report to the Council the status of the environment and natural resources.

[Ch6002s10]10. Establishment and composition of the National Council for the Environment

(1) There is hereby established a council to be known as the National Council for the Environment (in this Act otherwise referred to as the “Council”) which shall consist of—

(a) the Chairman of the Council who shall be appointed by the President on the recommendation of the Minister;

(b) the Secretary to the President and Cabinet, or his representative;

(c) all Principal Secretaries of Ministries, or their representatives;

(d) the General Manager of the Malawi Bureau of Standards, or his representative;

(e) the General Manager of the National Herbarium and Botanical Gardens of Malawi, or his representative;

(f) one member nominated by the Malawi Chamber of Commerce and Industry representing the industrial sector and appointed by the Minister;

(g) one member nominated by and representing non-governmental organizations concerned with the protection and management of the environment and the conservation of natural resources and appointed by the Minister;

(h) one representative of the University of Malawi appointed by the Minister;

(i) one member nominated by and representing the National Commission for Women in Development and appointed by the Minister.

(2) The Vice-Chairman of the Council shall be appointed by the Minister from amongst the members of the Council who are not public officers.

(3) The Director shall be the Secretary to the Council.

#### [Ch6002s11]11. Tenure of office and vacancies

(1) The Chairman, Vice-Chairman and the members of the Council referred to in section 10 (2) (f) to (i) shall hold office for three years and shall be eligible for reappointment.

(2) The Chairman, Vice-Chairman and any member referred to in section 10 (2) (f) to (i) shall cease to be a member of the Council—

(a) if he or she resigns as a member of the Council;

(b) if he or she ceases to be a member or employee of the organization that nominated him or her for appointment as a member of the Council;

(c) if, upon conviction of any offence, he or she is sentenced to a term of imprisonment exceeding six months without the option of a fine;

(d) if he or she is of unsound mind; and

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

#### [Ch6002s12]12. Functions of the Council

The Council shall—

(a) advise the Minister on all matters and issues affecting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) recommend to the Minister measures necessary for the integration of environmental considerations in all aspects of economic planning and development;

(c) recommend to the Minister measures necessary for the harmonization of activities, plans and policies of lead agencies and non-governmental organizations concerned with the protection and management of the environment and the conservation and sustainable utilization of natural resources.



[Ch6002s13]13. Proceedings of the Council

(1) Save as is provided in this section, the Council shall regulate its own procedure.

(2) The Council shall hold at least four ordinary meetings in a year, and such number of extraordinary meetings as may be necessary, at such place or places and at such time or times, as the Chairman may determine.

(3) The Chairman shall convene an extraordinary meeting on his own motion or at the request of one-third of the members of the Council within such reasonable period as the Chairman shall deem appropriate.

(4) Half of the members shall form a quorum at a meeting of the Council.

(5) The Chairman, or in his absence the Vice-Chairman, shall preside at any meeting of the Council and, in the absence of both the Chairman and the Vice-Chairman, the members present shall elect amongst their number a chairman to preside at the meeting of the Council.

(6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) The Council may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations of the Council but that person shall have no right to vote.

(8) The Council shall cause to be kept minutes of the proceedings of every meeting of the Council and of every meeting of any committee constituted by the Council.

[Ch6002s14]14. Disclosure of interest

(1) If any person is present at a meeting of the Council or a committee of the Council at which any matter in which that person or his spouse is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

[Ch6002s15]15. Allowances of members of the Council

A member of the Council or committee shall be paid such allowance as the Minister may determine.

[Ch6002s16]16. Technical Committee on the Environment

(1) There is hereby established a committee to be known as the Technical Committee on the Environment (in this Act otherwise referred to as the "Technical Committee") which shall consist of not less than ten members and not more than twenty members each of whom shall have sufficient

knowledge and training in the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(2) The members of the Technical Committee shall be appointed by the Minister on the recommendation of the Council and shall serve in a personal capacity for such period, and shall be paid such allowances and remuneration, as the Minister may determine.

(3) A member of the Technical Committee may, by written notice to the Minister, at any time resign his position.

#### [Ch6002s17]17. Functions of the Technical Committee

The Technical Committee shall—

(a) examine any scientific issue which may be referred to it by the Minister, the Council, the Director or any lead agency relating to the protection and management of the environment and sustainable utilization of natural resources and shall recommend to the Minister, the Council or lead agency, as the case may be, such action as is necessary for achieving the purposes of this Act;

(b) carry out investigations and conduct studies into the scientific, social and economic aspects of any activity, occurrence, product or substance which may be referred to the Minister, the Council, the Director or any lead agency and shall, at the completion of the investigation or study, recommend to the Minister, the Council or lead agency, as the case may be, such action as is necessary for achieving the objectives of this Act;

(c) recommend to the Council the criteria, standards and guidelines for environmental control and regulation, including the form and content of environmental impact assessments.

#### [Ch6002s18]18. Proceedings of the Technical Committee

(1) The Technical Committee shall adopt its own rules of procedure and every meeting of the Committee shall be presided over by a Chairman elected by the members from amongst their number, and the Director shall be the Secretary to the Committee.

(2) The Technical Committee may, where it deems it necessary, invite any person to attend and participate in the meetings of the Committee provided that such a person shall not have a right to vote at such a meeting.

#### [Ch6002s19]19. Functions of District Development Committees

A District Development Committee shall, in addition to its existing role—

(a) under the supervision of the District Environmental Officer, prepare every five years, a district environmental action plan;

(b) co-ordinate the activities of lead agencies and non-governmental organizations in the protection and management of the environment and conservation and sustainable utilization of natural resources in the district;

(c) promote and disseminate information relating to the environment through public awareness programmes and prepare reports on the state of the environment in the district every two years at least two months before the end of each second calendar year.

[Ch6002s20]20. District Environmental Officer

(1) There shall be appointed for each district a District Environmental Officer who shall be a public officer.

(2) The District Environmental Officer shall be a member of the District Development Committee and shall—

(a) advise the District Development Committee on all matters relating to the environment and in the performance of its functions under section 19;

(b) report to the Director on all matters relating to the protection and management of the environment and conservation and sustainable utilization of natural resources;

(c) submit such reports to the Director as the Director may require;

(d) promote environmental awareness in the district on the protection and management of the environment and the conservation of natural resources;

(e) gather and manage information on the environment and the utilization of natural resources in the district; and

(f) perform such other functions as the Director may, from time to time, assign to him.

PART IV

ENVIRONMENTAL PLANNING

[Ch6002s21]21. Environmental planning at national level

The Minister shall lay before the National Assembly a copy of the National Environmental Action Plan for approval at its next meeting after the commencement of this Act and the Minister shall thereafter review it every five years subject to approval by the National Assembly.

[Ch6002s22]22. Purposes and contents of action plan

The purpose of the National Environmental Action Plan shall be to promote and facilitate the integration of strategies and measures for the protection and management of the environment into plans and programmes for the social and economic development of Malawi.

[Ch6002s23]23. Planning at district level

(1) The district environmental action plan prepared under section 19 (a) shall—

(a) be in conformity with the National Environmental Action Plan;

(b) identify environmental problems in the district in question;

- (c) be approved by the Minister on the recommendation of the Council; and
- (d) be disseminated to the public by the District Development Committee.

(2) No person shall implement a development activity or project in any district otherwise than in accordance with the district environment action plan for the district in question.

## PART V

### ENVIRONMENTAL IMPACT ASSESSMENT, AUDITS AND MONITORING

[Ch6002s24]24. Projects for which an environmental impact assessment is required

(1) The Minister may, on the recommendation of the Council specify, by notice published in the Gazette, the types and sizes of projects which shall not be implemented unless an environmental impact assessment is carried out.

(2) A developer shall, before implementing any project for which an environmental impact assessment is required under subsection (1), submit to the Director, a project brief stating in a concise manner—

- (a) the description of the project;
- (b) the activities that shall be undertaken in the implementation of the project;
- (c) the likely impact of those activities on the environment;
- (d) the number of people to be employed for purposes of implementing the project;
- (e) the segment or segments of the environment likely to be affected in the implementation of the project;
- (f) such other matters as the Director may in writing require from the developer or any other person who the Director reasonably believes has information relating to the project.

(3) Where, upon examining the project brief, the Director considers that further information is required to be stated in the project brief before an environmental impact assessment is conducted, the Director shall require the developer, in writing, to provide such further information as the Director shall deem necessary.

[Ch6002s25]25. Environmental impact assessment reports

(1) Where the Director considers that sufficient information has been stated in the project brief under section 24, the Director shall require the developer, in writing, to conduct, in accordance with such guidelines as the Minister may, by notice published in the Gazette prescribe, an environmental impact assessment and to submit to the Director, in respect of such assessment, an environmental impact assessment report giving—

- (a) a detailed description of the project and the activities to be undertaken to implement the project;

(b) the description of the segment or segments of the environment likely to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project;

(c) the description of the technology, method or process to be used in the implementation of the project and of any available alternative technology, method or process, and the reasons for not employing the alternative technology, method or process;

(d) the reasons for selecting the proposed site of the project as opposed to any other available alternative site;

(e) a detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects on the environment of the project;

(f) an identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment;

(g) an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment;

(h) an outline of any gaps, deficiencies and the adverse environmental concerns arising from the environmental impact assessment and from the compilation of the environmental impact assessment report;

(i) a concise description of the method used by the developer to compile the information required under this section.

(3) The environmental impact assessment report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under this Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilization of natural resources.

#### [Ch6002s26]26. Review of environmental impact assessment reports

(1) Upon receiving the environmental impact assessment report, the Director shall invite written or oral comments from the public thereon, and where necessary may—

(a) conduct public hearings at such place or places as the Director deems necessary for purposes of assessing public opinion thereon;

(b) require the developer to redesign the project or to do such other thing as the Director considers desirable taking into account all the relevant environmental concerns highlighted in the environmental impact assessment report, any comments made by the public and the need to achieve the objectives of this Act;

(c) require the developer to conduct a further environmental impact assessment of the whole project or such part or parts of the project as the Director may deem necessary, or to revise the information compiled in the environmental impact assessment report;

(d) recommend to the Minister to approve the project subject to such conditions as the Director may recommend to the Minister.

(2) In considering whether or not to recommend to the Minister the approval of any project or of any condition, the Director shall take into account any likely impact of the project on the environment and the actual impact of any existing similar project on the environment.

(3) A licensing authority shall not issue any licence under any written law with respect to a project for which an environmental impact assessment is required under this Act unless the Director has certified in writing that the project has been approved by the Minister under this Act or that an environmental impact assessment is not required under this Act.

#### [Ch6002s27]27. Environmental audits

(1) The Director shall, in consultation with such lead agency as he may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act.

(2) For purposes of subsection (1), the Director may require a developer to keep such records and submit to the Director such reports as the Director may deem necessary.

(3) A developer shall take all reasonable measures for mitigating any undesirable effects on the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an environmental impact assessment and shall, within a reasonable time, report to the Director such effects and measures.

#### [Ch6002s28]28. Monitoring existing projects

The Director shall take such measures as are necessary for ensuring that the implementation of any project commenced before the coming into force of this Act complies with the provisions of this Act.

#### [Ch6002s29]29. Fees

The Minister may, by notice published in the Gazette, prescribe such fees as may be necessary for covering reasonable costs for scrutinizing environmental impact assessment reports and for the subsequent monitoring of a project which has been approved for implementation under this Act.

### PART VI

#### ENVIRONMENTAL QUALITY STANDARDS

#### [Ch6002s30]30. Power to prescribe environmental quality standards

(1) The Minister may, on the advice of the Council, prescribe environmental quality standards generally and, in particular, for air, water, soil, noise, vibrations, radiation, effluent and solid waste.

(2) The prescription of the environmental quality standards under subsection (1) shall be based on scientific and environmental principles and shall take into account the practicability and availability of appropriate technology for ensuring compliance with such standards.

(3) The Minister may prescribe different environmental quality standards to apply in different areas of Malawi with respect to different segments of the environment and the Minister may, from time to time, vary such standards.

## PART VII

### ENVIRONMENTAL MANAGEMENT

#### [Ch6002s31]31. Environmental incentives

The Minister, on the recommendation of the Council and in consultation with the Minister of Finance, shall determine—

(a) such fiscal incentives as are necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources; and

(b) such measures as are necessary for preventing the unsustainable use of natural resources and controlling the generation of pollutants.

#### [Ch6002s32]32. Environmental protection areas

(1) The Minister may, on the recommendation of the Council, declare any area of Malawi, other than an area declared to be a wild reserve, forest reserve, game reserve, national park or monument under any written law, to be an environmental protection area.

(2) In determining whether or not to declare any area an environmental protection area, the Minister shall have regard to—

- (a) representations made by any person who has sufficient interest in the area;
- (b) the natural features and beauty of the area;
- (c) the flora and fauna of the area;
- (d) the unique or special geological, physiographical, ecological or historical and cultural features of the area;
- (e) any special scientific feature or biological diversity of or existing in the area;
- (f) the proneness of the area to any hazards against which the area requires protection;
- (g) the interests of the local communities in or around the area;

(h) the need for the Government to comply with any international obligation under any treaty, convention or an agreement to which Malawi is party.

(3) The Director shall, in consultation with relevant lead agencies, prepare an environmental protection plan for the protection and management of every environmental protection area, and the environmental protection plan shall—

(a) set out policies for the protection and management of the environmental protection area; and

(b) provide for the development of social amenities and facilities necessary for carrying out scientific research in the environmental protection area.

### [Ch6002s33]33. Environmental protection orders

(1) The Director shall have power to issue environmental protection orders against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources, and the environmental protection orders shall be in the prescribed form and, if no such form is prescribed, in such form as the Director may determine.

(2) Notwithstanding the provisions of any other law to the contrary, the environmental protection order may require the person against whom it is made to—

(a) take such measures as are necessary for the restoration of any land degraded by reason of the activities of the person against whom the environmental protection order is made including the replacement of soil, the replanting of trees and other flora, and the restoration, as far as may be possible, of unique geological, physiographical, ecological or historical features of the land and of waste disposal sites;

(b) stop, prevent or modify any action or conduct which causes or contributes or is likely to cause or contribute to pollution;

(c) remove, at the expense of the person against whom the environmental protection order is made, any waste or refuse deposited by that person, or with his or her knowledge or authority, in a place specified in the environmental protection order and to dispose of the waste or refuse in such manner and place and within such period as may be specified in the environmental protection order;

(d) pay such compensation as may be specified in the environmental protection order to any person whose land is degraded by the action or conduct of the person against whom the environmental protection order is made.

(3) An environmental protection order issued under subsection (1) shall, in addition to the matters referred to in that subsection, specify—

(a) the activity considered by the Director to be detrimental to the protection and management of the environment and the conservation and sustainable utilization of natural resources;



- (b) the particulars of the person or persons against whom it is made;
- (c) the period within which anything required to be done by the person against whom it is made shall be done;
- (d) the penalties which may be imposed for non-compliance with the environmental protection order; and
- (e) such other matters as the Director may consider necessary for the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(4) The Director shall have power to inspect, at any reasonable time, any activity on any premises for purposes of determining whether the activity is harmful to the environment or the conservation of natural resources or whether to make an environmental protection order under subsection (1).

(5) For purposes of subsection (4) the Director may enter any premises at any reasonable time to enforce the environmental protection order and the Director shall not be responsible for the consequences of any action reasonably taken by him in good faith under this section.

(6) Subject to subsection (5), any person aggrieved with the environmental protection order may, within thirty days from the date on which it is made, appeal to the Tribunal, and the appellant shall indicate whether the appeal is against the whole environmental protection order or against only a part or parts thereof and, if so, which part or parts.

(7) The Director may delegate the power referred to in subsections (4) and (5) to an inspector or any person duly authorized by him and anything done by that person shall be deemed to be done by the inspector or by the Director and shall be valid for all purposes.

(8) An environmental protection order shall be served on the person against whom it is made or his agent or legal practitioner.

#### [Ch6002s34]34. Enforcement of environmental protection order

(1) Where a person against whom an environmental protection order is served fails, neglects or refuses to take the action specified in the environmental protection order, the Director shall take such action as he deems appropriate for achieving the purposes for which the environmental protection order is made.

(2) Where the Director has taken action pursuant to subsection (1), the Director shall be entitled to recover in full from the person against whom the environmental protection order is made the expenses reasonably incurred by the Director for taking such action, and if the expenses remain unpaid for a period of more than thirty days from the date of first demand in writing by the Director, the amount in respect of the expenses shall be recoverable by the Government as a civil debt.

#### [Ch6002s35]35. Conservation of biological diversity

(1) The Minister may, on the advice of the Council—

- (a) identify the components of the biological diversity of Malawi;
- (b) determine the component or components of biological diversity which is or are threatened with extinction;
- (c) prepare and maintain an inventory of the biological diversity of Malawi;
- (d) determine actual and potential threats to the biological diversity of Malawi and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;
- (e) devise measures for the better protection and conservation of rare and endemic species of wild fauna and flora;
- (f) develop national strategies, plans and programmes for the conservation of the biological diversity of Malawi;
- (g) require in writing any developer, including the Government, to integrate the conservation and sustainable utilization of the biological diversity of Malawi in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Malawi;
- (h) on the recommendation of the Technical Committee, prohibit or restrict access by any person to or the exportation of any component of the biological diversity of Malawi.

(2) The Minister may, on the advice of the Council and in consultation with the Minister responsible for the matter in question, take such action or measure as is necessary for—

- (a) promoting such land use methods as are compatible with the conservation of the biological diversity of Malawi;
- (b) the selection and management of environmental protection areas for the conservation of the various terrestrial and aquatic ecological systems in Malawi;
- (c) the establishment and management of buffer zones near environmental protection areas;
- (d) the protection of threatened animal and plant species, habitats and ecological systems;
- (e) controlling the importation of alien and plant species;
- (f) identifying, promoting and integrating traditional knowledge into the conservation and sustainable utilization of the biological diversity of Malawi; and
- (g) the establishment and management of germplasm banks, botanical gardens, zoos and animal orphanages and such other similar facilities.

(3) Where the Minister considers it desirable so to do, he may, on the advice of the Council, recommend to the Minister responsible for wildlife, the release of any animal or animal species conserved ex-situ or in-situ into its natural habitat or ecological system.

[Ch6002s36]36. Access to genetic resources

(1) The Minister, on the recommendations of the Council, may, by regulations published in the Gazette, control or restrict access by any person to the genetic resources of Malawi.

(2) Without prejudice to the generality of subsection (1), the regulations may—

(a) prohibit the exportation of germplasm, except in accordance with a licence issued by the Minister and subject to such conditions as the Minister may impose;

(b) provide for the sharing of benefits arising from the technological exploitation of germplasm originating from Malawi between the owner of the technology and the Government;

(c) provide for fees payable in respect of an export licence issued under subsection (2) (a) and for a charge payable for accessing germplasm.

[Ch6002s37]37. Waste management

(1) The Minister, on the recommendations of the Council, may, by regulations published in the Gazette, control the management, transportation, treatment and recycling, and safe disposal of waste and for prohibiting littering of public places.

(2) The Minister may recommend to the Minister responsible for local government the promulgation of such rules or the formulation of such measures as are necessary to regulate the collection, transportation and safe disposal of waste by local authorities.

(3) The Minister may, on the recommendation of the Council—

(a) formulate criteria and standards for the classification and analysis of waste and shall, subject to the rules or measures referred to in subsection (2), determine the method or methods for safe disposal of waste;

(b) control the handling, storage, transportation, classification, importation, exportation and destruction of waste;

(c) monitor any waste disposal site and direct the control of any such site if its continued use as a waste disposal site constitutes or is likely to constitute a hazard to the health of the people living in the vicinity of, or to the environment adjacent to, the site.

[Ch6002s38]38. Licences for waste

(1) No person shall handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site or plant, or generate waste except in accordance with a licence issued under this section.

(2) The Minister may, on the advice of the Council, grant to any person a licence to handle, store, transport, classify or destroy any waste, including hazardous waste, or to generate waste or to operate a waste disposal site or plant, subject to such conditions as the Minister may determine.

(3) An application for a licence under this section shall be in the prescribed form or, if no such form is prescribed, in such form as the Minister may determine, and the form shall contain the applicant's full names, postal and physical address and such other particulars as the Minister may require.

(4) Any person who, at the commencement of this Act, is carrying on the business of handling, storing, transporting, classifying, destroying or disposing of waste shall apply for a licence under this section within six months from the date of the commencement of this Act.

(5) The Minister may, at anytime, revoke any licence issued under this section or vary any condition attached to the licence if the activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or if the licensee violates any condition endorsed on the licence.

(6) The Minister may delegate the power to issue a licence under this section to the Director and any thing done by the Director in the exercise of that power shall be valid for all purposes as if it had been done by the Minister.

#### [Ch6002s39]39. Importation and exportation of hazardous waste

(1) Notwithstanding the Control of Goods Act, no person shall import or export any hazardous waste or substance, except under a permit issued by the Minister subject to such conditions as the Minister may determine, and in the case of exportation, the exporter shall before a permit is issued produce to the Minister written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country. Cap. 18:08

(2) No person shall transport within Malawi hazardous waste or substances, except under a permit issued by the Minister subject to such conditions as the Minister may impose.

#### [Ch6002s40]40. Classification of pesticides and hazardous substances

(1) The Minister may, in consultation with the Minister responsible for agriculture, make rules for classifying pesticides and hazardous substances, and for determining their toxicity.

(2) Without prejudice to the generality of subsection (1), the rules may make provision—

(a) requiring the registration, labelling and packaging of pesticides and hazardous substances;

(b) for measures for controlling the manufacture, importation and exportation of pesticides and hazardous substances;

(c) for the distribution, storage, handling and transportation of pesticides and hazardous substances;

(d) for monitoring the impact of pesticides and hazardous substances and their residuary effect on public health, the environment and natural resources;

(e) for restricting or banning pesticides and hazardous substances.

[Ch6002s41]41. Protection of the ozone layer

(1) The Director shall carry out national studies on substances, activities and practices that deplete or are likely to deplete the stratospheric ozone layer and other components of the stratosphere, and on the completion of each study, the Director shall submit the report of the study to the Minister.

(2) The Minister may, on the recommendation of the Council, make regulations—

(a) restricting or prohibiting the use of any appliance, equipment or any other thing which uses ozone depleting substances;

(b) requiring any person to make, in such manner and in such form as the Minister may determine, regular reports to the Minister on the generation, consumption and importation of ozone depleting substances;

(c) providing for the progressive reduction and eventual elimination of substances that deplete the ozone layer;

(d) providing for the control of activities and practices likely to deplete the ozone layer; and

(e) providing for such as matters as are necessary for protecting the stratospheric ozone layer.

(3) Notwithstanding the provisions of the Control of Goods Act, no person shall import or export any appliance, equipment or any other thing which uses substances that deplete the stratospheric ozone layer except under a licence issued by the Minister and subject to such conditions as the Minister may determine. Cap. 18:08

PART VIII

POLLUTION CONTROL

[Ch6002s42]42. Discharge of pollutants

(1) No person shall discharge or emit any pollutant into the environment, except in accordance with this Act.

(2) It shall be the duty of any person to prevent the discharge or emission of any pollutant into the environment otherwise than in accordance with this Act and to comply with such general or specific directions of the Minister or Director for preventing, minimizing or cleaning up, removing or disposing of any pollutant discharged or emitted into the environment.

(3) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act may be required by the Minister to clean up, remove or dispose of the pollutant in such manner and within such period as the Minister shall direct.

[Ch6002s43]43. Licence to discharge effluent, etc.

(1) No person shall discharge effluent or emit any gas or other gaseous substances into the environment except under a licence issued by the Minister subject to such conditions as the Minister shall determine.

(2) The Minister may revoke any licence issued under this section if the licensee fails to comply with the conditions of the licence or any provision of this Part:

Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

(3) The Minister may, by notice published in the Gazette, prescribe such fees as he shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment.

[Ch6002s44]44. Prohibition of pollution

No person shall pollute or permit or cause any other person to pollute the environment.

## PART IX

### INSPECTION, ANALYSIS AND RECORDS

[Ch6002s45]45. Environmental inspectors

(1) For purposes of ensuring compliance with the provisions of this Act, the Minister may, by notice published in the Gazette, designate such number of public officers as he may consider necessary to be environmental inspectors whose functions shall be to administer, monitor and enforce measures for the protection and management of, and for the prevention and abatement of pollution to, the environment.

(2) Every inspector shall be issued with an identity card, and the identity card shall constitute prima facie evidence that the holder thereof is an inspector duly designated by the Minister under subsection (1).

(3) An inspector shall, on demand by any person affected by the exercise of the powers of the inspectors under this Act, produce for inspection, the identity card referred to in subsection (2).

[Ch6002s46]46. Powers of inspectors

(1) An inspector may, for the purpose of performing the functions referred to in section 45 (1), enter, at any reasonable time, any premises to examine any activity which the inspector reasonably considers to be detrimental to the environment or natural resources and to collect therefrom samples of any pollutant or other substance for analysis at any laboratory designated by the Minister under section 48.

(2) Upon entering the premises, the inspector may require the owner or occupant or the agent of the owner or occupant of the premises to produce for inspection any book, document or record or copies thereof for retention by the inspector concerning any matter relevant to the administration of this Act.

(3) It shall be the duty of the owner or occupant or the agent of the owner or occupant of the premises to render an inspector reasonable assistance in the performance by the inspector of the functions referred to in section 45 (1).

(4) An inspector may—

(a) inspect and examine any vehicle, in or upon which he has reasonable cause to believe that a pollutant or other article or substance which he believes to be a pollutant is being or has been transported;

(b) order the production of any document pertaining to the transportation of the pollutant or such other article or substance;

(c) collect any sample of the pollutant of any such substance from the vehicle or place where it has been delivered for analysis at a laboratory designated by the Minister under section 48;

(d) request information from any person who has or appears to have custody or control of the pollutant or such other article or substance or the vehicle in which it is or has been transported.

#### [Ch6002s47]47. Procedure for taking samples

(1) An inspector shall, before collecting from the premises or vehicle a sample of any pollutant or other article or substance which the inspector believes to be a pollutant, inform the owner or occupier of the premises or vehicle or other person in control of the vehicle from which the sample is to be taken of his intention to do so.

(2) The inspector shall place the sample in three separately sealed packages and shall deliver one package each to the Director, to the laboratory at which the sample will be tested or analyzed and to the owner or occupier of the premises or vehicle or other person in control of the vehicle.

(3) Any dispute arising from the manner in which a sample is collected by an inspector or in connexion with the results of any laboratory test or analysis of the sample shall be referred by the aggrieved person or the Director, as the case may be, to the Tribunal.

#### [Ch6002s48]48. Establishment or designation of analytical laboratories

The Minister may, by notice published in the Gazette, establish, or where he deems it necessary, designate such laboratories as he thinks fit to be analytical laboratories or reference laboratories at which samples taken under this Act may be tested or analyzed.

#### [Ch6002s49]49. Appointment of analysts

There shall be appointed in the public service such number of analysts as may be required to carry out such functions and exercise such powers as are necessary for achieving the purposes of this Act.

[Ch6002s50]50. Certificate of analysis, etc.

(1) There shall be issued by every analyst in respect of any test or analysis, a certificate showing the results of the test or analysis.

(2) The certificate shall state the method or methods used in carrying out the test or analysis and shall be signed by the analyst who carried out the test or analysis.

(3) A certificate issued under this section shall be prima facie evidence of the results of any test or analysis carried out under this Act.

[Ch6002s51]51. Keeping of records

(1) The Director may, by notice published in the Gazette, prescribe the activities in respect of which records shall be kept for the purposes of this Act and may require any person in possession or control of such records to transmit the records to the Director at such intervals as the Director may determine.

(2) The records shall be used by the Director or an inspector for purposes of environmental auditing, monitoring, control and inspection and such other purposes related to the protection and management of the environment and the conservation and sustainable utilization of natural resources.

[Ch6002s52]52. Public access to information and prohibition of disclosure

(1) Subject to subsection (3), every person shall have access to any information submitted to the Director or any lead agency relating to the implementation of the provisions of this Act or any other law relating to the protection and management of the environment and to the conservation and sustainable utilization of natural resources.

(2) Notwithstanding subsection (1), no person shall be entitled to have access to proprietary information (to which the Trade Marks Act or the Patents Act applies) submitted to or received by the Director under this Act unless with the prior written consent of the owner of the proprietary information. Cap. 49:01, Cap. 49:02

(3) No person shall, without the consent of the Director, publish or disclose to any person, otherwise than in accordance with the provisions of this Act, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K2,000 and not more than K100,000, and to imprisonment for twelve months.

PART X



## ENVIRONMENTAL FUND

### [Ch6002s53]53. Establishment of Environmental Fund

(1) There is hereby established a fund to be known as the Environmental Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

- (a) such sums as shall be appropriated by Parliament for the purposes of the Fund;
- (b) advances made to the Fund under section 55;
- (c) such sums or other assets as may be received for the purposes of the Fund by way of voluntary contributions or donations;
- (d) such sums as are paid by way of fees or other penalties in respect of licences issued under this Act.

### [Ch6002s54]54. Vesting of Fund in the Minister

The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions. Cap. 37:01

### [Ch6002s55]55. Advances to the Fund

If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

### [Ch6002s56]56. Objects of the Fund

The objects for which the Fund is established shall be the protection and management of the environment and the conservation and sustainable utilization of natural resources.

### [Ch6002s57]57. Application of the Fund

Without derogation from the generality of section 56, the Fund, may be applied to—

- (a) research and training which is calculated to promote the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;
- (c) the cost of any scheme which the Minister considers to be in the interest of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) meeting any expenses arising from the establishment and maintenance of the Fund;  
and

(e) any purpose which the Minister considers to be in the interest of the objects of the Fund.

[Ch6002s58]58. Books and other records of account, audit and reports of the Fund

(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Finance and Audit Act. Cap. 37:01, Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General who shall have all the powers conferred upon him by the Finance and Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

[Ch6002s59]59. Holdings of the Fund

(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Council, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

[Ch6002s60]60. Financial year

The financial year of the Fund shall be the period of twelve months commencing on 1st April in one year and ending on the 31st March of the following year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART XI

OFFENCES

[Ch6002s61]61. General offences

(1) Any person who contravenes any provision of this Act for which no other penalty is specifically provided shall be guilty of an offence and liable, upon conviction, to a fine of not less than K10,000 and not more than K500,000 and to imprisonment for five years.

(2) Any person who is convicted of an offence under subsection (1) shall, in addition to the fine provided for in that subsection, be liable to a fine of K5,000 for each day the offence continues to be committed.

[Ch6002s62]62. Hindering, obstructing, etc., of inspectors

Any person who—

- (a) hinders or obstructs an inspector in the execution of his or her duties under this Act;
- (b) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;
- (c) prevents the Director or an inspector or any person duly authorized by the Director or inspector from gaining entry upon or into any premises which he or she is empowered under this Act to enter;
- (d) impersonates the Director or an inspector or any person duly authorized by the Director or inspector;
- (e) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;
- (f) misleads or gives false information to the Director or an inspector or any person duly authorized by the Director or inspector under this Act; or
- (g) fails to comply with measures directed by the Minister, the Director or an inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

[Ch6002s63]63. Offences relating to environmental impact assessments

Any person who contravenes section 24 (3) or fails to prepare an environmental impact assessment report or knowingly gives false information in an environmental impact assessment report contrary to section 25 shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

[Ch6002s64]64. Offences relating to records

Any person who—

- (a) fails to keep records required under this Act or under any regulations made under this Act;
- (b) fraudulently or knowingly alters any such records,

shall be guilty of an offence and be liable, upon conviction, to a fine of not less than K5,000 and not exceeding K200,000 and to imprisonment for two years.

[Ch6002s65]65. Offences relating to environmental standards and guidelines

Any person who—

- (a) violates any environmental standard established under this Act;
- (b) violates any measure prescribed under this Act; or
- (c) uses natural resources otherwise than in accordance with this Act,

shall be guilty of an offence and shall be liable upon conviction to a fine of not less than K5,000 and not more than K200,000 and to imprisonment for two years.

[Ch6002s66]66. Offences relating to hazardous materials, processes, and wastes

Any person who—

- (a) fails to manage hazardous materials, processes and wastes in accordance with this Act;
- (b) knowingly or fraudulently mislabels wastes, pesticides or chemicals;
- (c) aids or abets the illegal trafficking in wastes, chemicals, pesticides or hazardous processes, wastes or substances,

shall be guilty of an offence and shall upon conviction be liable to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

[Ch6002s67]67. Offences relating to pollution

(1) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine of not less than K20,000 and not more than K1,000,000 and to imprisonment for ten years.

## PART XII

### LEGAL PROCEEDINGS

[Ch6002s68]68. Immunity of officials

No legal proceeding shall be brought against the Minister, Director, an inspector, an analyst or any other person duly authorized by the Minister, the Director, inspector or analyst to do anything authorized under this Act, in respect of anything done in good faith under the provisions of this Act.

[Ch6002s69]69. Establishment of Environmental Appeals Tribunal

There is hereby established an Environmental Appeals Tribunal (in this Act otherwise referred to as the “Tribunal”) which shall—

- (a) consider appeals against any decision or action of the Minister, Director or inspector under this Act;

(b) consider appeals against the refusal by the Minister or Director to issue a licence under this Act;

(c) consider appeals against the revocation by the Minister or Director of a licence issued under this Act;

(d) consider appeals against the closure pursuant to this Act of any premises;

(e) consider such other issues relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources as the Minister, the Director or any person may refer to it.

#### [Ch6002s70]70. Composition of Tribunal

(1) The Tribunal shall consist of—

(a) a suitably trained and qualified person appointed by the President, on the recommendation of the Minister, who shall be the Chairman; and

(b) two other members appointed by the President, on the recommendation of the Minister, both of whom shall be sufficiently qualified in the protection and management of the environment and the conservation and sustainable utilization of natural resources,

and the appointment of each member of the Tribunal shall be subject to confirmation by the Public Appointments Committee.

(2) The decisions of the Tribunal shall be by a majority.

(3) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of this Act.

(4) The Tribunal shall make its own rules of procedure and shall have power to—

(a) summon any person to give evidence in any proceedings before the Tribunal or to produce to the Tribunal any document relevant to the proceedings before it;

(b) confirm, vary, amend or alter a decision made by the Minister, the Director or inspector or reverse or substitute such decision for any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(7) Any person aggrieved with the decision of the Tribunal may appeal to the High Court within thirty days from the date of the decision of the Tribunal.

#### [Ch6002s71]71. Failure to attend

If a party fails to attend or to be represented at the proceedings of the Tribunal without good cause, the Tribunal may proceed in the absence of that party or representative.

#### [Ch6002s72]72. Representation of parties

- (1) A party to any proceedings before the Tribunal may—
- (a) appear personally; or
  - (b) be assisted or represented by a legal practitioner.

[Ch6002s73]73. Enforcement orders

Any decision or order of the Tribunal shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.

[Ch6002s74]74. Costs

(1) Subject to subsection (2), the Tribunal shall not make any order as to costs but nothing in this subsection shall prevent a legal practitioner from agreeing with his or her client the payment of solicitor and own client costs.

(2) The Tribunal may make an order as to costs where a party fails to attend, without good cause, any proceedings of the Tribunal or where the matter is vexatious or frivolous.

[Ch6002s75]75. Liability of bodies corporate, etc.

(1) Where an offence under this Act is committed by a body corporate or a partnership—

(a) in the case of the body corporate, every director, manager or similar officer of the body corporate shall be guilty of the offence; and

(b) in the case of a partnership, every partner shall jointly and severally be guilty of the offence.

(2) A person shall not be guilty of an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

## PART XIII

### MISCELLANEOUS PROVISIONS

[Ch6002s76]76. Closure of premises

(1) Where the Director believes, on reasonable grounds, that this Act or any regulations made thereunder, have been contravened, the Director may, subject to subsection (2), order the closure of any premises by means of, or in relation to which the Director reasonably believes the contravention was committed.

(2) The closure of any premises shall cease after the provisions of this Act or any regulations made thereunder have, in the opinion of the Director, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed until the proceedings are finally concluded.

[Ch6002s77]77. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act.

SUBSIDIARY LEGISLATION

ENVIRONMENT MANAGEMENT (MANAGEMENT OF OZONE DEPLETING SUBSTANCES) REGULATIONS

under s. 41

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Environment Management (Management of Ozone Depleting Substances) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“consumption” means production plus imports less exports of ozone depleting substances;

“CFCs” means chlorofluorocarbons listed in the First Schedule;

“HCFCs” means hydrochlorofluorocarbons listed in the Third Schedule;

“ODS” means ozone depleting substances listed in the First, Second, Third and Fifth Schedules;“

“ODS Technologies” means the equipment or materials containing or made with ozone depleting substances listed in the Fourth Schedule;

“Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer of 1987 and as amended at London, Copenhagen and Vienna;

“refrigerant” means a substance, whether part or mixture, that is used as a coolant in a refrigerator, freezer, cold room, dehumidifier, heat pump or an air conditioner; and

“training” means training in refrigeration and air conditioning.

3. Application

These Regulations shall apply to—

(a) every importer and distributor of ozone depleting substances;

(b) every importer of technology which uses ozone depleting substances;

(c) every company and an individual who services refrigerators, air conditioners including mobile and other ozone depleting substances technologies;

- (d) every company and an individual using servicing fire extinguishers;
- (e) any company, an individual and farmer using ODS;
- (f) the relevant Government ministries and departments; and
- (g) the general public.

## PART II

### CONTROL MEASURES

#### 4. Import permit for ODS

(1)(a) Any person who wants to import ODS shall apply for an import permit from the Minister:

- (b) An import permit shall be in the form set out in the Sixth Schedule.

(2) The Department of Customs and Excise shall submit to the Minister duplicate copies of all import declarations of the ODS.

(3) Any person who supplies or distributes the ODS shall keep a record of names and addresses of the persons to whom the ODS have been supplied or distributed.

(4)(a) Any person importing ODS shall cause all the containers of ODS to have a label bearing the:

- (i) name of the manufacturer;
- (ii) the name of the country of origin; and
- (iii) Chemical Abstracts (CAS) Registry number;

(b) Any person who contravenes the provisions of subregulation 4 (a) commits an offence.

#### 5. Export permit

Any person exporting ODS shall apply to the Minister for an export permit.

#### 6. Second hand refrigerators

With effect from 1st April, 1998, no person shall import second-hand refrigerators and air conditioners which are designated to use CFC-12 (R-12) or CFC-11 (R-11) as coolant.

#### 7. New CFC refrigerators

With effect from 1st January, 1999, no person shall import brand new CFC refrigerators and air conditioners.

#### 8. Vehicles fitted with air conditioners, etc.



With effect from 1st January, 1999, any person importing vehicles fitted with an air conditioner or refrigeration unit shall ensure that the cooling units are fitted with CFC-free coolants.

9. Aerosol products

(1) With effect from the date of entry into force of the Regulations and subject to subregulation (2), no person shall bring into the country any aerosol product which uses CFCs as carrier gases or propellants.

(2) Medical aerosols used in asthma metered dose inhalers (MDIs) may continue being imported.

10. Import of new ODS

With effect from 1st January, 2004, no person shall import new ODS.

11. Use of ODS

With effect from 2007, no person shall use ODS listed in the First and Second Schedules.

12. Investment project

With effect from the date of entry into force of these Regulations, no person shall engage in investment projects using ODS projects listed in the First and Second Schedule.

13. Servicing an air conditioner, etc.

An air-conditioner or refrigerator technician shall not vent out any refrigerant that is an ODS when installing, serving, maintaining or repairing the equipment.

14. Leak detector or leak detecting method

Any person who owns or is responsible for a refrigerator or an air-conditioner shall have a leak detector or leak detecting method.

15. Retrofitting CFC refrigeration, etc.

No person shall retrofit CFC refrigeration and air-conditioning equipment with HCFC.

16. Fire fighting services

(1) No person shall use halons where alternatives like carbon dioxide, water, dry powder, foams and inert gases can be used.

(2) No fire station shall use halons in fire fighting demonstrations or exercises.

(3) With effect from 1st January, 2001, no person shall refill the fire-extinguishing systems with new halons rather than recycled halons.

(4) With effect from 1st January, 2003, no person shall sell fire-extinguishers with halons, except for critical uses in defence and aviation.

(5) With effect from 1st January, 2007, no person shall use halons, whether used or recycled, except for uses in defence and aviation.

17. Offence and penalty

(1) Any person who contravenes any provision of these Regulations commits an offence and upon conviction shall be liable to a fine of not less than K10,000 and not more than K500,000 and to imprisonment for five years.

(2) Any person who is convicted to an offence under subregulation (1) shall, in addition to the fine provided for in that subregulation, be liable to a fine of K5,000 for each day the offence continues to be committed.

FIRST SCHEDULE reg. 2

CHLOROFLUOROCARBONS (CFCs)

IUPAC Name	Chemical Formula	Montreal Protocol Nomenclature
Trichlorofluoroethane		CFC-11
Dichlorodifluoroethane		CFC-12
Monochlorotrifluoroethane		CFC-13
Trichlorotrifluoroethane		CFC-113
Dichlorotetrafluoroethane		CFC-114
Monochloropentafluoroethane		CFC-115
Pentachlorofluoroethane		CFC-111
Tetrachlorodichloroethane		CFC-112
Heptachlorofluoropentane		CFC-211
Hexachlorodifluoropentane		CFC-212
Pentachlorotrifluoropentane		CFC-213
Tetrachlorotetrafluoropentane		CFC-214
Trichloropentafluoropentane		CFC-215
Dichlorohexafluoropentane		CFC-216
Monochloroheptafluoropentane		CFC-217

SECOND SCHEDULE reg. 2

PART I

HALOES

IUPAC Name	Chemical Formula	Montreal Protocol Nomenclature
Bromochlorodifluoromethane	CF <sub>2</sub> BrCl	Halon 1211
Bromotrifluoromethane	CF <sub>3</sub> Br	Halon 1301
Dibromotetrafluoroethane	C <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	Halon 2402

PART II

CHLORINATED CARBON COMPOUNDS

Tetrachloroethane	CCl <sub>4</sub>	Carbon Tetrachloride
1,1,1-Trichloroethane	C <sub>2</sub> H <sub>3</sub> Cl <sub>3</sub>	Methyl Chloroform

THIRD SCHEDULE reg. 2

HYDROCHLOROFLUOROCARBONS (HCFCs)

IUPAC Name	Chemical Formula	Montreal Protocol Nomenclature
Hydrochlorofluoromethane	CHFCl <sub>2</sub>	HCFC-21
Hydrochlorodifluoromethane	CHF <sub>2</sub> Cl	HCFC-22
Dihydrochlorofluoromethane	CH <sub>2</sub> FCl	HCFC-31
Hydrotetrachlorofluoroethane	C <sub>2</sub> HFCl <sub>4</sub>	HCFC-121
Hydrotrichlorodifluoromethane	C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	HCFC-122
Hydrochlorotrifluoroethane	C <sub>2</sub> HF <sub>3</sub> Cl <sub>2</sub>	HCFC-123
Hydrochlorotetrafluoroethane	C <sub>2</sub> HF <sub>4</sub> Cl	HCFC-124
Dihydrotrichlorofluoroethane	C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	HCFC-131

Dihydrodichlorodifluoroethane	C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>3</sub>	HCFC-132
Dihydrochlorotrifluoroethane	C <sub>2</sub> HCF <sub>3</sub> Cl	HCFC-133
Trihydrodichlorofluoroethane	C <sub>2</sub> H <sub>3</sub> FCl <sub>2</sub>	HCFC-141
Trihydrotrichlorodifluoroethane	C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Cl	HCFC-142
Tetrahydrodichlorofluoroethane	C <sub>2</sub> H <sub>4</sub> FCl <sub>2</sub>	HCFC-151
Hydrohexachlorofluoropentane	C <sub>2</sub> HFCI <sub>6</sub>	HCFC-221
Hydropentachlorodifluoroethane	C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	HCFC-222
Hydrotetrachlorodifluoropentane	C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	HCFC-223
Hydrotrichlorotetrafluoropentane	C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	HCFC-224
Hydrodichloropentafluoropentane	C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	HCFC-225
Hydrochlorohexafluoropentane	C <sub>3</sub> HF <sub>6</sub> Cl	HCFC-226
Hydropentachlorofluoropentane	C <sub>3</sub> HFCI <sub>5</sub>	HCFC-231
Dihydrotetrachlorodifluoropentane	C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	HCFC-232
Dihydrotrichlorotrifluoropentane	C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	HCFC-233
Dihydrodichlorotetrafluoropentane	C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	HCFC-234
Dihydrochloropentafluoropentane	C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	HCFC-235
Dihydrotetrachlorofluoropentane	C <sub>3</sub> H <sub>2</sub> FCl <sub>4</sub>	HCFC-241
Trihydrochlorodifluoropentane	C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl	HCFC-242
Trihydrodichlorotrifluoropentane	C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	HCFC-243
Trihydrochlorotetrafluoropentane	C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Cl	HCFC-244
Tetrahydrotrichlorofluoropentane	C <sub>3</sub> H <sub>4</sub> F <sub>1</sub> Cl <sub>3</sub>	HCFC-251
Tetrahydrodichlorodifluoropentane	C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	HCFC-252
Tetrahydrochlorotrifluoropentane	C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	HCFC-253
Pentahydrodichlorofluoropentane	C <sub>3</sub> H <sub>3</sub> F <sub>1</sub> Cl <sub>2</sub>	HCFC-261
Pentahydrochlorodifluoropentane	C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Cl	HCFC-262
Hexahydrochlorofluoropentane	C <sub>3</sub> H <sub>6</sub> FCl	HCFC-271

FOURTH SCHEDULE reg. 2

EQUIPMENT USING OR CONTAINING OR MADE WITH OZONE DEPLETING SUBSTANCES

1. Automobile and truck air conditioning units.
2. Domestic and commercial refrigeration and air conditioning/heat pump equipment containing annex A substances e.g.
  - Refrigerators;
  - Freezers;
  - Cold rooms;
  - Dehumidifiers;
  - Ice machines;
  - Air-conditioning and heat pump units.
3. Aerosol products, except medical aerosols.
4. Portable fire-extinguishers.
5. Flexible and rigid foams e.g. mattress.

FIFTH SCHEDULE reg. 2

METHYL BROMIDE

IUPAC Name	Chemical Formula	Montreal Protocol Nomenclature
Bromomethane	CH <sub>3</sub> Br	Methyl Bromide

SIXTH SCHEDULE

IMPORT PERMIT

1. Application—

Name of Importing Company: .....

.....

Business Address: .....

Telephone Number: .....

Fax Number: .....

Contact Person: .....

Designation: .....

Type of importer:      Distributor ( )    End-user ( )

## 2. Products to be imported—

Description of Products    Tariff Number    Quantity to be imported in kgs

Chemical Formula      Scientific Name (IUPAC)    Trade Name

## ENVIRONMENT (SPECIFICATION OF PROJECTS REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT) NOTICE

G.N. 58/1998

### 1. Citation

This Notice may be cited as the Environment (Specification of Projects Requiring Environmental Impact Assessment) Notice.

### 2. Specification of projects requiring environmental impact assessment

The projects specified in the Schedule shall not be implemented unless an environmental impact assessment is carried out.

SCHEDULE para. 2

## PROJECTS FOR WHICH ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

### 1. Agriculture/Aquaculture Projects—

- (a) agricultural drainage projects of more than 1 hectare;
- (b) irrigation schemes designed to serve more than 10 hectares;
- (c) land development for the purposes of agriculture on a piece of land greater than a 20-hectare holding;
- (d) agricultural projects necessitating the resettlement of 20 or more families;

(e) any change from one agricultural land use to another on a piece of land greater than a 20-hectare holding;

(f) use of more than 1 tonne of fertilizer/hectare per annum on a piece of land greater than a 20-hectare holding except for lime applications;

(g) use of the following concentrations of pesticides on a piece of land greater than a 5-hectare holding—

(i) more than 5 litres per hectare of ultra-low volume pesticides, per application; or

(ii) more than 1 litre per hectare of aerial applications of pesticides; or

(iii) more than 20 kg per hectare for each application of granular pesticides;

(h) construction of fish-farming or ornamental pond(s) where the capacity is greater than 100 m<sup>3</sup> or where there is any direct discharge from a fish pond to a receiving water body; and

(i) any proposal to introduce fish species in an area where they do not presently exist.

## 2. Projects in the Food and Beverage Production Industry—

(a) construction of new abattoirs or slaughtering houses with a capacity of greater than 100 animals per day and expansions to existing abattoirs or slaughtering houses to a capacity of greater than 100 animals per day;

(b) construction of new canning and bottling operations with a work space of greater than 5,000 m<sup>2</sup> or expansion to an existing canning or bottling operation to a work space of greater than 5,000 m<sup>2</sup>;

(c) construction of new breweries and distilleries with a production capacity of greater than 25,000 litres per day or expansions to existing breweries or distilleries to a production capacity of greater than 25,000 litres per day;

(d) construction of new sugar production operations or expansions to existing sugar production operations by greater than 10 per cent; and

(e) construction of, or expansions to, tea or coffee processing industries.

## 3. Water Resources Development Projects—

(a) construction of, or expansion of, ground water utilization projects where the utilization will be greater than 15 litres per second or where the well is 60 metres or deeper;

(b) construction of new water pipelines or canals longer than 1 kilometre, or expansions to existing water pipelines or canals by longer than 1 kilometre, where the cross-sectional area is greater than 20 square metres and the volume of water to be carried will be greater than 50 cubic metres per second;

(c) water pumping stations adjacent to lakes, rivers and reservoirs which withdraw more than 2 cubic metres per second;

(d) drinking water supply schemes to serve a population of greater than 10,000 people or expansions of existing schemes to serve such a population, or water reticulation networks with more than 10 kilometres of pipeline;

(e) construction of reservoirs with a capacity of more than 500,000 litres or with a surface area of greater than 100 hectares or expansions of existing reservoirs by greater than 500,000 litres or greater than 100 hectares; and

(f) construction or expansion of dams with a height of 4.5 metres or higher.

#### 4. Infrastructure Projects—

(a) construction of new sanitary sewerage works, or expansion of existing sanitary sewerage works, to serve a population of more than 5,000 people;

(b) construction of new storm sewerage works, to drain an area of greater than 10 hectares;

(c) any new sewage outfall to a receiving water body or location or sewerage systems or septic tanks within 1 kilometre of a water body;

(d) construction or expansion of septic tanks servicing more than 100 people or 20 homes or which receive more than 100 cubic metres per day of waste water;

(e) construction of new highways and feeder roads or expansion of existing high ways and feeder roads;

(f) construction of new airports and airstrips or expansion of existing airports and airstrips and their ancillary facilities;

(g) construction of new, or expansions to existing, railway lines;

(h) construction of new, or expansions to existing, railway lines; and

(i) establishment or expansion of industrial estates.

#### 5. Waste Management Projects—

(a) establishment or expansion of any of the following hazardous waste management facilities—

(i) incineration plant;

(ii) off-site recovery plant;

(iii) off-site waste disposal facility;

(iv) off-site storage facility;



(v) landfill-site;

(b) establishment or expansion of any of the following municipal solid waste management facilities serving a population of greater than 1,000 people—

(i) landfill site;

(ii) incineration facility;

(iii) composting facility;

(iv) recover/recycling facility;

(v) waste depots/transfer sections; and

(c) establishment or expansion of on-site waste treatment facilities.

#### 6. Energy Generation, Transmission and Storage Projects—

(a) construction or expansion of electrical generating facilities designed to operate at greater than 4 MW or, in the case of hydroelectric generating facilities, where the total head is greater than 20 metres or, where there is a firm flow or 100 cubic metres per second or greater;

(b) construction of electrical transmission facilities operating at a voltage of 132 kV or greater;

(c) construction or expansion of oil and gas pipelines longer than 1 kilometre;

(d) construction or expansion of storage facilities (including service stations) for oil, gas, petrol or diesel located within 3 kilometres of commercial, industrial or residential area and with a storage capacity of 500,000 litres or more; and

(e) all activities associated with nuclear power development.

#### 7. Industrial Projects—

(a) construction of, and expansions to, industries involving the use, manufacturing, handling, storage, transport or disposal of hazardous or toxic chemicals as regulated under the hazardous chemicals regulations made under the Act;

(b) construction of, or expansion to, any of the following industrial operations—

(i) tanneries;

(ii) pulp and paper mills;

(iii) lime plants;

(iv) cement plants;

(v) all types of smelters;

(vi) petrochemical plants;

- (vii) chemical plants;
- (viii) soap and detergent plants;
- (ix) fertilizer manufacturing operations; and

(c) construction of textile manufacturing operations (including carpet-making) which consume greater than 5,000 m<sup>2</sup> of surface area or expansions to existing textile manufacturing operations to a capacity of more than 5,000 m<sup>2</sup>.

#### 8. Mining and Quarrying Projects—

- (a) any mining and quarrying activity for which an exclusive prospecting licence, a mining claim licence or a mining licence is required;
- (b) any extraction of sand, gravel, clay or topsoil material (be it from the ground, banks or beds or water bodies) by means of any explosive or heavy machinery; and
- (c) any explosive manufacturing and blasting operation.

#### 9. Forestry Projects—

- (a) establishment or expansion of logging operations covering an area of greater than 50 hectares;
- (b) establishment of or expansions to existing logging operations on hill sides with a slope of greater than 10 per cent covering an area of greater than 10 hectares or any conversion of forested land with a slope of greater than 10 per cent to another land use on a piece of land greater than 10 hectares;
- (c) establishment of logging or conversion of forested land to another land use within the catchment area of reservoirs; and
- (d) establishment of forest plantation of greater than 50 hectares.

#### 10. Land Development, Housing and Human Settlement Projects—

- (a) establishment of, or expansion to an existing, housing development of a size greater than 5 hectares or where more than 500 people are intended to be housed;
- (b) resettlement programmes for 500 or more people or the creation of refugee camps intended to shelter 500 or more people;
- (c) filling in of water bodies for the purposes of land development where the surface area of the gross fill deposit is greater than 5 hectares; and
- (d) land reclamations projects greater than 100 hectares.

#### 11. Remedial Flood and Erosion Control Project—

- (a) construction of breakwaters, seawalls, jetties, dikes and groynes of greater than 2 metres in height or 1 kilometre in length to remedy shoreline erosion or flooding;

(b) construction of dams or weirs with a height of greater than 2 metres or which divert more than 20 cubic metres per second or any bypass channels or channel realignments to remedy riverine erosion or flooding; and

(c) shoreline stabilization projects where the shoreline involved is greater than 1 kilometre.

#### 12. Tourism Development Projects—

(a) construction of resort facilities and hotels with a capacity of more than 50 people or expansions to existing facilities by a factor of greater than 50 people;

(b) construction of safari lodges and operations with a capacity of more than 50 people or expansions to existing facilities by a factor of greater than 50 people;

(c) construction of marine facilities with more than 10 boat slips or expansion of existing marine facilities by more than 10 boat slips; and

(d) development of tourism master plans which have several projects associated with them.

#### 13. Projects, in proximity to, or which have the potential to affect—

(a) areas of unique historical, cultural, scientific or geographical significance or which have received some kind of world heritage designation;

(b) national parks, game reserves and protected areas;

(c) wetlands;

(d) water bodies;

(e) flood zones;

(f) major sources of drinking water, including communal wells;

(g) cemeteries or ancestral shrines; and

(h) residential, school and hospital areas, as designated in local planning documents.

#### 14. Major Policy Reforms—

(a) degazettment of forestry reserves;

(b) changes to zoning plans; and

(c) proposed introduction of any exotic species.

ENVIRONMENT MANAGEMENT (GUIDELINES FOR ENVIRONMENTAL IMPACT ASSESSMENT) NOTICE

under s. 25 (1)

G. N. 14/1999

1. Citation

This Notice may be cited as the Environment Management (Guidelines for Environmental Impact Assessment) Notice.

2. Guidelines for environmental impact

Environmental impact assessment of a project shall be conducted in accordance with guidelines contained in a document entitled "Guidelines for Environmental Impact Assessment" which is published as General Notice No. 48 of 1999 dated 12th March, 1999.

ENVIRONMENT MANAGEMENT (ENVIRONMENTAL IMPACT ASSESSMENT FEES) REGULATIONS

under s. 29

G.N. 10/2004

1. Citation

These Regulations may be cited as the Environment Management (Environmental Impact Assessment Fees) Regulations.

2. Fees

The fees prescribed in the Schedule shall be payable in respect of the matters specified therein in relation to such fees.

SCHEDULE reg. 2

Matter Fee

K t

1. On submission of a project brief 50,000 00

2. On examination of an environmental impact assessment report—

(a) where the cost of the project does not exceed K17,000,000 50,000 00

(b) where the cost of the project exceeds—

(i) K17,000,000 but does not exceed K1,000,000,000 3 of  
the cost of the project

1000

(ii) K1,000,000,000 3,000,000 00

# ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

## ARRANGEMENT OF REGULATIONS

### REGULATION

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11. Conditions for registered chemicals
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22. Chemicals to be sold by licensed persons
23. Prohibition sale of unlabelled chemical products
24. Safe keeping of registered chemicals, etc.
25. Local authorities to make by-laws for management of chemicals and toxic substances
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28. Application to operate chemical waste disposal site or plant
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35. Control of importation of chemicals
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Third Schedule — Application for a Licence for Manufacturing/Repackaging of Toxic Substances and Chemicals

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Sixth Schedule — Application for a Licence for Transportation of Toxic and Chemical Substances

Seventh Schedule — Application for a Licence to Distribute Chemicals

Eighth Schedule — Licence to Manufacture/Repackage Chemicals

Ninth Schedule — Licence to Import Chemicals

Tenth Schedule — Licence to Export Chemicals

Eleventh Schedule — Licence to Transport Chemicals

Twelfth Schedule — Licence to Distribute Chemicals

Thirteenth Schedule — Fees

Fourteenth Schedule — Application for Renewal of a Licence

Fifteenth Schedule — Minimum Requirements for Manufacturing, Packaging, Transportation, Storage or Distribution of Chemicals

Sixteenth Schedule — Application for a Licence to Own/ Operate a Chemical Waste Disposal Site/Plant

Seventeenth Schedule — Licence to Own/Operate a Chemical Waste Disposal Site

Eighteenth Schedule — Notification Scheme for Banned and Severely Restricted Chemicals

G.N. 12/2008

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

under s. 40

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Environment Management (Chemicals and Toxic Substances Management) Regulations.

2. Interpretation

In these Regulations unless the context otherwise requires—

“carrier” means any person who carries out the transportation of chemicals or toxic substances and includes his agents or assignees;

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation whether manufactured or obtained from nature and includes such substances used as industrial chemicals, for consumer use but excludes pesticides and fertilizers, medicines and drugs and for the purposes of these Regulations includes toxic chemicals;

“chemical wastes” means any unwanted or waste chemical or chemical formulation generated from any process which can cause danger to both human health and the environment;

“disposer” means the person licensed to dispose of chemicals or toxic substances under these Regulations;

“disposal” means final placement or destruction of toxic substances, chemicals and chemical formulations, pesticides, and containers of toxic substances from removal actions or accidental releases.

“exporter” means any person under the jurisdiction of the state of export who arranges for chemicals or toxic substances to be exported;

“formulation” means the combination of various ingredients designed to render the product useful and effective for the purpose claimed; the form of the chemical or toxic substances as purchased by users;



“hazardous chemicals” means any chemical which has the likelihood of causing adverse effects or injury to human health or the environment and which has been so designated by the Director;

“hazardous waste” includes all unwanted substances or materials generated in any process be it chemical or otherwise which can cause danger to human health or the environment and which has been so designated by the Director;

“importer” means any person under the jurisdiction of the state of import who arranges for toxic substances or chemicals to be imported;

“label” means the written, printed or graphic matter on, or attached to, a toxic substance or chemical; or its immediate container and the outside container or wrapper of the retail package of the toxic substances or chemical;

“manufacture” in relation to a chemical means to prepare, compound, formulate, mix, make, pack, label, or otherwise treat the chemical with a view of meeting a specific purpose but does not include the carrying on a bona fide research relating to the chemical or any act incidental to such research;

“registered user” for the purposes of these Regulations means a person approved by the Director to use a restricted chemical or toxic substance;

“restricted chemical” means a chemical registered by the Director for specific use or to be used only under stipulated conditions;

“toxic substance” means a chemical or mixture that may present an unreasonable risk of injury to health or the environment;

“trade name” means that name under which the chemical or toxic substance is labeled, registered and promoted by the manufacturer and which can be used exclusively by the manufacturer to distinguish the product from other chemicals containing the same active ingredient;

“transit” means the passage of chemicals from one border through the national territory of Malawi including storage in transit bonds.

### 3. Application

(1) These Regulations shall apply to any person in Malawi whose undertaking involves or includes the manufacturing, repackaging, importation, exportation, transportation, distribution, sale or other mode of handling toxic substances and chemicals and in respect of any activity in relation to toxic substances and chemicals which involves a risk of harm to human health or the environment.

(2) These Regulations shall not apply to any chemicals or toxic substances which are regulated under the Pesticides Act, or the Pharmacy, Medicines and Poisons Act. Cap. 35:03, Cap. 35:01

## PART II

### MANAGEMENT OF CHEMICALS AND TOXIC SUBSTANCES

#### 4. Licences

(1) (a) No person shall engage in the business of manufacturing, repackaging, importing, exporting, transporting, distributing, sale or other mode of handling chemicals and toxic substances without a licence issued by the Director in the prescribed form;

(b) an applicant for any licence provided for under these Regulations—

(i) shall be resident in Malawi;

(ii) where the applicant is resident outside Malawi, the applicant shall designate a representative resident in Malawi;

(c) an application for a licence under the Act in relation to—

(i) the manufacturing or repackaging of chemicals or toxic substances shall be in the form set out in the Third Schedule hereto;

(ii) the importation of chemicals or toxic substances shall be in the form set out in the Fourth Schedule hereto; and

(iii) the exportation of chemicals or toxic substances shall be in the form set out in the Fifth Schedule hereto;

(iv) the transportation of chemicals or toxic substances shall be in the form set out in the Sixth Schedule hereto; and

(v) the distribution of chemicals or toxic substances shall be in the form set out in the Seventh Schedule hereto.

(2) The Director may reject any application form if any part of the application form is illegible or not properly completed.

(3) A licence to—

(a) manufacture or repackage chemicals or toxic substances shall be in the form set out in the Eighth Schedule hereto;

(b) import chemicals or toxic substances shall be in the form set out in the Ninth Schedule hereto;

(c) export chemicals or toxic substances shall be in the form set out in the Tenth Schedule hereto;

(d) transport chemicals or toxic substances shall be in the form set out in the Eleventh Schedule hereto; or

(e) distribute chemicals or toxic substances shall be in the form set out in the Twelfth Schedule hereto.

(4) The applications referred to in subregulation (1), shall be accompanied by the fee prescribed or contained in the Thirteenth Schedule hereto.

5. Minimum requirements for manufacture, etc.

Any person who applies for a licence under these Regulations shall ensure that his business complies with applicable conditions as set out hereunder—

(a) in the case of manufacturing or repackaging of chemicals or substances, the minimum requirements set out in Part I of the Fifteenth Schedule hereto;

(b) in the case of transporting of chemicals or toxic substances, the minimum requirements set out in Part II of the Fifteenth Schedule hereto; and

(c) in the case of distribution of chemicals or toxic substances as a wholesaler or retailer, the minimum requirements set out in the Part III of the Fifteenth Schedule hereto.

6. Publication of applications for licences

The Director shall publish all applications for licences in the Gazette and in at least one widely circulating newspaper and shall charge the costs of such advertisement to the applicant.

7. Duration of licences

Every licence which is issued in respect of chemicals or toxic substances to any person pursuant to the Act shall be valid for one year from the date of issue, and may be renewed thereafter.

8. Production and return of licences

(1) Whenever the Director—

(a) cancels any licence;

(b) varies or amends the conditions of any licence; or

(c) imposes any new condition in respect of or on the renewal of any licence,

the Director shall request the holder of the licence to produce such licence within such period as may be specified, and the holder thereof shall produce such licence within the specified period.

(2) Any person who fails to comply with a request made in accordance with subregulation (1) commits an offence.

(3) Where the Director varies, amends or imposes any new condition in respect of a licence, he shall return such licence duly endorsed to the holder thereof within three months.

9. Application for renewal of a licence

(1) Every application for the renewal of a licence shall be—

(a) in the form set out in the Fourteenth Schedule hereto;

(b) lodged with the Director at least two months before the expiry of the licence hereto;  
and

(c) accompanied by the appropriate fee in respect of the licence.

(2) If an application for the renewal of a licence is lodged with the Director after the time limit as specified in subregulation (1), there shall be paid in addition to the renewal fee an appropriate fee in respect of the licence as determined from time to time.

#### 10. Categories and registration of chemicals

(1) The Director shall in accordance with the provisions of the Act, from time to time, establish in the Gazette a list of chemicals or toxic substances which fit in categories identified under the first Schedule hereto or which have characteristics identified in the First Schedule hereto which need to be controlled or prohibited.

(2) The Director shall give written notification to manufacturers and importers dealing with chemicals in the First Schedule hereto affected by his decision.

(3) An application for the registration of a chemical or toxic substances shall be made by—

(a) the person who has the right to distribute the product in Malawi; or

(b) any other person registered by the Director.

(4) Every application for the registration of a chemical shall be submitted to the Director in the form set out in the Second Schedule hereto and shall be accompanied by—

(a) detailed information of all advertising materials and package inserts which the applicant intends to use;

(b) samples of the product or the raw materials thereof shall be made available for analysis;

(c) a copy of any literature in support of the application:

Provided that the Director may require additional copies of such literature;

(d) additional package inserts and labels or copies of the package;

(e) at least three copies of all records and chemical data sheet which shall include information on chemical composition, properties and antidotes and information relating to manufacture and packaging in process control records, final products analytical records and authorized for release, and any other relevant records; and

(f) the prescribed fee, together with such additional fee as the Director may require for the purpose of analyzing the chemical product.

(5) Every applicant shall, without delay, inform the Director either before or after the registration of a chemical product—

(a) of any alteration of the information or particulars furnished by him in applying for registration in terms of subregulation (2); and

(b) whether the chemical product is to be imported as a finished product into, or labeled or repackaged or dealt with in any manner, in Malawi.

(6) For the purposes of paragraph (b) of subregulation (4), “finished product”, in relation to a chemical product, means a chemical which is wholly manufactured outside Malawi and is imported into Malawi ready for sale without having to be relabeled or repackaged.

(7) An application for the retention of the registration of a registered chemical product shall be submitted to the Director, in the form set out in the Eighteenth Schedule hereto at least two months before the expiry of the licence and shall be accompanied by the prescribed fee.

#### 11. Conditions for registered chemicals

Where the Director approves registration of a chemical product, he shall fix as a condition of registration, the product’s specific use and the conditions under which the chemical is to be used.

#### 12. Rejection of application

(1) The Director may reject an application for registration if—

- (a) the application is not complete;
- (b) the application contains information which is misleading, erroneous, deceptive or likely to deceive;
- (c) the chemical is likely to cause adverse effect to human health, animals, plants or the environment even when handled and used according to given instructions;
- (d) the chemical is provisionally cleared;
- (e) the container, or label does not meet the requirements of these Regulations;
- (f) the applicant is considered unsuitable or incapable of carrying out the obligation imposed under these Regulations; or
- (g) the chemical is toxic contrary to indications on the label.

(2) Where the Director rejects an application for registration of a chemical, he shall inform the applicant in writing the reasons for the rejection.

(3) Where the Director rejects an application for registration of a chemical he shall enter the chemical in the register of banned chemicals stating the identity of the chemical, the reasons for banning it and any other particulars the Director may specify.

#### 13. Labelling of chemicals

(1) Every chemical product shall, unless otherwise directed by the Director, bear or incorporate a label on the product package or container in which the chemical product is sold, on

which is printed, in clear and indelible letters in the English language and any other local language as the Director may direct or approve the following particulars which relate to the chemical—

- (a) the name and address of the person who owns the chemical;
- (b) the name and address of the manufacturer including the physical address;
- (c) the approved name of the chemical product and the proprietary name or trade mark, if any, of the chemical product;
- (d) inherent physical and chemical properties, toxicity to human beings and impact on the environment;
- (e) chemical composition;
- (f) production batch number, date of manufacture and the expiry date of the chemical;
- (g) the required storage conditions or other necessary precautions to prevent harm to human health and the environment;
- (h) the chemical classification as determined in accordance with regulation 10 and the directions on safe use including proper disposal methods;
- (i) any warning notices and hazard symbol which shall be in colour or print other than the colour referred to in subparagraphs (a) to (j);
- (j) the antidote for use in cases of accidents; and
- (k) any other particulars as may be directed by the Director:

Provided that the label shall contain no warranties, guarantees or liability exclusion clauses inconsistent with the provisions of the Act or these Regulations.

(2) In the case of a small package containing a chemical product, it shall be adequate to record information required under paragraphs (c), (d), (e) and (f) on the outer label.

(3) Every chemical product shall, where possible, be marked with the logo of the owner of the chemical product or manufacturer thereof, as the case may be, and such other distinguishing mark for the purpose of identifying such chemical product.

#### 14. Packaging of chemicals

(1) The Director shall not approve a container for the packaging of chemicals unless he is satisfied that the container—

- (a) shall not react chemically or physically with the chemical;
- (b) is of sufficient strength and shall not pose any risk during handling and transportation of the chemical; and
- (c) is durable enough to prevent the chemical from escaping.

(2) The Director may, at any time, direct the seller of a chemical to submit for inspection an approved container in which the chemical is contained.

(3) Every package of a chemical product shall, unless otherwise directed by the Director, contain a package insert on which is printed, in clear and indelible letters in the English language and any other local language as may be directed or approved by the Director the following particulars which relate to the chemical product—

- (a) the name and address of the owner of the chemical product;
- (b) the name and address of the manufacturer of the chemical product;
- (c) the approved name of the active ingredient of the chemical product and the proprietary name or trade mark, if any, of the chemical product;
- (d) the logo, if any, of the owner of the chemical product or manufacturer thereof;
- (e) the chemical composition and percentage of any toxic agent inherent in the chemical product;
- (f) adequate directions for handling including safety precautions in transportation, storage, use and disposal of obsolete chemicals or chemicals waste to prevent harmful effects to human health and the environment;
- (g) chemical classification as determined in accordance with regulation 10;
- (h) warnings relating to risks associated with the use of the chemical product;
- (i) identification of the chemical product;
- (j) the form in which the chemical product is presented whether liquid, dust, granulars, baits or wettable powders and the colour thereof;
- (k) the date of publication of the package insert including expiry date of the product;
- (l) a summary of the relevant information concerning the purpose and beneficial, harmful or other effects of the chemical product and the possible dangers that may arise from exposure to the chemical product;
- (m) relevant information, including particulars in regard to a specific medicinal product as an antidote (if known), concerning the treatment of a user in case of an accident or harmful exposure relating to the chemical product; and
- (n) any other particulars or warning notices as the Director may direct.

15. Procedures for restricting the use of a chemical product

(1) Before making a decision to restrict the use or to the handling of a chemical, the Director shall—

(a) ensure that there is evidence that the chemical causes or is likely to cause adverse effects to human health, animals, plants or the environment;

(b) require the applicant to show cause in writing within a period of thirty days from the date of the letter, why the restriction or ban should not be imposed on the chemical;

(c) publish in the Gazette the intention to impose a ban on or restrict the use and handling of the chemical.

(2) Upon receipt of the submission from the applicant, the Director shall—

(a) invite the applicant to attend a meeting and give the applicant the opportunity to make oral submissions in person or through a representative to the Technical Committee on the Environment; and

(b) consider any other information available to the Technical Committee on the Environment, including submission of experts in the field of chemical management.

(3) Where the Director considers it necessary in the public interest to protect human health or the environment, he shall suspend use of the chemical pending a final decision to restrict use or ban handling of such chemical.

(4) The Director may lift the ban or restrict use.

#### 16. Register of Chemicals

The Director shall enter in the register in respect of each chemical product registered, the—

(a) date of the application for registration of the chemical product;

(b) number allocated to the application for registration;

(c) proprietary name or trade mark of the chemical product, if any;

(d) logo of the owner of the chemical product or manufacturer thereof, if any;

(e) particulars of the patent of the chemical product, if any;

(f) approved name of the chemical product;

(g) form in which the chemical product is presented whether liquid or otherwise and the colour thereof;

(h) inherent physical and chemical properties and the level of toxicity of the chemical product;

(i) qualitative and quantitative details of every ingredient in a specified unit of the chemical product;

(j) name and business address of the owner of the chemical product;

(k) name and business address of the manufacturer of the chemical product;



- (l) country of origin of the chemical product;
- (m) number allocated to the inspection report of the place of manufacture, if applicable;
- (n) date of registration of the chemical products;
- (o) registration number of the chemical products;
- (p) shelf-life or life span of the chemical products;
- (q) specific use of the chemical product and any other conditions if it falls under regulation 11;
- (r) classification of the chemical product determined in accordance with regulation 10;
- (s) date and particulars of any variation in the conditions of registration of the chemical product;
- (t) payment of any fee for the retention or registration of the chemical product; and
- (u) date of the cancellation of the registration of the chemical product where applicable.

17. Certificate of registration for a chemical product

After registering a chemical product, the Director shall issue a certificate of registration in the prescribed form.

18. Production and return of registration certificate for chemical products

(1) Whenever the Director—

- (a) cancels the registration of any chemical product;
- (b) varies or amends the conditions of registration of any chemical product; or
- (c) imposes any new conditions on the registration of any chemical product,

the Director shall request the holder of the registration certificate concerned to produce such certificate within one month and the holder thereof shall produce such certificate within the specified period.

(2) Any person who fails to comply with a request made in accordance with subregulation (1) commits an offence.

(3) Where the Director varies, amends or imposes any new condition on any registration certificate, the Director shall return such certificate, duly endorsed, to the holder thereof within a period of three months.

(4) The holder of a certificate which has been varied or amended shall comply with the conditions within a period of three months of the date of amendment or variation.

19. Importation of chemical products

No person shall, without prior written approval of the Director, import a chemical product which has one-half or less than one-half of its shelf-life span remaining upon arrival in Malawi.

20. Handling chemical with less than half shelf-life

No person shall, without prior written approval of the Director deliver, receive, accept or sell any chemical product whose shelf-life or remaining life span is less than one-half.

21. Sale of expired products

(1) No person shall sell any chemical or chemical product after a date later than the expiry date which appears on the package of such chemical product.

(2) Any person who sells any expired chemical product in contravention of subregulation (1) commits an offence.

(3) The Director shall have power to confiscate and destroy any products that have expired.

22. Chemicals to be sold by licensed persons

No person shall sell any chemical product unless his business has been—

(a) licensed under these Regulations; or

(b) authorized in terms of these Regulations:

Provided that this regulation shall not apply to the sale of toxic substances regulated under the Pharmacy, Medicine and Poisons Act or the Pesticides Act. Cap. 35:01, Cap. 35:03

23. Prohibition sale of unlabeled chemical products

No person shall sell any chemical product whose composition is not labeled in accordance with the requirements of regulation 13.

24. Safe keeping of registered chemicals, etc.

(1) Any person who sells chemicals listed in the First Schedule hereto shall not store, keep or display such chemicals on an open shelf or in an open area or on any part of his premises to which members of the public have access.

(2) Any person who has under his control or custody or uses chemicals referred to in subregulation (1), shall exercise all reasonable care in the custody, safe keeping and use thereof.

25. Local authorities to make by-laws for management of chemicals and toxic substances

(1) Every local authority shall make by-laws relating to the management of toxic substances and chemical wastes in their respective area of jurisdiction:

Provided that—

(a) such by-laws shall not be in conflict with the Act and these Regulations; and

(b) such by-laws shall ensure that the disposal method of chemical wastes is in an environmentally sound manner.

(2) Every local authority shall be responsible for management of chemicals and toxic substances, and such management shall be in accordance with the provisions of the Act and these Regulations.

#### 26. Duty to treat chemical wastes

(1) No industry or medical facility shall discharge any chemical wastes in any state into the environment unless such wastes have been treated in accordance with acceptable international methods that are approved by the Director in consultation with the relevant local authority.

(2) Any person whose operations discharge chemical wastes into the environment at the date of entry into force of these Regulations shall within ninety days submit a written proposal specifying the time schedule within which compliance with these Regulations shall be achieved.

(3) It shall be an offence for any person to discharge any chemical waste whether treated or not into a disposal site or plant unless such disposal site or plant has been approved and licensed in accordance with and upon the conditions set out in these Regulations and for such purpose.

#### 27. Voluntary compliance

Every industry shall develop a voluntary compliance code which shall outline the industry's goal for—

(a) chemical waste reduction and minimization;

(b) chemical waste treatment on site and emission standards; and

(c) disposal plans.

#### 28. Application to operate chemical waste disposal site or plant

(1) Any person who intends to operate a chemical disposal site or plant shall apply to the Director for a chemical waste disposal licence.

(2) An application for a licence to operate a chemical waste disposal site or plant shall be in the form set out in the Sixteenth Schedule hereto and shall be accompanied by the appropriate fee.

(3) A person carrying out a business of operating a chemical waste disposal site or plant before the commencement of these Regulations shall apply for a licence within ninety days from the date these Regulations come into force.

(4) A person who operates a chemical waste disposal site or plant without a licence commits an offence.

#### 29. Licence to own or operate a chemical waste or plant

(1) The Director may grant a licence in the form set out in the Seventeenth Schedule hereto to own or operate a chemical waste disposal site or plant, if—

(a) a written approval has been obtained by the applicant from the environmental officer of the local authority within which the chemical waste disposal site or plant is located;

(b) the local authority is satisfied that the owner or operator of the site has the ability and the appropriate facilities to manage the site or plant without causing any damage to public health or the environment, taking into account the findings and recommendations of the approved environmental impact assessment submitted by the owner or operator; and

(c) notice has been given by the applicant in the Gazette and such local newspapers of daily circulation as the Director shall deem fit on the proposed chemical waste disposal site or plant, sixty days before issue of the licence.

(2) Any licence to own or operate a chemical waste disposal site or plant shall be subject to the following conditions—

(a) the site or plant shall be located away from a residential or commercial area and water sources;

(b) the site or plant shall have hazard and safety signs approved by the Director displayed in appropriate places indicating the disposal site or plant and the nature of operations it carries out;

(c) the site or plant shall be enclosed and secure from scavenging;

(d) the site or plant shall be operated in a way which would avoid pollution of surface and underground water, air or soil;

(e) highly toxic or hazardous chemical wastes shall be disposed of or treated in accordance with conditions specified in the licence or in accordance with any general guidelines issued by the Director in consultation with the Director responsible for local government;

(f) suitable ventilation shall be provided at the disposal site or plant to prevent harmful effects to personnel;

(g) the personnel working at the chemical waste disposal site or plant shall be provided with—

(i) adequate training in chemical waste management;

(ii) adequate protective and safety clothing;

(iii) adequate and appropriate equipment or facilities for the operations of the disposal site or plant;

(iv) shelter;

(v) first aid training and facilities;

(vi) communication facilities; and

(h) the personnel working at the chemical disposal site or plant shall undergo a medical check up, at least once every six months.

(3) A licence to own or operate a chemical waste disposal site or plant shall be valid for one year and may be renewed for a like period at a prescribed fee:

Provided that the Director may, where he deems necessary, issue a licence to any applicant under regulation 5 for the temporary storage of any chemical waste pending final disposal on condition that such temporary storage meets the approved standards for the storage of such a category of chemical waste approved under these Regulations.

(4) Any person who—

(a) operates or owns a chemical disposal site or plant without a licence; or

(b) discharges chemical waste onto a site or plant which is unlicensed, commits an offence.

### 30. Environmental impact assessment

(1) No disposal site or plant for chemical wastes shall be licensed under these Regulations unless an environmental impact assessment has been carried out in accordance with the provisions of the Act.

(2) Any person operating a disposal site or plant shall carry out annual audits of the environmental performance of his site or plant and shall submit his report to the Director.

### 31. Disposal of toxic substances

(1) Where a person intends to dispose or treat toxic substance and wastes he shall, in addition to the provisions of regulations 24 and 25, indicate in his application for a licence, the disposal operations he intends to carry out in accordance with the categories identified in the First and Second Schedules hereto and shall enclose—

(a) a detailed description of the process he intends to use and its possible effects;

(b) a detailed description of the soil structure and geology of the area;

(c) a detailed plan for control of emissions;

(d) a plan for managing leakages;

(e) a detailed health impact assessment;

(f) a detailed drawing indicating the structure, construction and surroundings of the disposal site or plant;

(g) a decommissioning plan; and

(h) any other matter that may be required by the Director.

(2) In granting a licence for the disposal of highly toxic substances or wastes, the Director shall clearly indicate the disposal operation permitted and identified in accordance with the categories set out in the First Schedule hereto.

(3) Any person who contravenes this regulation commits an offence.

32. Prevention of pollution from disposal sites and treatment plants

Every person who operates a toxic substance or chemical wastes disposal site or treatment plant shall take all necessary measures to prevent pollution from sites or plants including the erection of necessary works and taking of mitigation measures.

PART III

INTERNATIONAL TRADE IN TOXIC SUBSTANCES AND CHEMICALS

33. National authority for prior informed consent procedure

(1) The Director shall be the national authority for the operation of the prior informed consent procedure for the import, export or any other trans-boundary movement of toxic substances and chemicals.

(2) The Director shall closely liaise with the designated authorities of other states under any international conventions or arrangements to which Malawi is a party; and international organizations with competence in the field of the management of toxic substances and chemicals under any convention or arrangement to which Malawi is a party, for the purpose of monitoring imports and exports and controlling the movement of toxic substances and chemicals in Malawi territory.

(3) The Director shall disseminate information on toxic substances and chemicals management to the public.

34. Notification procedures and prior informed consent

A licence for export of chemicals shall not be issued by the Director unless accompanied by the relevant documentation for notification in accordance with Form A contained in the Eighteenth Schedule hereto and as required by the prior informed consent procedure as set out in these Regulations and the appropriate fee set in the Thirteenth Schedule hereto.

35. Control of importation of chemicals

(1) No person shall import a chemical into Malawi without a licence issued by the Director under these Regulations.

(2) The Director shall not issue a licence to import a chemical into Malawi unless accompanied by documentation for notification in accordance with Form B contained in the Eighteenth Schedule hereto and as required by the Prior Informed Consent procedure as set out in these Regulations and the appropriate fee set out in the Thirteenth Schedule hereto.

(3) In considering every application to import chemicals, the Director shall ensure that—

(a) the applicant is aware of the toxicity of the chemical and the risk involved in its use and handling;

(b) the applicant is capable of handling the risks arising from the importation of such a chemical and has in this behalf an adequate insurance coverage or similar guarantee;

(c) the applicant has plans and means to dispose of any surplus chemicals and containers in an environmentally sound manner;

(d) the applicant shall distribute the chemical only to those wholesalers and retailers appropriately licenced under these Regulations;

(e) the applicant shall comply with such other measures as may be determined by the Director; and

(f) the requirements of the Prior Informed Consent procedure set out in these Regulations have been fulfilled.

(4) A licence to import a chemical shall be valid for such consignments and for such a period as may be determined by the Director.

#### 36. Restrictions on importing severely restricted chemicals

The Director shall grant a licence to import severely restricted chemicals or other toxic substances if—

(a) the exporting country permits the use of the chemicals within its jurisdiction;

(b) no other alternative chemical is available; and

(c) there are adequate management plans.

#### 37. Control of exportation of chemicals

(1) No person shall export a chemical from Malawi without a licence issued under these Regulations.

(2)—(a) In considering every application to export chemicals, the Director shall ensure that—

(i) the requirements for the prior informed consent set out in regulation 34, where appropriate, have been fulfilled; and

(ii) the application meets such other requirements as may be determined by the Director; and

(b) a licence to export a chemical shall relate to such a consignment of chemicals and be for such a period as may be determined by the Director.

#### 38. Restrictions on exporting severely restricted chemicals

The Director shall grant a licence to export severely restricted chemicals or other toxic substances if—

- (a) the importing country permits the use of chemicals within its jurisdiction;
- (b) the chemical in question is required as a raw material for recycling or recovery in the country of import; and
- (c) the import is in accordance with an agreement or arrangement that conforms to the requirements as contained in these Regulations.

39. Ports of entry and routes

A licence issued under these Regulations shall only entitle the licensee to transport chemicals or toxic substances, through designated ports of entry and routes under the Customs and Excise Act. Cap. 42:01

PART IV

MISCELLANEOUS PROVISIONS

40. Reporting

(1) Any person who is licensed to carry out any procedures or activities under these Regulations shall submit to the Director annual reports on the conduct of the licensed activities.

(2) Where special reporting procedures are a condition of any licence under the Regulations, such reporting procedures shall take precedence over the provisions of subregulation (1).

41. Duty to keep records

(1) A holder of a licence shall—

- (a) keep records of the licensed activities and all transactions related thereto; and
- (b) submit the records referred to in paragraph (a) hereof to the Director every year from the commencement of the licensed activities.

(2) The Director may order a licensee under these Regulations to install mechanisms at the expenses of the licensee or to take samples and analyze them as the Director may direct.

42. Communication of decision of licence

Where a person applies for a licence under these Regulations, the Director shall communicate his decision to the applicant within a period of three months.

43. Improvement notice

(1) Where an inspector has reasonable cause to believe that any person is violating these Regulations, he may issue against such a person an improvement notice or take any other measures appropriate for correcting the situation.

(2) An improvement notice issued under subregulation (1) shall not prejudice criminal proceedings which may be taken under any of the provisions of the Act.



44. Cancellation of licence

The Director may suspend or revoke a licence issued under these Regulations if he is satisfied that the conditions attached to the granting of the licence have not been complied with or if the Director is satisfied that continued operation of the activity may be injurious to the human health or the environment.

45. Offence and penalties

Any person who contravenes the provisions of these Regulations commits an offence and shall be subject to the penalties prescribed in the Act.

FIRST SCHEDULE reg. 10

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

CATEGORIES OF CHEMICALS TO BE CONTROLLED

1. Industrial Chemical
  - (a) Crocidolite
  - (b) Polybrominated Biphenyls (PBBs)
  - (c) Polychlorinated Biphenyls (PCBs)
  - (d) Polychlorinated Terphenyls (PCTs)
  - (e) Iris (2, 3 dibromopropyl) Phosphate

2. Biochemicals

SECOND SCHEDULE reg. 10

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FORM FOR REGISTRATION OF CHEMICALS OR TOXIC SUBSTANCES

I/We ..... hereby make application for full registration/provisional registration of the following chemical which we intend to import into Malawi and state that the particulars of the chemical are as follows—

1. Brand name:
2. Other common names, if any:
3. Nature of the chemical:
4. Formulation (i.e. emulsifiable, concentrate wet table powder, etc.):
5. Use:
6. Method of application:
7. Composition:
  - (a) active constituents:

common names	chemical names	*percentage
--------------	----------------	-------------
  - (b) mode of action of each active constituent:

active constituent	mode of action
--------------------	----------------
  - (c) molecular and structural formulae of each of the active constituents:

active constituent	molecular formulae	structural formulae
--------------------	--------------------	---------------------
8. Residue data:
  - (a) nature of residues occurring in or on crops/animals/products treated with the formulation under tropical or subtropical conditions, in case of pesticides:
  - (b) information on persistence in soil and water and possible or known breakdown mechanism:
9. Toxicological properties of each active constituent—
  - (a) general toxicity to wildlife, fish and bees:

active constituent	toxicity to the above
--------------------	-----------------------
  - (b) acute toxicity

active constituent	acute toxicity
	LD50 on test animals
	Oral dermal respiratory
  - (c) toxicity to skin and possible danger through inhalation

- |     |                         |                          |
|-----|-------------------------|--------------------------|
|     | active constituent      | toxicity as stated above |
| (d) | symptoms of poisoning   |                          |
|     | active constituent oral | inhalation dermal eyes   |
| (e) | first aid and antidote: |                          |
|     | active constituent      | first aid antidote       |

10. Use precautions—

- (a) agents and chemicals with which product is known to be:
  - (i) compatible:
  - (ii) incompatible:
- (b) flammability:
- (c) corrosiveness:
- (d) stability on storage:
- (e) stability on duration:
- (f) recommendation for cleaning, measuring, and spray equipment:
- (g) safety precautions for handling and application:
- (h) procedures for both container disposal and disposal or deactivation of the excess chemical:

11. Package material and pack sizes (dimension and net volume/weight proposed for import and marketing):

12. Manufacturers name and address:

13. Action by other authorities—

- (a) evidence of registration approval, revocation or rejection by other authorities outside Malawi:
- (b) name countries for which full registration of this product has been granted:
- (c) if rejected or revoked give reasons:

14. Name and physical address of proprietor/importer:

Date: .....

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

1. Full registration/provisional registration granted with no restriction:
2. Full registration/provisional registration granted with the following restrictions:
3. Registration not granted for the following reasons:
4. Comments:
5. Registration No.:

Date: .....

Signature:.....

Director

Environmental Affairs Department

THIRD SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FOR A LICENCE FOR MANUFACTURING/REPACKAGING OF TOXIC SUBSTANCES AND  
CHEMICALS

I/We ..... hereby apply for a licence to  
manufacture/repackage toxic substances and chemicals, of which particulars are given below—

1. Name and address of applicant: .....
2. Location of premises: .....
3. Name, qualification and experience of supervising chemist (attach curriculum vitae):
4. Physical (describe whether industrial, residential, or commercial and whether it is near schools or recreational areas): .....
5. Other key officers: .....

Name	Qualification
Title	

6. Equipment or technology possessed: .....
7. Type of chemicals to be manufactured or repackaged (indicate number in accordance with First Schedule and describe whether liquid or otherwise and their characteristics):
8. Quantity of chemicals to be manufactured in kilogrammes or tonnes for solids or in cubic centimetres if liquid or gases: .....
9. Registration number: .....
10. Sources of raw materials: .....
11. Type of containers to be used for packaging or repackaging: .....
12. Type of labels on the container (describe whether industrial, residential, or commercial and whether it is near schools or recreational areas): .....
13. Describe safety measures at the premises including protective equipment, first aid kits and first aid personnel: .....
14. Measures of containment and treatment of fumes, dusts, spillage and leakages:  
.....
15. Chemical wastes disposal methods: .....

Attachments:

- (a) Description of manufacturing equipment  
(Appendix I)
- (b) Description of manufacturing process (Appendix II)
- (c) An environment impact assessment of proposed manufacturing or formulation (Appendix III)
- (d) Curriculum vitae of key officers in the production process  
(Appendix IV)

Date: .....

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Date received: .....

Fee paid (MK): .....

Comments of the lead agency: .....

Date: .....

.....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment: .....

.....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

FOURTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (TOXIC SUBSTANCES AND CHEMICALS MANAGEMENT)  
REGULATIONS

APPLICATION FOR A LICENCE TO IMPORT CHEMICALS OR TOXIC SUBSTANCES

I/We ..... hereby apply for a licence to import chemicals of which  
particulars are given below—

1. Address of Applicant: .....
2. Type of chemicals to be imported (indicate number in accordance with First Schedule and describe whether liquid or otherwise): .....
3. Country of origin of the chemical: .....
4. Regulatory action in country of origin: .....
5. Status of the chemical in the country of origin: .....
6. Mode of transporting the chemicals into the country and the safety precautions to be used:  
.....
7. Quantity of the chemicals to be imported: .....

8. The permitted use of the chemical: .....
9. Proprietary name or the trade name of the chemical: .....
10. Physical address of premises where storage would be done: .....
11. Describe safety measures at the premises: .....
12. Surroundings of the premises: .....
13. Final destination of the chemicals: .....
14. Safety consideration in case of an accident: .....
15. Chemical wastes disposal plans: .....
16. Port of Entry: .....
17. Any other information: .....

Date: .....

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Date received: .....

Fee paid (MK): .....

Comments of the lead agency or designated National Authority: .....

.....

Date: .....

.....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment:.....

.....

Date: .....

Signature:.....

Director

Department of Environmental Affairs

FIFTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FOR A LICENCE TO EXPORT CHEMICALS

I/We ..... hereby apply for a licence to export chemicals, of which particulars are given below—

1. Address of Applicant: .....
2. Type of chemical(s) to be exported (indicate classification in accordance with regulation 9 and describe whether liquid or otherwise): .....
3. Characteristics of chemical(s): .....
4. The permitted use of the chemicals: .....
5. The proprietary name or trademark of the chemical: .....
6. The registration number of the chemical: .....
7. The recipient country: .....
8. Have the Prior Informed Consent procedures been satisfied: .....
9. Describe the mode of exporting the chemicals to the recipient country and the safety precautions to be used: .....
10. Indicate if the recipient country permits the use of the chemical within its jurisdiction:  
.....  
.....
11. Any other information: .....
12. Port of entry: .....

Date: .....  
.....

Signature of Applicant and Title



FOR OFFICIAL USE ONLY

Date received: .....

Fee paid (MK): .....

Comments of the lead agency or designated National Authority: .....

.....

Date: .....

.....

Name and Signature of Responsible Officer

Decision of the Technical Committee on the Environment: .....

.....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

SIXTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(Cap 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FOR A LICENCE FOR TRANSPORTATION OF TOXIC SUBSTANCES AND CHEMICALS

I/We ..... hereby apply for a licence to transport toxic substances and  
chemicals of which particulars are given below—

1. Address of Applicant:

2. Type of chemicals to be transported (indicate number in accordance with First Schedule or  
Second Schedule and describe whether liquid or otherwise and their characteristics):

.....

.....

3. Characteristics: .....
4. Origin and destination of the consignment: .....
5. Number and type of vehicles to transport the chemicals: .....
6. Quantity of chemicals per vehicle to be transported: .....
7. Type of containers to be used in transporting chemicals: .....
8. Type of labels on containers (describe and attach sample): .....
9. Type of labels to be used on carrier vehicles in case of petrochemicals: .....
10. Describe safety precautions during transportation: .....  
.....
11. Licensed premises or sites/plants to which toxic substances or chemicals are to be transported: .....
12. Any other information: .....

Date: .....

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by: ..... on..... 20.....

Fee paid (MK): ..... In words: .....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

SEVENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FOR A LICENCE TO DISTRIBUTE CHEMICALS

I/We ..... hereby apply for a licence to distribute chemicals of which particulars are given below—

1. Address of Applicant: .....
2. Qualification and experience in handling chemicals: .....
3. Type of chemical(s) to be distributed: .....
4. Characteristics of chemicals: .....
5. The permitted use of the chemical(s): .....
6. The proprietary name or trademark of the chemical: .....
7. The Registration number of the chemical(s): .....
8. Quantity: .....
9. Indicate if distribution will be to wholesalers or retailers: .....
10. Location of premises: .....  
.....
11. Describe safety precautions at the premises: .....
12. Any other information: .....

Date: .....

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by: ..... on..... 20.....

Fee paid (MK): ..... In words: .....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

EIGHTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

LICENCE TO MANUFACTURE/REPACKAGE CHEMICALS

Licence No. ....

Name: .....

Address:.....

(Plot No., village, town, city, district)

You are hereby licensed to manufacture repackage the following chemicals:

(classification of chemicals indicated by number in ..... Schedule)

1. ....

2. ....

3. ....

Concentration: .....

Quantity: .....

Specific use: .....

Address of licensed premises for manufacture or repackaging: .....

.....

This licence is valid from ..... 20 ..... to ..... 20.....

This licence is granted subject to the following conditions: .....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

NINTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

LICENCE TO IMPORT CHEMICALS

Licence No. ....

Name: .....

Address: .....

(Plot No., village, town, city, district)

You are hereby licensed to import the following chemicals: .....

(indicated by number in ..... Schedule)

1. ....

2. ....

3. ....

Purposes for which the imported chemicals are licensed: .....

From (Name and address): .....

Quantity: .....

Concentration:.....

The import shall be made through: .....

(border/customs control post)

Address of licensed premises for storage or repackaging where necessary: .....

.....

This licence is valid from ..... 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

(Attach a copy of authorization by the state from which importation is to be made)

Date: .....

Signature: .....

Director

Department of Environmental Affairs

TENTH SCHEDULE

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO EXPORT CHEMICALS

Licence No. ....

Name: .....

Address: .....

(Plot No., village, town, city, district)

You are hereby licensed to import the following chemicals: .....

.....

(indicated by number in Schedule):

1. ....

2. ....

3. ....

(Name and address): .....

The export shall be made through: .....

(border/customs control post)

This licence is granted subject to the following conditions:

(Attach a copy of authorization by the state from which importation is to be made)

1. ....

2. ....

3. ....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

ELEVENTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

LICENCE TO TRANSPORT CHEMICALS

Licence No. ....

Name: .....

Address: .....

You are hereby licensed to manufacture/repackage the following chemicals (indicated by number in Schedule):

1. ....

2. ....

To (Location, district): .....

From (Location, district): .....

Number, type and registration number of vehicles licensed: .....

.....

This licence is valid from ....., 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

TWELFTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

LICENCE TO DISTRIBUTE CHEMICALS

Licence No. ....

Name: .....

Address: .....

(Plot No., village, town, city, district)

You are hereby licensed to distribute the following chemicals: (indicated by number in Schedule)

1. ....
2. ....
3. ....

To: (wholesalers retailers, etc.)

Quantity: .....

Specific use: .....

This licence is valid from ....., 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

THIRTEENTH SCHEDULE reg. 4



REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

FEES

Matter	Fees payable on first application	Fees payable	Column 1 renewal of licence
K	t	K	t
1.	Application for licence to manufacture/repackage chemicals	50,000 00	30,000 00
2.	Application for licence to import chemicals	50,000 00	30,000 00
3.	Application for licence to export chemicals	50,000 00	30,000 00
4.	Application for licence to transport chemicals (carrier)	50,000 00	30,000 00
5.	Application for licence to distribute chemicals	50,000 00	30,000 00
6.	Application for licence to operate/own a disposal site or plant	50,000 00	30,000 00

FOURTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

APPLICATION FOR RENEWAL OF A LICENCE

Name of Applicant: .....

Address: .....

Application for Renewal of a licence for: .....  
manufacturing/repackaging chemicals: .....  
Importing chemicals: .....  
Exporting chemicals: .....  
Transportation of chemicals: .....  
Wholesale/distribution of chemicals: .....  
Retail of chemicals: .....  
Location of business: .....  
Current licence number: .....  
Chemical applied for: .....

Does the applicant seek any changes in the conditions of the current licence?

I certify that the information provided is complete and correct.

Date: .....

Signature: .....

Director

Department of Environmental Affairs

FOR OFFICIAL USE ONLY

1. Date of receipt of application: .....
2. Application Fee MK in words: .....
3. Date of inspection of premises (a separate inspection report is required): .....
4. Approved
5. Rejected Licence number
6. Further information required
7. Reasons if (5) is applicable: .....

FIFTEENTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

MINIMUM REQUIREMENTS FOR MANUFACTURING, PACKAGING, TRANSPORTATION STORAGE OR  
DISTRIBUTION OF CHEMICALS

PART I

MINIMUM REQUIREMENTS FOR MANUFACTURING, PACKAGING OF CHEMICALS

1. Premises

1.1 Premises should be located away from home, drinking water sources and areas liable to flooding.

1.2 Premises should be maintained in a good state of repair. The condition of buildings should be reviewed regularly and repairs effected where necessary.

1.3 Premises should have sufficient space to provide hygienic working conditions, allow an efficient flow of work, and permit effective communication and suspension, and clear access to fire fighting equipment.

1.4 Floors in processing areas should be made of impervious materials, laid on, and even surface, free from cracks and open joints, and should allow prompt and efficient removal of any spillage. Walls should be sound and finished with a smooth, impervious, washable and non-flammable surface.

1.5 Premises in which chemical products are stored, manufactured or repackaged should be made secure, with access restricted to authorized personnel.

1.6 Roofing must be able to keep out rain and must be designed to allow for fumes and heat to be vented in case of fire.

1.7 Pretreatment facilities should be provided to reduce the amount and toxicity of wastes.

1.8 Drains should be of adequate size, and should have trapped quellies and proper ventilation. Open channels should be avoided where possible, but if they are necessary, they should be shallow to facilitate cleaning or easy recovery of the chemical for reuse/disposal. Drainage should be directed to pretreatment facilities.

1.9 Air intakes and exhausts, and associate pipe work and trucking should be sited to avoid occupational safety hazards and reduce emission into the environment.

1.10 Manufacturing areas should not be used as a general right of way for personnel or, except of materials used in the manufacturing process, for storage of materials.

1.11 Waste material should not be allowed to accumulate but should be collected in suitable receptacles for removal to collection points outside the building and disposed of in accordance with

the requirements under regulation. Special care is necessary over the disposal of waste containing dangerous, highly toxic chemicals.

Disposal of raw materials printed packing materials and rejected products should be carefully controlled and documented.

1.12 There should be made available written clearing procedures and schedules for manufacturing or repackaging and storage areas. The amounts of harmful chemicals stocked should be reported and the quantities emitted into the environment.

1.13 Adequate space, preferably separated from the processing areas, should be provided for storing equipment, and storage of cleaning materials, signs should be available indicating non-smoking, non-eating areas, location of emergency equipment. Emergency phones and emergency exit routes.

## 2. Storage Areas

2.1 Goods must be checked on arrival for identity, quantity and condition.

2.2 Storage areas should be designed, laid-out and be of sufficient capacity to permit effective and orderly segregation of various categories of material stored and where possible access should be restricted to authorized personnel.

2.3 Segregated storage should be provided for rejected, recalled, expired or returned goods. There should also be physical separation of chemicals that react with each other and separation of chemicals from foodstuffs, feedstuffs and pharmaceuticals.

2.4 Labels and other printed packaging materials, should be stored in a secure manner that will permit issue only to authorized persons in accordance with formal documented procedures. Storage arrangements should permit separation of different labels and other printed materials and avoidance of a mix-up.

2.5 All goods should be stored under cover to avoid risk of harmful exposure to personnel.

2.6 Every area for the bulk storage should be under cover to avoid risk of harmful exposure to personnel and should be—

- (a) adequately ventilated;
- (b) capable of containing not less than seventy-five per cent of spillage;
- (c) have an inventory of the substances in storage maintained and prominently displayed; and
- (d) provide for separate locations for solid and liquid products.

2.7 Products in storage shall have—

- (a) product data sheets;
- (b) hygiene and safety instructions; and

(c) emergency instructions and procedures.

2.8 Storage facilities should only stock the quantity needed in the immediate future.

### 3. Equipment

3.1 Equipment should be designed and located to suit the process and products for which it is to be used. Equipment should be maintained so as to be fit to perform the contemplated functions and present no hazard to personnel.

3.2 All necessary and protective equipment should be provided.

3.3 Manufacturing equipment should be easily and conveniently cleanable, both inside and outside. There should be available written instructions for cleaning of equipment and suitable clearing facilities should be provided.

3.4 Equipment should not be a hazard to human health and the environment through leaking joints, lubricant drips or through inappropriate modifications or adaptations.

3.5 Equipment used for weighing, measuring, testing and recording should be subject to regular recorded checks for accuracy and working order, in accordance with a written planned maintenance schedule.

3.6 Emergency equipment should be available, for example, fire fighting, and emergency showers.

### 4. Personnel

4.1 The key personnel are the persons responsible for production or repackaging and the person responsible for quality control, who should be different persons, neither of whom should be responsible to the other, but who should both have a responsibility for achieving the requisite quality.

4.2 Manufacturing or repackaging operations shall be carried out under the supervision of a chemist with adequate relevant post-graduate training with the support of suitably qualified personnel such as a chemical technologist or assistant.

4.3 All quality control operations shall be carried out under the supervision of an appropriate trained chemist with relevant post-graduate training with the support of suitably qualified personnel such as a laboratory technologist or assistant.

4.4 Personnel involved in the manufacturing or repackaging of toxic substances or chemicals shall be provided with—

(a) adequate protective and safety clothing;

(b) adequate and appropriate equipment or facilities for handling toxic substance and chemicals;

(c) proper training and information of potential health hazards to which he may be exposed to and the measures available for prevention and control and protection against health hazards as required under section 65 of the Occupational Safety Health and Welfare Act. Cap. 55:07

## 5. Production

5.1 Manufacturers are required to use less harmful chemicals during production to reduce the amount of hazardous wastes.

5.2 The quality of the chemical shall comply with the requirements under these Regulations.

## PART II

### MINIMUM REQUIREMENTS FOR TRANSPORTATION AND STORAGE OF TOXIC SUBSTANCES AND CHEMICALS

1.1 Adequate and appropriate facilities and equipment to transport, store or handle toxic substances and chemicals in an environmentally sound manner is a prerequisite.

1.2 The facility should be in a position to report the amounts of harmful chemicals they stock and the quantities emitted into the environment.

1.3 The collection and transportation of toxic substances and chemicals shall be conducted in a manner that would not cause spillage, harmful emissions, leakage and scattering of the substances.

1.4 The vehicle, pipelines and equipment for the transportation of toxic substances and chemicals shall be in such a state as not to cause the scattering, harmful emissions or the flowing of the substances.

1.5 Chemicals must not be loaded together with food and other materials destined for human or animal consumption and use.

## 2. Personnel

2.1 The personnel involved in the collection, transportation or storage of toxic substances shall be provided with—

- (a) adequate protective and safety clothing;
- (b) adequate and appropriate equipment or facilities for handling toxic substances; and
- (c) proper training and information.

2.2 Drivers in particular should be given written summaries of emergency response procedures to be followed in case of an accident involving chemicals.

2.3 The personnel involved in the collection, transportation or storage of toxic substances and chemicals shall undergo such medical check-ups as are necessary commensurate to the risks faced by the employees and the medical report of fitness shall be kept by the town clerk of every local authority.

### 3. Vehicles

3.1 The vehicle for transporting or other means of conveyance and the premises for storage of toxic substances and chemicals shall be labelled in such a manner as prescribed by the Director.

3.2 The condition of the vehicle must be checked before loading, and unsound floors and protrusions likely to damage the packs must be avoided.

3.3 Stability of the load must be ensured.

3.4 Vehicle must carry documents, for example Transport Emergency (TREM) Card, that will identify the following, in the event of an accident—

(a) the dispatching company, including its address and phone numbers;

(b) the products being carried; and

(c) basic hazards and precautions to be taken.

3.5 Suitable fire-extinguisher, protective and clean-up equipment should be available for the driver.

3.6 The quality of the chemical shall comply with the requirements under these regulations.

## PART III

### MINIMUM REQUIREMENTS FOR DISTRIBUTION OF TOXIC SUBSTANCES AND CHEMICALS

#### 1. Domestic Sale

1.1 A person may sell chemicals if he has been granted a licence by the Director under regulation 4.

1.2 A chemical shall be distributed and used for specific purpose only as stipulated under these Regulations e.g. restricted to agricultural, industrial, domestic or public health purposes.

1.3 A chemical shall be produced or manufactured in the form (i.e. whether liquid or otherwise) as indicated by these Regulations and the concentration levels shall conform to the specifications under these Regulations.

1.4 A distributor of chemicals must comply with labelling, packaging, storage and other requirement stipulated under these Regulations.

#### 2. Advertising

2.1 The use of false or misleading statements or visual presentations is strictly prohibited. In particular, the use of statements and pictures that exaggerate or otherwise misrepresent the safety and effectiveness of a chemical.

2.2 Adverts should consist of accurate, factual statements that can be substantiated by testing and technical information.

2.3 Adverts should stress the importance of reading the label and following appropriate safety precautions.

3. Import and Export

3.1 A person may import chemicals into Malawi if he is licensed to do so under regulation 4.

3.2 A licensed person shall import into Malawi only those chemicals registered under regulation 10.

3.3 A licensed importer of chemicals shall display proof of his licence or other documentation to customs officials when bringing shipments of chemicals into the country.

3.4 The importer shall be required to certify in writing that a shipment complies with these Regulations.

3.5 A person may export chemicals if he is licensed to do so under regulation 4.

3.6 Severely restricted chemicals shall be exported only with the prior consent of the recipient country.

SIXTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT) REGULATIONS

APPLICATION FOR A LICENCE TO OWN/OPERATE A CHEMICAL WASTE DISPOSAL SITE/ PLANT

I/We ..... hereby apply for a licence to own/operate a chemical waste disposal site/plant, of which particulars are given below—

1. Address of Applicant: .....
2. Location and District of site/plant: .....
3. Approval by the Local Authority (attach a written approval by the environmental officer of the Local Authority).
4. Type of chemical(s) to be disposed off at site/plant: .....
5. Characteristics of the chemical(s):.....
6. Form of the chemical(s): .....
- (a) liquid: .....



- (b) dust: .....
- (c) granular: .....
- (d) baits :.....
- (e) wettable powders: .....
- (f) other (specify): .....

7. Quantity being disposed off/per annum:.....

- (a) liquid: .....
- (b) dust: .....
- (c) granular: .....
- (d) baits:.....
- (e) wettable powders: .....

8. Estimated life span of plant/site:.....

9. — (a) proposed hectarage/area of site/plant (include site plan and designation):

— (b) description of soil structure and geology of the area

10. Executive summary of environmental impact assessment (please attach) Any other information.

.....

Signature of Applicant and Title

FOR OFFICIAL USE ONLY

Application received by:.....

MK ..... in words

Signature .....

Director, Environmental Affairs Department

SEVENTEENTH SCHEDULE reg. 4

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

LICENCE TO OWN/OPERATE A CHEMICAL WASTE DISPOSAL SITE

Licence No. ....

Name: .....

Physical address: .....

You are hereby licensed to own operate a chemical waste disposal site/plant at Plot No.

.....

(village, town city, district)

This licence is valid from ....., 20 ..... to ....., 20.....

This licence is granted subject to the following conditions: .....

.....

Date: .....

Signature: .....

Director

Department of Environmental Affairs

EIGHTEENTH SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (CHEMICALS AND TOXIC SUBSTANCES MANAGEMENT)  
REGULATIONS

NOTIFICATION SCHEME FOR BANNED AND SEVERELY REGISTERED CHEMICALS

FORM A: INFORMATION REGARDING EXPORT

1. Country of export: .....
2. Ministry/Department and Responsible Authority/Firm: .....
3. Name(s) of chemical:.....

(common name; trade name)

4. Specification, irrelevant for control action: .....
5. Code numbers: .....
  - (a) Chem. Abstr. Services Reg. No. (CAS):.....
  - (b) Other number(s) specify:.....
6. Country of destination: .....
7. Designated National Authority or national authorities to which this information is addressed:  
.....
8. Notification of control action sent: .....
  - (a) Date(s): .....
  - (b) Copy attached: .....
  - (c) Reference address of Designated National Authority: .....
9. Information regarding export: .....
10. Name, title and address of person providing this information: .....
11. Date: .....

FORM B. NOTIFICATION FOR CONTROL ACTION

1. Country: .....
2. Ministry Department and Responsible Authority: .....
3. Name(s) of chemical (chemical name) (IUPAC): common name: trade names:  
.....
4. Specification, if relevant for control action (e.g. for pesticides): .....
5. Code numbers: .....
  - (a) Chem. Abstr. Services Reg. No. (CAS): .....
  - (b) Customs Cooperation Council No. (CCC): .....
  - (c) Other number(s) specify: .....
6. Control action: .....

USE(S) CONTROLLED AND SUMMARY OF CONTROL ACTION      EFFECTIVE DATE      REF.      TO  
NATION DOCUMENT

7. Reasons supporting the control action (relevant to protection of human health and the environment): .....
8. Contact point where additional information may be obtained: .....
9. Designated alien authority: .....
10. Name and title of official issuing this notification: .....
11. Date: .....

## ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

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G.N. 25/2008

## ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

under s. 37

### PART I

#### PRELIMINARY

##### 1. Citation

These Regulations may be cited as the Environment Management (Waste Management and Sanitation) Regulations.

##### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“agricultural solid wastes” include wastes resulting from the production and processing of farm or agricultural products, including manures, pruning and crop residues wherever produced;

“business” shall have the same meaning assigned thereto under the Business Licensing Act; Cap.46:01

“carrier” means any person who carries out the transportation of wastes including hazardous wastes and includes his agents or assignees;

“collection” means the act of collecting solid waste at the place of waste generation by a local government authority or approved private collection agent;

“commercial solid waste” includes all types of solid wastes generated by stores, offices and other commercial sources but does not include domestic waste or industrial waste;

“composting” includes a controlled microbial degradation of organic matters yielding a safe and nuisance free product;

“construction and demolition wastes” include the waste building, materials packaging and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings and other structures;

“domestic sewage” means human excrement, water borne human excretion or the water-carried wastes from liquid or non-liquid culinary purposes, washing, cleansing, laundering, food processing or ice production;

“disposal site or plant” means the land or water area on which waste disposal facilities are physically located and includes a large incinerator;

“domestic wastes” means wastes generated from residences and includes garbage and rubbish;

“exporter” means any person under the jurisdiction of the state of export who arranges for the export of wastes including hazardous wastes;

“garbage” includes all kitchen and table food waste, animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of foodstuffs;

“generator” means any person whose activity generates wastes or if that person is not known, the person who is in possession or control of the wastes;

“groundwater” means subsurface water at or below a water table in fully saturated geologic materials and formations;

“hazardous wastes” means any waste which has been identified in the Seventh Schedule hereto or any waste having the characteristics defined in the Eighth Schedule hereto and includes medical waste and infectious waste;

“importer” means any person under the jurisdiction of the state of import who arranges for wastes including hazardous wastes to be imported;

“incinerator” includes any equipment used for the volume reduction or destruction of combustible wastes by burning, from which the exhaust gases pass through a flue;

“industrial wastes” include all types of solid wastes and semi-solid wastes which result from industrial processes and manufacturing;

“infectious wastes” include—

(a) disposable equipment, instruments, utensils and other materials of a disposable nature which require special precaution because of contamination by disease causing organisms;

(b) microbiological laboratory wastes, including cultures and stocks of infectious agents from clinical research or industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;

(c) pathological wastes, including human or animal tissues, organs and body parts, removed during surgery, autopsy and biopsy;

- (d) human blood and blood products, including waste blood, blood serum and plasma;
- (e) used sharps, including used hypodermic needles, syringes, scalpel blades, pasteur pipettes and broken glass; and
- (f) contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in research, in the production of biological or the “in viro” testing of pharmaceuticals.

“litter” means all improperly discarded waste material including convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic and other natural and synthetic materials, thrown or deposited on the lands and waters of the nation;

“local authority” means a local authority as defined under the Local Government Act; Cap. 22:01

“medical waste” means waste which is generated or produced as a result of diagnosis, treatment or immunization of human beings or animals, and includes waste sharps and bio-hazardous waste which is generated by bio-hazardous research through production and testing of biologicals including serums, vaccines, antigens and anti-toxins;

“Director” means the Director responsible for environmental issues;

“municipal liquid waste” means—

- (a) effluent that originates from any source and is discharged into a municipal sewer system;
- (b) effluent from residential sources that is discharged to the ground; or
- (c) effluent specified by the Director to be included in a waste management plan;

“municipal sewage” means domestic sewage, waste water or municipal liquid waste originating primarily from residences, but may include contributions from—

- (a) commercial, institutional and industrial sources; and
- (b) inflow and infiltration;

“municipal solid waste” means waste that is generally non-hazardous and may be disposed of without any special considerations and includes trash and garbage and bulky waste;

“recyclables” means waste materials of the type required to be recycled pursuant to these Regulations;

“recycling” means any process by which materials are diverted from the solid waste stream and are collected, separated, processed and returned to the economic mainstream in the form of raw materials or product for re-use;

“recycling facility” means a facility which is able to accept and process recyclable materials in accordance with acceptable international standards and these Regulations;

“recycling plan” means a plan describing a programme for waste reduction at source and recycling;

“resource recovery” means the reclamation or salvage of wastes for re-use, conversion to energy or recycling;

“re-use” means using an object and material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material;

“septic tank” means a watertight vessel into which municipal sewage is continually conveyed such that solids within the municipal sewage settle, anaerobic digestion of organic materials occurs and an effluent is discharged;

“sewage facility” means works operated by a municipality or any licensed person to gather, treat, transport, store, utilize or discharge sewage;

“solid waste management” includes—

(a) a planned programme for effectively controlling the generation, storage, collection, transportation, processing, and reuse, conversion or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound and economic manner; and

(b) all administrative, financial, environmental, legal and planning functions as well as the operational aspects of solid waste handling, disposal and resource recovery systems necessary to achieve established objectives.

“transit” means the passage from one border to another border through the national territory of Malawi including storage in transit bonds;

“waste” includes—

(a) general or municipal solid waste;

(b) hazardous waste; and

(c) municipal liquid waste.

## PART II

### ROLE OF LOCAL AUTHORITIES

#### 3. Local authorities to prepare waste management

(1) Every local authority shall prepare a waste management plan for the area of its jurisdiction which shall include the following—

(a) type of waste generated by area;

(b) management of each type of waste generated; and

(c) resources required for managing each type of waste in terms of budget and equipment.

(2) A local authority shall keep records of waste management services in its area of jurisdiction from the point of generation to the point of disposal and such records shall include—

(a) the source;

(b) waste type or types;

(c) quantities of waste handled;

(d) classification of waste;

(e) recyclability of the types of waste managed; and

(f) recommended disposal methods and mechanisms for monitoring compliance with such disposal methods.

#### 4. Local authorities to promote waste management

(1) A local authority shall promote an integrated waste management system and shall adopt the waste management hierarchy as provided in the First Schedule hereto.

(2) A local authority shall progressively upgrade landfills from dump sites to sanitary or engineered landfills.

(3) Local authorities shall promote waste composting at source as the only way to reduce the amount of waste to be disposed at landfills.

#### 5. Local authorities to operate a municipal sewage collection system

A local authority shall operate and maintain a municipal sewage collection system in its area of jurisdiction.

#### 6. Local authorities promote colour coding of waste containers by waste type

(1) Local authorities shall promote colour coding of waste containers by waste type to ensure and promote waste segregation.

(2) Waste containers shall be colour coded as provided in the Second Schedule hereto.

### PART III

#### MANAGEMENT OF GENERAL OR MUNICIPAL SOLID WASTE

#### 7. Waste separation at source

(1) Any person who generates or collects solid waste shall sort out the waste by separating hazardous waste from the general or municipal solid waste.

(2) The general or municipal solid waste shall be further sorted out into categories of wastes that can be recycled or reclaimed and waste that is earmarked for disposal.

8. General responsibility for proper storage of municipal waste

(1) Every generator of waste shall be responsible for the safe and sanitary storage of all general or municipal solid waste accumulated on his or her property so as not to promote the propagation, harborage or attraction of vectors or the creation of nuisances.

(2) Any method of storage adopted by a generator pursuant to subregulation (1) shall accommodate the anticipated solid waste loading and shall allow for efficient and safe waste removal or collection.

9. Generator of waste may dispose of waste in certain circumstances

Any generator of waste may, without licence under these Regulations, but with special permission from a local authority, dispose of general or municipal solid waste which is non-hazardous in an environmentally sound manner in accordance with by-laws made by a local authority:

Provided that this shall not apply to the disposal of large amounts of such waste.

10. Collection of municipal solid waste

(1) A local authority shall be responsible for the collection of the general or municipal solid waste in its area of jurisdiction and this shall be done at such a frequency as to prevent the piling of waste.

(2) Notwithstanding subregulation (1), a local authority may assign private contractors to collect general or municipal waste to ensure effective and efficient collection services.

(4) Where the same vehicle is used to collect both types of waste, the separation shall be maintained during collection, transportation and offloading at the respective waste disposal sites or recycling facilities.

(5) Recyclables shall be delivered only at any recycling facility licensed for that purpose under these Regulations and not to a waste disposal site or plant.

11. Disposal of general or municipal solid waste

(1) General or municipal solid waste may be disposed of at any waste disposal site or plant identified and maintained by a competent local authority or owned or operated by any person licensed to do so under these Regulations.

(2) An operator of a waste disposal site or plant shall keep the following records in respect of any waste disposed of at the site or plant—

- (a) the source;
- (b) weight of the wastes; and

(c) type of wastes.

(3) Any person who discharges wastes into a site or plant which is unlicensed commits an offence.

#### PART IV

#### SOLID WASTE RECYCLING AND RECYCLING FACILITIES

##### 12. Recyclables

For the purposes of these Regulations, the following materials may be recycled—

- (a) paper;
- (c) plastics;
- (d) metals such as aluminium foil, beverage cans, metal, food cans;
- (e) tyres; and
- (f) leaf and yard waste and other organic materials including agricultural solid wastes.

##### 13. Application for a licence to own or operate a recycling facility

(1) Any person who intends to own or operate a recycling facility shall apply to the Director for a licence.

(2) The application shall specify the types of waste that is intended to be recycled at the facility and shall be in the form set out in the Third Schedule hereto and shall be accompanied by a fee specified in the Twentieth Schedule hereto.

(3) Where the application is for a licence to recycle hazardous wastes, the applicant shall indicate the recycling process that he intends to employ in accordance with the categories specified under Part VI and shall enclose—

- (a) a detailed description of the possible effects of the process that he intends to employ; and
- (b) any other matter that may be required by the Director.

##### 14. Application for a licence to own or operate a recycling facility

(1) The Director may grant a licence in the form set out in the Fourth Schedule hereto to own or operate a recycling facility if—

- (a) a written approval has been obtained from the local authority responsible for the area within which the recycling facility is located; and
- (b) the Director is satisfied that the owner or operator has the ability and appropriate facilities to manage the recycling facility without causing any damage to public health and the

environment, taking into account the findings of any environmental impact assessment submitted by the owner or operator.

(2) In granting a licence for the recycling of hazardous wastes, the Director shall clearly indicate the recycling process permitted and identified in accordance with the categories identified under Part VI.

(3) A licence to own or operate a recycling facility shall be valid for one (1) year and may be renewed for a like period at a fee set out in the Twentieth Schedule hereto.

15. A business to recycle solid waste materials

(1) A business may recycle any commercial solid waste which is recyclable under these Regulations and for which there is a viable market.

(2) For the purposes of this regulation, businesses shall be classified into the following size categories—

- (a) large business with two hundred fifty or more employees;
- (b) medium sized business with one hundred to one hundred forty nine (149) employees;
- (c) small business with less than one hundred employees.

(3) Pursuant to subregulation (1), a business shall place containers for all required recyclable materials in adequate sizes and quantities in each location where trash containers are located and shall clearly label each container to indicate the appropriate material to be placed inside for recycling.

16. Solid waste reduction and recycling plan and annual reports

(1) Every business shall prepare and submit to the Director a wastes reduction and recycling plan demonstrating how the business shall recycle or reduce the amount of solid wastes going to a disposal site or plant with the goal of reducing solid waste disposal by at least fifty per cent (50%) annually, by volume or weight.

(2) Every business shall prepare and submit to the Director an annual report providing information on wastes reduction and recycling activities conducted during the previous calendar year.

17. Contents of a solid waste reduction and recycling plan

A solid wastes reduction and recycling plan shall be in the form set out in the Fifth Schedule hereto and shall contain the following—

- (a) a description of the business, including—
  - (i) name and address of the property owner and the reporting business;



- (ii) names of all entities affiliated with the business, including any parent or subsidiary businesses;
  - (iii) number of full-time and part-time employees;
  - (iv) number of square metres occupied by the business; and
  - (v) the activities conducted by the business.
- (b) a description of the businesses' current solid waste generation, including—
- (i) estimated tonnage of all solid waste produced;
  - (ii) identification of recyclable solid waste as provided in regulation 12;
- (c) a description of the businesses' waste reduction and recycling methods;
- (d) name of the person responsible for—
- (i) coordinating recycling and waste reduction activities;
  - (ii) preparation of the annual report on waste reduction and recycling; and
  - (iii) responding to the Director on actions concerning implementation and enforcement of these Regulations; and
- (e) name and address of the licensed contractor responsible for collecting the materials to be recycled and the names of the facilities where materials are delivered.

18. Contents of annual report on waste reduction and recycling

An annual report referred to in regulation 16 shall include the following information on waste reduction and recycling activities—

- (a) any change in the description of the business as submitted in the waste reduction and recycling plan, including—
- (i) the purpose of and activities conducted by the company;
  - (ii) the number of full-time and part-time employees; and
  - (iii) the number of square metres occupied by the company;
- (b) identification of the total annual tonnage of solid waste generated and the annual tonnage of each type of material being reduced or recycled;
- (c) name and address of the licensed contractor responsible for collecting the materials to be recycled and sites where materials are delivered;
- (d) a description of the progress in waste reduction and re-use efforts undertaken by the company;

(e) a description of the company's efforts to educate employees about its recycling programme.

19. Certificate of solid waste reduction and recycling plans and reports

All plans and reports on waste reduction and recycling shall be signed by a person authorized to bind a business, and must certify that the information is correct to the best of his knowledge.

PART V

MANAGEMENT OF MUNICIPAL LIQUID WASTE

20. Effluent

(1) No person shall discharge effluent or provide reclaimed water that exceeds the effluent quality limits for use as reclaimed water or for discharge to the environment as specified in the Sixth Schedule hereto.

(2) Disinfected effluent may be used for—

- (a) domestic or agricultural water extraction;
- (b) recreational uses; or
- (c) aquatic food production.

(3) No person shall use chlorine to disinfect an effluent which is to be discharged to surface water unless the effluent is dechlorinated before discharge.

21. Discharges to water

(1) A person must not provide or use reclaimed water unless—

- (a) the standards for use of reclaimed water as set out in the Sixth Schedule are met; and
- (b) an environmental audit has been conducted.

(2) A person providing or using reclaimed water shall—

- (a) provide an alternative method of disposing of the reclaimed water and describe that method in the operating plan; and
- (b) satisfy the Director that no alternative method described in paragraph (a) is required to assure public health protection and treatment reliability.

(3) No person shall provide reclaimed water unless specifically authorized by a local authority having jurisdiction in the area.

22. Discharges

No person shall introduce effluent to water unless—

(a) the effluent quality standards for discharges to water as set out in the Sixth Schedule hereto are met; and

(b) there is adequate proof that the receiving water body shall efficiently dilute the effluent so as to prevent any hazard to the environment or public health.

23. Discharges into the environment

No person shall discharge effluent into the environment unless it meets prescribed environment standards.

24. Sewage facility

(1) A sewage facility shall be designed in such a way as to ensure that the construction method, the materials used and the constructed facility meet the design criteria of such a facility undertaken by a competent professional who has expertise in the particular aspect of the design.

(2) Where the sewage facility is to serve a population greater than five thousand persons, a staged approach to the design should be taken as follows—

(a) concept level planning;

(b) preliminary engineering; and

(c) detailed design.

25. Management and operations of a sewage facility

(1) The owner or operator of a sewage facility shall develop an operating plan for the facility.

(2) The operating plan shall specify the following—

(a) proper operation and maintenance of the sewage facilities;

(b) for reclaimed water use on vegetation, the maximum application rate based on agronomy studies for the vegetation to which the reclaimed water is applied;

(c) emergency procedures;

(d) facility monitoring; and

(e) staff education and certification.

(3) This regulation shall not apply to a municipal sewage collection system.

26. Non-domestic waste connection to municipal sewage system

(1) No person shall release any non-domestic waste into a municipal sewage system unless—

(a) the person releasing the non-domestic waste ensures that its quality meets the standards set by a competent local authority before being released;

(b) the sewage facility owner ensures that the requirements of this regulation and the quality of any bio-solids meet the requirements of an authorization issued by a competent local authority.

(2) A local authority shall not accept the discharge of non-domestic waste into municipal sewage collection system unless the local authority—

(a) has adopted a source control by-law or equivalent measures to regulate the discharge of non-domestic waste into the sewer system; or

(b) demonstrates, to the satisfaction of the Director that a source control by-law or equivalent measures are not required to protect the sewage facility or the receiving environment.

(3) The source control by-law shall include—

(a) provision for the pre-treatment of industrial, commercial and institutional discharges to the municipal sewer system;

(b) pre-treatment requirements to ensure that the final discharge of effluent meets the effluent quality standards set out in these Regulations and that the quality of any bio-solids meets the requirements of an authorization by a competent local authority.

(4) For the purposes of this regulation “non-domestic waste” means liquid waste other than domestic waste.

## 27. Semi-solid waste

(1) A person shall not dispose of semi-solid waste to a sewage facility unless—

(a) the sewage facility is capable of treating these wastes, in accordance with acceptable standards as may be prescribed under the Act or any other written law;

(b) the quality of any bio-solids removed from the sewage facility shall meet the requirements of an authorization given by a competent local authority.

(2) Where necessary to protect the sewage facility, the owner or operator of the facility shall install pre-treatment or containment facilities.

(3) For the purposes of this regulation “semi-solid waste” means septictank pumpage, holding tank solids and sewage sludge.

## 28. Discharge monitoring

(1) Any person who discharges municipal liquid waste into the environment shall—

(a) install a suitable sampling facility for obtaining a sample of the effluent;

(b) provide and maintain a suitable flow measuring device to record the effluent volume discharged over any specified period as may be directed by the Director;

(c) monitor effluent quantity and quality as directed by the Director in writing.

(2) A local authority shall develop guidelines to promote appropriate disposal methods for semi-solid wastes by private septictank emptying operators.

(3) Any person who discharges solid wastes indiscriminately shall be guilty of an offence.

#### 29. Monitoring of receiving environment

(1) Any person who discharges municipal liquid waste into the environment shall—

(a) monitor the receiving environment to provide data to assess the potential impact of the discharge and to ensure that the discharge does not and shall not cause water quality parameters outside the initial dilution zone, to exceed any known water quality guidelines;

(b) ensure that the monitoring programme is designed by a qualified professional knowledgeable in such matters;

(c) when conducting a receiving environment monitoring programme, provide at least one control sampling station located up stream, upgradient or outside the influence of the initial dilution zone of the effluent.

(2) A receiving environment monitoring programme shall document pre-discharge conditions.

(3) Where the Director considers that the seasonal variations of parameters within the receiving environment are significant he/she shall require the discharger to carry out pre-discharge monitoring during the most critical period of the year as may be determined by the Director.

#### 30. Reporting

(1) A person who discharges municipal liquid waste into the environment shall retain the following information at all times—

(a) effluent flow and effluent quality data; and

(b) receiving environment monitoring data.

(2) The data required under subregulation (1) and any other associated quality control work shall be submitted to the Director in a format acceptable to the Director.

#### 31. Submission of false information. etc.

Any person who, with intent to mislead—

(a) submits false monitoring data; or

(b) fails to retain monitoring data in accordance with regulation 29 commits an offence.

## PART VI

### MANAGEMENT OF HAZARDOUS WASTES

#### 32. Hazardous wastes

The Director shall from time to time publish in the Gazette and in at least one (1) of the local newspapers of daily circulation a list of wastes which fit in categories specified under the Seventh Schedule hereto or which have characteristics specified in the Eighth Schedule hereto which are hazardous and need to be controlled.

#### 33. Labeling of waste

Each container or package of hazardous wastes shall have a label written in English and such other relevant local languages in characters that are easily legible affixed into the container which shall at the minimum contain the following—

- (a) identity of the hazardous wastes;
- (b) name and address of the generator of wastes;
- (c) net contents;
- (d) normal storage stability and methods for safe storage;
- (e) name and percentage by weight of other ingredients or half-life of radio-active material;
- (f) warning or caution statements which may include all, some or any of the following as appropriate—
  - (i) the words “warning” or “caution”;
  - (ii) the words “danger! keep away from unauthorized persons”;
  - (iii) the word “poison” marked indelibly in red or on contrasting background;
  - (iv) a pictogram of a skull and crossbones; and
- (g) a statement of first aid measures including the antidote when inhaled or ingested and a direction that a physician must be contacted immediately.

(2) Vehicles or other conveyances carrying hazardous wastes shall be labeled in accordance with subregulation (1) (f) and any such label shall contain no warranties, guarantees or liability exclusion clauses.

#### 34. Directions for handling hazardous wastes

Each container or package of hazardous waste shall contain a leaflet giving adequate directions for handling the waste including safety precautions in transporting, storage and disposal of the hazardous waste and measures for cleaning any equipment used.

35. Compliance code by industries

Every industry shall develop a compliance code which shall outline the industry goals for—

- (a) waste reduction and minimization;
- (b) waste treatment on site; and
- (c) disposal plans.

36. Disposal of hazardous waste

(1) No industry, business or medical facility shall discharge any hazardous waste in any state into the environment unless such wastes have been treated in accordance with acceptable international methods that are approved by a competent local authority in consultation with the Director.

(2) Hazardous wastes whether treated or not shall not be discharged into a disposal site or plant unless such disposal site or plant has been approved and licensed for that purpose in accordance with these Regulations.

(3) Any person who contravenes this regulation commits an offence.

37. In Infectious waste

(1) No person may mix infectious waste in the same bag or waste receptacle with solid waste which is not infectious, unless mixing the wastes is necessary to protect the health or safety of patients, employees or other persons.

(2) Adequate measures shall be taken to protect waste handlers and other persons from exposure when separating infectious wastes from solid waste that is not infectious.

(3) No person may transport general solid waste and infectious waste on the same vehicle or conveyance unless the wastes are in separate and identifiable containers or bags.

38. Containment of infectious waste

(1) No person shall transport infectious waste from the property where the waste was generated unless the person puts the waste in containers or bags which protect waste handlers and other persons from exposure to the infectious waste.

(2) In the case of sharps, the person shall ensure that the sharps are contained in rigid, puncture-resistant labelled containers made of materials which include metal or rigid plastic, designed to prevent the loss of the contents and labelled with the legible words “sharps”, “infectious waste” or “bio-hazard”.

(3) Where the waste is infectious waste other than sharps, it shall be contained according to all of the following—

- (a) the waste shall be placed in a single plastic bag that is tear resistant or if necessary, a double bag that meets the same standard or a rigid re-usable container;

(b) the bag or re-usable container shall be securely sealed to prevent leakage or expulsion of contents under normal handling;

(c) all re-usable containers shall be disinfected after being emptied.

(4) No person may open a secured bag or container of infectious waste which is ready for transportation until immediately before treating the waste unless—

(a) repackaging is necessary to prevent spills or leakages; or

(b) the person is conducting a waste audit or training session.

#### 39. Handling waste

(1) No person shall handle, load, unload, process or treat infectious waste unless adequate measures are taken to protect waste handlers and other persons from exposure to the infectious waste.

(2) Such measures shall ensure that—

(a) all containers or bags are handled and transported in such a way as to prevent the loss or spilling of the contents;

(b) nuisance conditions shall be prevented from developing including measures to prevent odors by refrigerating the waste, among other methods;

(c) all infectious waste shall be loaded and unloaded by hand or by a safe mechanical method which does not damage containers or spill their contents; and

(d) untreated infectious waste is not compacted.

#### 40. Storage and transfer of infectious wastes

(1) Infectious waste generators may temporarily accumulate infectious waste in individual containers near the place where the waste is generated prior to moving the waste to a disposal facility.

(2) Notwithstanding subregulation (1), no person may store infectious wastes unless the person protects waste handlers and other persons from exposure.

#### 41. Infectious waste treatment methods

(1) No person shall dispose of infectious waste in a solid waste disposal facility unless the infectious waste has undergone treatment which effectively renders the waste non-infectious.

(2) The treatment method shall be in accordance with acceptable international methods that are approved by a local authority in consultation with the Director and shall be chosen by considering the properties of the waste being treated and the degree of microbial contamination and shall be one or more of the following—



(a) incineration in a controlled air, multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash;

(b) steam disinfection, which includes autoclaving and subjects the waste to a combination of operational temperature, pressure (where applicable) and time proven to render the waste non-infectious at the design capacity of the relevant equipment used;

(c) chemical disinfection which exposes the infectious waste to an appropriate type and concentration of disinfectant for a period of time sufficient to render the waste non-infectious;

(d) mechanical grinding and chemical disinfection, which prevents the release of infectious liquid or infectious gaseous discharges into the environment;

(e) mechanical grinding and heat disinfection, which includes low frequency wave radiation and microwave radiation and exposes infectious waste to heat for a period of time sufficient to render it non-infectious; or

(f) gas disinfection, which allows for gas to penetrate all the infectious waste to render it non-infectious.

(3) No person shall treat the following categories of infectious waste in any other way except as follows—

(a) human tissue, by—

(i) a method which renders the tissue both non-infectious and unrecognizable as human tissue; or

(ii) incineration;

(b) animal tissue, by—

(i) a method which renders the tissue non-infectious;

(ii) incineration; or

(iii) burial;

(c) sharps, by—

(i) any method which renders the sharp non-infectious and renders the sharps broken non-re-usable, such as by a grinding or shredding process; or

(ii) incineration;

(d) bulk blood, by:

(i) biological treatment in a municipal or industrial waste water treatment plant which has been approved under these Regulations and may be transported to such facility through the sewer system;

(ii) incineration; or

(iii) methods which render the blood non-infectious; and

(e) body fluids and blood-contaminated urine and faeces shall be treated by any method in paragraph (d) or by disposal into a septic tank.

#### 42. Infectious waste records

(1) An infectious waste generator shall keep records of the amounts of infectious wastes generated and sent off-site for treatment and disposal.

(2) The records may consist of any of the following—

(a) copies of infectious wastes manifest;

(b) invoices or records received from the infectious waste treatment facility;

(c) logs or other written documentation of the amount of infectious waste sent off-site for treatment and disposal.

(3) The records under this regulation shall be kept for at least three years after they were created and if the three year period expires during an unresolved enforcement action, the period shall automatically extend until resolution of the pending enforcement action.

#### 43. Medical waste reduction

(1) Medical facilities shall adopt and implement policies aimed at—

(a) reducing the amount of medical waste generated by medical facilities;

(b) preventing the mixing of infectious waste with non-infectious waste;

(c) promoting practical alternatives to disposable items; and

(d) maintaining effective waste reduction programmes.

(2) Each medical facility shall prepare a medical waste reduction plan for—

(a) separating, reducing and managing the medical waste generated;

(b) evaluating alternatives to disposable products; and

(c) maintaining waste reduction efforts.

(3) The medical waste reduction plan shall—

(a) include or refer to specific written policies and procedures for informing volunteers, patients and others about waste disposal in order to prevent non-infectious waste from being put in containers meant for infectious waste;

(b) provide for the training of employees and medical personnel who work within the medical facility.

#### 44. Waste audit by medical facilities

(1) Each medical facility shall audit the facility's current solid waste management practices at least every three years.

(2) The audit shall identify—

(a) the source areas for solid waste in general and the types of waste that are generated within each source area;

(b) quantity of medical waste generated during the previous twelve months and also the rate at which the facility generated the medical waste;

(c) how medical waste is collected, stored, transported and treated from the point of generation to the point of final disposal;

(d) how non-infectious waste is prevented from being mixed with infectious waste and any waste types that are currently mixed with or may be mixed with infectious wastes.

## PART VII

### TRANSPORTATION AND STORAGE OF WASTE

#### 45. Transportation and storage of waste

(1) No person shall engage in the business of transporting, handling or storage of wastes without first applying for a licence from the Director in accordance with the provisions of the Act.

(2) An application for a licence to transport wastes shall be in the form set out in the Ninth Schedule hereto and shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(3) An application for a licence for storage of wastes shall be in the form set out in the Tenth Schedule hereto and both application shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(4) In addition to the provisions of the Act, the Director in granting a licence to any person for the purposes of this regulation shall be satisfied—

(a) that the applicant has adequate and appropriate facilities and equipment to transport, handle or store wastes in an environmentally sound manner;

(b) with the proposed collection schedule of wastes of the applicant and, in the case of storage, that the premises are suitable for storing such a category of wastes as applied for.

(5) Any person who contravenes subregulation (1) commits an offence.

#### 46. Licence for waste transportation or storage

(1) The Director shall publish his intention to issue a licence for the transportation or storage of wastes by notice in the Gazette and in at least one of the local newspapers of daily circulation sixty days before the licence is granted.

(2) A licence to transport wastes shall be in the form set out in the Eleventh Schedule hereto and a licence for storage of wastes shall be in the form set out in the Twelfth Schedule hereto:

Provided that the Director may, where he deems it necessary, issue a licence to any applicant for the temporary storage of any waste pending final disposal if the temporary storage meets the standards required for the storage of such a category of waste under these Regulations.

(3) Subject to the Act and these Regulations, a licence granted under this regulation shall be valid for such a period as the Director shall determine:

Provided that the Director may limit the validity of period of the licence to a specific number of transactions where necessary.

#### 47. Conditions attached to licences

(1) The Director shall subject a licence to transport wastes granted under regulation 46 to the following conditions, that—

(a) the collection and transportation shall be conducted in such a manner that shall not cause scattering of the wastes;

(b) the vehicles, pipelines and equipment for the transportation of wastes shall be in such a state as not to cause the scattering of, or the flowing of the wastes, or the emission of bad smell from the wastes;

(c) there shall be adequate cleaning facilities at waste disposal sites or plants where the transported wastes will be disposed of to ensure that the vehicles or other equipment used for transportation of wastes are cleaned regularly.

(2) The Director shall attach the following conditions to the licences for transportation and storage of wastes—

(a) that the personnel involved in the collection, transportation or storage of wastes shall be provided with—

(i) adequate protective and safety clothing;

(ii) adequate and appropriate equipment or facilities for handling wastes;

(iii) safe and secure sitting facilities in the vehicles for transportation of wastes;

and

(iv) proper training and information;

(b) the licensee shall ensure that the personnel involved in the collection, transportation or storage of wastes undergo such medical check-ups as may be necessary, in view of the risks faced by the employees, and medical reports of fitness shall be kept by the licensee for inspection;

(c) an inspector may at any reasonable time subject the personnel involved in collection, transportation or storage of wastes to a medical check-up and the costs of such examination shall be borne by the licensee;

(d) the vehicles for transporting or other means of conveyance and the premises for storage of wastes shall be labeled in such a manner as may be determined by the Director;

(e) the premises for storage of waste are safe and secure to prevent scavenging; and

(f) any other condition which the Director shall consider relevant for the transportation and storage of wastes.

(3) In addition to the powers contained in the Act, an inspector may at any reasonable time stop and inspect any vehicle or conveyancer used for the transportation of wastes and enter upon any premises where waste is stored.

#### 48. Materials for storage of waste

(1) Any person who applies for a license for storage of wastes under regulation 46 shall provide a sample of the container or packaging material in which the wastes shall be stored.

(2) The container or packaging material submitted under regulation (1) shall be suitable for the storage of wastes for which the application for storage has been made and shall—

(a) not be reactive to the wastes in question;

(b) be capable of protecting the health of persons involved in handling the wastes, the neighboring community and the environment in general; and

(c) be leak or puncture proof.

(3) Every container or packaging material which is used for storage of hazardous wastes shall be labeled in accordance with these Regulations.

### PART VIII

#### WASTE DISPOSAL SITE OR PLANT

#### 49. Environmental impact assessment

(1) No disposal site or plant shall be licensed under these Regulations unless an environmental impact assessment has been carried out in accordance with the provisions of the Act.

(2) Any person operating a disposal site or plant shall carry out annual audit of the environmental performance of his site or plant and shall submit his reports to the Director.

#### 50. Application for a licence to own or operate a waste disposal site or plant

(1) Any person who intends to own or operate a waste disposal site or plant shall apply to the Director for a licence.

(2) An application for a licence to operate a waste disposal site or plant shall specify whether the facility shall be for the disposal of general or municipal solid waste or the disposal of hazardous waste or for the disposal of both and shall be in the form set out in the Thirteenth Schedule hereto and shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(3) Where the application is for a licence for the disposal of hazardous wastes, the applicant shall indicate the disposal operations that he intends to carry out in accordance with the categories identified in the Seventh and Eighth Schedules hereto and shall enclose—

- (a) a detailed description of the process he intends to employ and its possible effects;
- (b) a detailed description of the soil structure and geology of the area;
- (c) a plan for managing leachate, incinerator fumes, fly ash and other by-products from the waste;
- (d) a detailed drawing indicating the structure, construction and surroundings of the waste disposal site or plant; and
- (e) any other matter that may be required by the Director.

(3) Any person who operates a waste disposal site or plant without a licence commits an offence.

#### 51. Licence to own or operate a waste disposal site or plant

The Director may grant a licence in the form set out in the Fourteenth Schedule hereto to own or operate a waste disposal site or plant if—

- (a) a written approval has been obtained by the applicant from the local authority within the area of which the waste disposal site or plant is located;
- (b) that the Director is satisfied that the owner or operator has the ability and resources to manage the facility without causing any damage to public health and the environment, taking into account the findings of any environmental impact assessment submitted by the applicant; and
- (c) notice has been given by the applicant in the Gazette or such local newspapers of daily circulation as the Director shall deem fit on the proposed waste disposal site or plant, sixty days before the issue of the licence.

#### 52. Conditions for a waste disposal site or plant

(1) Each waste disposal site or plant shall—

- (a) be at least outside a radius of one thousand metres away from a residential or commercial area and water sources;
- (b) have hazard and safety signs displayed at appropriate places indicating the disposal site or plant and the nature of operations it carries out in accordance with the Fifteenth Schedule hereto;

- (c) be enclosed and secure from scavenging;
- (d) be operated in a way which would—
  - (i) avoid polluting surface and underground water;
  - (ii) avoid the emission of bad smells from the site or plant to levels beyond any standards prescribed by the Director under section 30 of the Act; and
  - (iii) prevent the breeding of rats, mosquitoes and other vermin at the site or plant;
- (e) have equipment to control accidental fires;
- (f) make provision to confine wind blown materials within the active area of disposal;
- (g) have means of ventilation to remove bio-gas generated from the site or plant and the smell from the site or plant shall be controlled; and
- (h) install equipment for the collection and testing of leachate.

#### 53. Methods of disposal

(1) General or municipal waste shall be compacted and completely covered at the end of each day with a compacted layer of at least six centimeters of soil.

(2) Sewage sludge may be disposed of at a waste disposal site or plant after treatment.

(3) Any waste which is deemed to be hazardous under these Regulations shall be disposed of in a specially designated cell and shall be compacted to a thickness of at least one metre and each layer of wastes shall be covered with at least fifty centimeters of soil.

(4) Where the waste disposal site or treatment plant is for disposal of hazardous waste only, then the waste shall be disposed of or treated in accordance with conditions specified in the licence or in accordance with any general guidelines issued by the Director in consultation with the Director responsible for Local Government.

(5) Any person who disposes of hazardous wastes contrary to these Regulations commits an offence.

#### 54. Requirements for personnel working at waste disposal site or plant

(1) The personnel working at the waste disposal site or treatment plant shall be provided with—

- (a) adequate protective and safety clothing;
- (b) adequate water and appropriate equipment or facilities for the operations of the disposal site or plant;
- (c) shelter;

- (d) first aid training and facilities;
- (e) communication equipment and facilities; and
- (f) adequate cleaning facilities for vehicles.

(2) The personnel working at the waste disposal site or treatment plant shall undergo a medical check-up at least once every year.

55. Prevention of pollution from waste disposal sites or treatment plants

(1) Every person who operates a waste disposal site or plant shall take all necessary measures to prevent pollution from such site or plant including the erection of necessary works and the taking of mitigating measures.

(2) In taking mitigating measures to prevent pollution, the operation of such a waste disposal site or plant shall comply with any directions given by an inspector under the Act.

PART IX

TRANS-BOUNDARY MOVEMENT OF WASTES

56. Trans-boundary movement of waste

(1) Any person who wishes to export or import wastes from or into Malawi shall complete a movement document in the form set out in the Sixteenth Schedule hereto which shall be accompanied by the fee prescribed in the Twentieth Schedule hereto.

(2) The movement document shall be submitted to the Director and a copy of which shall be submitted to the local authority of the area to which the imported wastes are destined, or of the area where the wastes to be exported are situated.

(3) The Director shall issue an export licence which shall be in the form set out in the Seventeenth Schedule hereto after considering the movement document submitted under subregulation (1) and taking into account the provisions of the Act.

(4) The Director shall issue an import licence, which shall be in the form set out in the Eighteenth Schedule hereto after considering the movement document submitted under subregulation (1) and taking into account the provisions of the Act.

(5) Where a licence is issued under the provisions of this regulation, a copy of such licence shall be sent to the Malawi Revenue Authority for the necessary customs verifications and control.

57. Restrictions on exporting hazardous wastes or other wastes

The Director shall grant a licence to export hazardous wastes or other wastes if—

(a) the applicant does not have the technical capacity or suitable disposal sites to dispose of the wastes in question in an environmentally sound and efficient manner;



(b) the wastes in question are required as raw materials for recycling or recovery in the state of import; and

(c) the export is in accordance with an agreement or arrangement that conforms with the requirements contained in Article 11 of the Basel Convention.

58. National authority for prior informed consent procedure

(1) The Director shall be the national authority for the operation of the prior informed consent procedure for the import, export or any other trans-boundary movement of hazardous wastes.

(2) The Director shall closely liaise with the designated national authorities of other states under any international conventions or arrangements to which Malawi is a party and international organizations with competence in the field of the management of hazardous wastes under any convention or arrangement to which Malawi is a party for the purpose of monitoring and controlling the movement of hazardous wastes in Malawian territory.

(3) The Director shall disseminate information on hazardous wastes management to the public.

59. Notification procedures and prior informed consent

(1) A licence for export of wastes shall not be issued by the Director unless the Director has—

(a) notified the designated national authority of the state of import of wastes by sending a copy of—

(i) the movement document in the form set out in the Sixteenth Schedule hereto;

(ii) the notification document for trans-boundary movement of wastes in the form set out in the Nineteenth Schedule hereto;

(iii) the comments that the Director made on the documents;

(iv) the necessary consents received from such authorities;

(b) transmitted copies of the documents provided for in paragraph (a) to the international body designated under any agreement or arrangement to which Malawi is a party or participant and has received favourable comments from such a body.

(2) The Director shall not grant a licence to any person who wishes to import any wastes into Malawi which is hazardous in accordance with the categories identified in the Seventh Schedule hereto unless—

(a) the Director has received from the designated national authority of the state in which the wastes is generated, a movement document conforming with the provisions of the

Sixteenth Schedule and the notification document conforming with the provisions of the Nineteenth Schedule hereto;

(b) the applicant has submitted a valid licence or letter of authority from the designated authority of the state where the wastes are generated permitting the export of the wastes; and

(c) the Director has received comments from the international body designated under any agreement or arrangement to which Malawi is a party or participant on the status of the wastes to be imported.

#### 60. Ports of entry and routes

(1) A licence issued under these Regulations shall only entitle the licensee to transport wastes through the customs points of entry designated as such under the Customs and Excise Act. Cap. 42:01

(2) No hazardous wastes shall be transported by water except for hazardous wastes generated from islands within the territorial jurisdiction of Malawi.

### PART X

#### MISCELLANEOUS PROVISIONS

#### 61. Location of disposal of wastes

(1) Any generator of wastes shall dispose of wastes within the area of jurisdiction of the local authority where the waste is generated.

(2) Where a person wishes to move wastes from one local authority to another, he shall notify in writing the environmental officers of the local authority from the area of which he is moving the wastes, and of the local authority of the area to which he is moving the wastes, before he applies for any licence under these Regulations.

(3) The environmental officers from the two local authorities shall consult and satisfy themselves that—

(a) the intended disposal site and the proposed methods of disposal or storage are in accordance with sound environmental management; and

(b) the Act and these Regulations have been complied with.

(4) Where the environmental officers are satisfied in accordance with subregulation (3), they shall make a recommendation to the Director for consideration to grant a licence under these Regulations.

#### 62. Reporting procedures

(1) Any person who is licensed to carry out any activities under these Regulations shall submit to the Director bi-annual reports on the conduct of the licensed activities.

(2) Where special reporting procedures are a condition of any licence under these Regulations, such procedures shall take precedence over regulation (1).

63. Duty to keep records

(1) The holder of a licence under these Regulations shall—

(a) keep records of the licensed activities and all transactions related thereto; and

(b) submit the records referred to in paragraph (a) to the Director every twelve months from the commencement of the licensed activities.

(2) The Director may order the holder of a licence under these Regulations to install mechanisms at the expense of the holder of the licence to take samples and analyze them as the Director may direct.

64. Register of licences

The Director shall maintain a register of holders of licences to transport wastes, for storage of wastes or for operating recycling facilities and wastes disposal sites or plants.

65. Communication of decision

Where a person applies for a licence under these Regulations, the Director shall communicate his decision to the applicant within three months.

66. Improvement notice

(1) Where an inspector has reasonable cause to believe that any person is violating these Regulations, he may issue against such a person an improvement notice or take any other measures appropriate for correcting the situation.

(2) An improvement notice issued under subregulation (1) shall not prejudice criminal proceedings which may be taken under any of the provisions of the Act.

67. Cancellation of licence

In addition to the provisions of the Act, the Director may suspend or revoke a licence issued under these Regulations if he is satisfied that—

(a) the conditions attached to the granting of the licence have not been complied with;  
or

(b) continued operation of the activity will be injurious to the health of the neighbouring environment in general.

68. Selling or offering for sale a container previously used for storage of hazardous waste

Any person who sells or offers for sale a container which has previously been used for the storage of hazardous wastes to be used for any purpose other than storage of wastes commits an offence.

69. Polluter responsible to pay for pollution

Any generator, collector or transporter of wastes or any person responsible for disposal of wastes who pollutes the environment by poor management of wastes shall be responsible to pay for any damage to the environment occasioned by such pollution.

70. Duty of care

(1) Every person, business or industry shall exercise duty of care by avoiding indiscriminate disposal of litter, garbage, commercial solid waste, and construction and demolition wastes.

(2) Any person who contravenes this provision commits an offence.

71. Skips

(1) Where a skip is provided by a local authority, it shall be securely fenced or a person shall be placed at such skip to guard it to reduce scavenging.

(2) A local authority shall not provide a skip for waste collection at a hospital to encourage hospitals to provide waste transfer stations which shall comprise secure rooms with restricted access:

Provided that a skip may be permissible only for the out-patient areas.

72. Pit latrines

(1) Where a household uses a pit latrine, it shall be an improved pit latrine which shall be—

(a) properly ventilated;

(b) built with slab; and

(c) be at least two and half metres in depth from ground level to the bottom of the pit:

Provided that where the surface of the water table is more than two and half metres below ground level, a depth of two metres from ground level to the bottom of the pit shall be permissible.

(2) A pit latrine shall be located at least thirty metres away from any well, spring, stream, underground water supply, water reservoir, pool or borehole.

73. Refuse pits

(1) The use of refuse pits shall only be permissible in areas where local authorities are not able to provide refuse collection services.

(2) When the refuse pit is full, the refuse shall be burned, buried or composted.

74. Public and private lavatories and washing places

(1) A local authority shall provide or cause to be provided public and private toilets and washing places in its area of jurisdiction.

(2) Such toilets and washing places shall comply with any by-laws that a local authority may adopt to promote public health and sound management of municipal liquid waste.

75. Offences and penalties

Any person who contravenes the provisions of these Regulations commits an offence and on conviction shall be liable to the penalties prescribed under the Act.

76. Local authorities to make by-laws

(1) Every local authority shall make by-laws prescribing the management of wastes in its jurisdiction.

(2) The by-laws made under subregulation (1) shall—

- (a) not be in conflict with the Act and these Regulations;
- (b) ensure that the disposal method of wastes is environmentally sound.

(3) Every local authority shall be responsible for the waste management system in its area of jurisdiction and such system shall be in accordance with the Act and these Regulations.

77. Transitional provision

(1) Any person whose operations discharge wastes into the environment at the date of entry into force of these Regulations, shall within six months submit a written proposal specifying the timeframe within which compliance with these Regulations shall be achieved.

(2) Any person carrying out the business of operating a waste disposal site or plant or a recycling facility before the commencement of these Regulations shall apply for a licence within six months from the date these Regulations come into force.

FIRST SCHEDULE reg. 4

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

SOLID WASTE MANAGEMENT HIERACHY

FROM THE MOST PREFERRED TO THE LEAST PREFERRED

1. Source reduction
2. Re-use
3. Recycling

SECOND SCHEDULE reg. 6

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

COLOUR CODING OF WASTE CONTAINERS BY WASTE TYPE

	Waste Type	Colour Coding
1.	General waste .....	Black
2.	Toxic waste .....	Red
3.	Cytotoxic waste .....	Red
4.	Human anatomical waste .....	Red
5.	Microbiological laboratory waste .....	Yellow
6.	Human blood and body fluid waste .....	Yellow
7.	Waste sharps .....	Yellow

THIRD SCHEDULE reg. 13

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE TO OWN/OPERATE A WASTE RECYCLING FACILITY

I/WE ..... hereby apply for a licence to own operate a waste recycling facility, whose particulars are given below:

Name and address of applicant: .....

Location and District of site/plant: .....

Approval of Town and Country Planning Authority:

Type of wastes to be recycled at the facility: .....

In the case of hazardous waste:

(a) the processes to be employed: .....

(b) possible adverse effects of proposed process: .....

Quantity being recycled/per annum tonnes/Kg: .....

Estimated life span of facility: .....

Proposed hectarage/area of facility (include facility plan and design): .....

.....

Executive summary of environmental impact assessment (please attach):.....

Any other information: .....

.....

Date: ..... Signature: ..... Designation/Title: .....

FOR OFFICIAL USE ONLY

Application received by:..... on ....., 20.....

Fees payable is MK .....

Fee paid MK (in words): .....

Date:.....

Signature: .....

Director, Department of Environmental Affairs

FOURTH SCHEDULE reg. 14

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO OWN/OPERATE A RECYCLING FACILITY

Licence No.: .....

Name: .....

Address: .....

You are hereby licensed to own/operate a waste recycling facility at Plot No.: .....

(village, town, city, district): .....

The validity period of this licence is from: ....., 20..... to ....., 20.....

This licence is subject to the following conditions: .....

.....

.....

.....

.....

Date: .....

Signature:.....

Director, Department of Environmental Affairs

FIFTH SCHEDULE reg. 17

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

SOLID WASTE REDUCTION AND RECYCLING PLAN

A description of the company including—

(a) name and address of the property owner and the reporting company: .....

.....

(b) names of all entities affiliated with the company: .....

.....

(c) number of full-time and part-time employees:.....

(d) square metres occupied by the company: .....

(e) the activities conducted by the company: .....

A description of the company's current solid waste generation, including—



(a) estimated tonnage of all solid waste produced: .....

(b) identification of recyclable solid waste: .....

A description of the company's waste reduction and recycling methods: .....

.....  
.....  
.....  
.....  
.....

Name(s) of the persons responsible for coordinating recycling and waste reduction activities:

.....  
.....  
.....

Name and address of licensed collector responsible for collecting materials to be recycled and the facilities where materials are delivered:

.....  
.....

SIXTH SCHEDULE reg. 20

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

QUALITY STANDARDS FOR EFFLUENT TO INLAND SURFACE WATER

Table 1—Tolerance Limits for Industrial Effluents

Characteristics Tolerance Limits

Total suspended solids, mg/l, max. .... 30

Particle size of total suspended solids, mg/l ..... Shall pass 850 micron

Total dissolved solids, mg/l, max. .... 500

Total residual chloride mg/l, max. ....	1
PH .....	6,5 to 9,0
Temperature (in any section of the stream within 15 metres down stream from the effluent outlet), °C, max. ....	40°C
Biochemical oxygen demand for 5 days at 20°C, mg/l, max. ....	60
Chemical oxygen demand after 1 hour's quiescent settlement, mg/l, max. ....	20
Oils and grease and other liquids immiscible with water, mg/l, max. ...	2,5
Edible oils, mg/l, max. ....	10
Colour, TCU, max. ....	25,0
Turbidity, NTU, max. ....	25,0
Effluent volume/day m <sup>3</sup> , mg/l, max. ....	5,0
Dilution ratio, effluent: receiving water body, max. ....	8,0
Radioactive materials:	
Alpha emitters, u c/ml, max. ....	10
Beta emitters, u c/ml, max. ....	10
Insecticides .....	Nil
Pesticides:	
Organochlorides, mg/l, max. ....	0,10
Organophosphates, mg/l, max. ....	0,20

Table 2—Tolerance limits for sewage effluents discharged into inland surface waters

Characteristics	Tolerance limit
Total suspended solids, mg/l, max.	30
Biochemical oxygen demand for 5 days at 20°C, mg/l max.	20

## ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

### ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

#### CATEGORIES OF HAZARDOUS WASTES TO BE CONTROLLED

##### WASTE STREAMS:

- Y 1 Clinical wastes from medical care in hospitals, medical centers and clinics;
- Y 2 Wastes from the production and preparation of pharmaceutical products;
- Y 3 Waste from pharmaceutical, drugs and medicines;
- Y 4 Waste from the production, formulation and use of biocides and phytopharmaceuticals;
- Y 5 Wastes from the manufacture, formulation and use of organic solvents;
- Y 6 Wastes from the production, formulation and use of organic solvents;
- Y 7 Wastes from heat treatment and tempering operations containing cyanides;
- Y 8 Waste mineral oils unfit for their originally intended use;
- Y 9 Waste oils/water, hydrocarbons/water mixtures, emulsions;
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs);
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment;
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish;
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives;
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or environment are not known;
- Y15 Wastes of an explosive nature not subject to other legislation.;
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials;
- Y17 Wastes resulting from surface treatment of metals and plastics;
- Y18 Residue arising from individual wastes disposal operations.

##### WASTE HAVING AS CONSTITUENTS:

- Y19 Metal carbonyls;
- Y20 Beryllium, beryllium compounds;
- Y21 Hexavalent chromium compounds;
- Y22 Copper compounds;
- Y23 Zinc compounds;
- Y24 Arsenic, arsenic compounds;
- Y25 Selenium, selenium compounds;
- Y26 Cadmium, cadmium compounds;

WASTE HAVING AS CONSTITUENTS:

- Y27 Antimony, antimony compounds;
- Y28 Tellurium, tellurium compounds;
- Y29 Mercury, mercury compounds;
- Y30 Thallium, thallium compounds;
- Y31 Lead, lead compounds;
- Y32 Inorganic fluorine compounds excluding calcium fluoride;
- Y33 Inorganic cyanides;
- Y34 Acid solutions or acids in solid form;
- Y35 Basic solutions or bases in solid form;
- Y36 Asbestos (dust and fibres);
- Y37 Organic phosphorus compounds;
- Y38 Organic cyanides;
- Y39 Phenols, phenol compounds including chlorophenols;
- Y40 Ethers;
- Y41 Halogenated organic solvents;
- Y42 Organic solvents excluding halogenated solvents;
- Y43 Any congener or polychlorinated dibenzo-furan;
- Y44 Any congener or polychlorinated dibenzo-P-dioxin;

Y45 Organohalogen compounds other than substances referred to in this Schedule

(e.g. Y39, Y41, Y42, Y43, Y44); and

Y46 Organotin compounds (TBT).

#### CATEGORIES OF OTHER HAZARDOUS WASTES TO BE CONTROLLED:

Y47 Wastes collected from households, including sewage and sewage sludges;

Y48 Residues arising from the incineration of household wastes; and

Y49 Wastes resulting from mining, habitat modification, agricultural activities and industrial operations not specified in this Schedule and/or characterized in the Second Schedule.

#### EIGHTH SCHEDULE reg. 32

#### REPUBLIC OF MALAWI

#### ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

#### ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

#### LIST OF HAZARDOUS CHARACTERISTICS

UN	Code	Characteristics Class
----	------	-----------------------

1.	H1	Explosive
----	----	-----------

An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3.	H3	Flammable Liquids
----	----	-------------------

The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, open-up test. Since the results of open-up tests and of closed-up tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition.

4.1	H4.1	Flammable solids
-----	------	------------------

Solids or wastes solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

4.2 H4.2 Substances or wastes liable to spontaneous combustion

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.

4.3 H4.3 Substances or wastes, which in contact with water emit flammable gases

Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

5.1 H5.1 Oxidizing

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.

5.2 H5.2 Organic per oxides

Organic substances or wastes, which contain the bivalent -O-O- structure, are thermally unstable substances which may undergo exothermic self-accelerating decomposition.

6.1 H6.1 Toxic or Poisonous (Acute)

Substances or wastes liable either to cause death or serious injury or harm to human health if swallowed, inhaled or by skin contact.

6.2 H6.2 Infectious substances extremely hazardous to health

Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.

8. H8 Corrosives

Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.

9. H10 Liberation of toxic gases in contact with air or water

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

9. H11 Toxic (delayed or chronic)

Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects including carcinogenicity.

9. H12 Ecotoxic

Substances or wastes which if released, present or may present immediate or delayed adverse impacts in the environment by means of bio-accumulation and/or toxic effects upon biotic systems.

- 9. H13 Capable, by any means, after disposal, of yielding another material, e.g. leachate, which possesses any of the characteristics listed above.
- 10. H14 Radioactive wastes.
- 11. H15 Persistent wastes; wastes which contaminate the environment for long periods of time.
- 12. H16 Carcinogenic wastes which may lead to development of cancer in human beings or animals.

NINTH SCHEDULE reg. 46

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE FOR TRANSPORTATION OF WASTES

I/WE ..... hereby apply for a licence to transport wastes, whose particulars are given below:

Name and address of applicant(s): .....

Location and District applied for: .....

Number and type of vehicles to transport waste: .....

Quantity of wastes per vehicle to be transported: .....

Quantity of wastes to be disposed of (tonnes/kg per annum) and source: .....

.....

Licensed sites/plant to which wastes are to be transported: .....

.....

Collection schedule:.....

Any other information: .....

Date: ..... Signature: .....

Designation/Title: .....

FOR OFFICIAL USE ONLY

Application received by: ..... on ....., 20.....

Fees payable is MK .....

Fee paid MK (in words): .....

Date:.....

Signature: .....

Director, Department of Environmental Affairs

TENTH SCHEDULE reg. 46

(To be completed in Triplicate)

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE FOR STORAGE OF WASTE

I/WE ..... hereby apply for licence to store wastes, whose particulars are given below:

Name and address of applicant(s): .....

Address of premises for the storage: .....

.....

(Plot No., village, town, district, city): .....

Type of wastes to be stored (indicate number in accordance with Fourteenth Schedule and describe) whether liquid, solid or gaseous and their possible impacts:

.....

Quantity of wastes to be stored in kg or tonnes for solids or in cm<sup>3</sup> if liquid or gases:

.....

Type of containers in which the wastes are packaged: .....

Type of labels on the container (describe and attach sample): .....



.....

Are there any other materials stored in the premises? (describe): .....

.....

Surroundings of the premises (describe whether industrial, residential, commercial and whether it is near schools or recreational areas): .....

.....

Duration of storage applied for: .....

Final destination of the wastes: .....

.....

Specifications of the construction of the premises including ventilation or other measures and suitability for storage for the specific wastes (describe and attach building plans):

.....

.....

.....

.....

Describe the safety measures at the premises: .....

Measures for containment and treatment of leachate if applicable: .....

Date: ..... Signature of Applicant: .....

**FOR OFFICIAL USE ONLY**

Date received: .....

Fee paid MK (in words): .....

Comments of the lead agency: .....

.....

.....

Comments of the Authority: .....

.....

.....

Date: .....

Name and signature of Responsible Officer: .....

Decision of the Technical Committee on the Environment: .....  
.....  
.....  
.....

Date:.....

Signature: .....

Director, Department of Environmental Affairs

Date when decision was communicated to Applicant (attach communication to this form):  
.....

Name of Responsible Officer: .....

Date:..... Signature: .....

ELEVENTH SCHEDULE reg. 46

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO TRANSPORT WASTES

Licence No. TR/W: .....

Name: .....

Address:.....  
.....

You are hereby licensed to transport wastes to (location/district): .....

From (location/district): .....

Number, type and registration number of vehicles licenced: .....

This licence is valid from: ....., 20..... to ....., 20.....

This licence is granted subject to the following conditions: .....  
.....  
.....

.....  
.....

Date:.....

Signature: .....

Director, Department of Environmental Affairs

TWELFTH SCHEDULE reg. 46

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE FOR STORAGE OF WASTE

Licence No. ST/W: .....

Name and address: .....

(Plot No., village, town, city, district): .....

You are hereby licensed to operate a storage facility for the following wastes (indicated by number in Schedule): .....

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....

at the following address: .....

(Plot No., village, town, city, district):

This licence shall be valid from: ....., 20..... to ....., 20.....

This licence is subject to the following conditions: .....

.....

.....  
.....

Date: .....

Signature:.....

Director, Department of Environmental Affairs

THIRTEENTH SCHEDULE reg. 50

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

APPLICATION FOR A LICENCE TO OWN/OPERATE A WASTE DISPOSAL SITE/PLANT

I/WE ..... hereby apply for a licence to own/operate a wastes disposal site/plant, whose particulars are given below:

Name and address of applicant(s): .....

Location and District of site/plant: .....

Approval of Town and Country Planning Authority: .....

Type of wastes to be disposed of at site/plant:.....

Quantity being disposed of/per annum tonnes/Kg: .....

(a) land fill: .....

(b) compost: .....

(c) incinerator: .....

(d) other (specify): .....

Estimated life span of plant/site: .....

Proposed hectrage/area of site/plant (include site plan and design): .....

Executive summary of environmental impact assessment (please attach): .....

Any other information: .....

Date:.....

Signature: .....

Designaton/Title

FOR OFFICIAL USE ONLY

Application received by: ..... on ....., 20.....

Fee paid MK (in words): .....

Date:.....

Signature: .....

Director, Department of Environmental Affairs

FOURTEENTH SCHEDULE reg. 14

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO OWN/OPERATE A WASTES RECYCLING FACILITY

Licence No.: .....

Name: .....

Address: .....

You are hereby licensed to own/operate a wastes recycling facility at Plot No.: .....

(village, town, city, district) .....

The validity period of this licence is from: ....., 20..... to ....., 20.....

Date: .....

Signature:.....

Director, Department of Environmental Affairs

FIFTEENTH SCHEDULE regs. 11, 32 and 36

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

## DISPOSAL OPERATIONS

- D1 Deposit into or onto land, (e.g. landfill, etc.);
- D2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.);
- D3 Deep injection, (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.);
- D4 Surface impoundment, (e.g. placement of liquid or sludge discards into pits, ponds or lagoons, etc.);
- D5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.);
- D6 Biological treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations in this Schedule;
- D7 Physico-chemical treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operation, (e.g. evaporation, drying, calcinations, neutralization, precipitation, etc.)
- D8 Incineration on land;
- D9 Incineration at sea;
- D10 Permanent storage (eg. Emplacement of containers in a mine, etc.);
- D11 Blending or mixing prior to submission for any of the operations in this Schedule;
- D12 Repackaging prior to submission to any of the operations in this Schedule;
- D13 Storage pending any of the methods of disposal;
- D14 Use of a fuel (other than in direct incineration) or other means to generate energy;
- D15 Solvent reclamation/regeneration of organic substances, which are not used as solvents;
- D16 Reclamation/recycling of organic substances, which are not used as solvents;
- D17 Reclamation/recycling of metals and metal compounds;
- D18 Reclamation/recycling of other inorganic materials;
- D19 Regeneration of acids or bases;
- D20 Recovery of components used for pollution abatement;
- D21 Recovery of components from catalysts;
- D22 Used oil re-refining or other reuses of previously used oil;
- D23 Land treatment resulting in benefit to agriculture or ecological improvement;

- D24 Use of residual materials obtained from any of the operations numbered D1-D26;
- D25 Exchange of wastes for submission to any of the operations numbered D1-D26;
- D26 Accumulation of material intended for any operation in this Schedule.

SIXTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

MOVEMENT DOCUMENT FOR TRANS-BOUNDARY MOVEMENT OF WASTES

Notification for wastes shipment was issued at: .....

Date of issuance: ..... / ..... / .....

- Notification for a single shipment.
- Notification for multiple shipment for the period.

This shipment is number: ..... general notification number: .....

of total shipments included in the .....

.....

1. EXPORTER NOTIFIER(1)

2. GENERATOR(S) OF WASTES

3. DISPOSER OF THE WASTES

4. WASTES

5. ITINERARY

6. CONSENT OF THE COMPETENT LOCAL AUTHORITY  
(to be completed by the generator or/exporter/importer)

7. CARRIER OF THE WASTES OR HIS AGENT

8. CONSENT OF THE COMPETENT LOCAL AUTHORITY  
(to be completed by the generator or/exporter/importer)



(a)

ANNEX TO THE NOTIFICATION AND MOVEMENT DOCUMENT

1. The Notifier is:  
— the person who wants to transit hazardous wastes through Malawi.
2. “Designation to the wastes” means a designation of the nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the wastes both in handling and in relation to the proposed disposal method.
3. As per Annex IV of the Basel Convention: D or R Code.
4. This must include the point of entry and the point of exit of the wastes, inside or outside the country.
5. In the case of a general notification covering several shipments, the expected dates of each shipment have to be specified. If this is not known, the expected frequency of the shipments.

SEVENTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO EXPORT WASTES

Licence No. EX/HW: .....

Name and address: .....

(Plot No., village, town, city, district): .....

To (name and address):.....

This export shall be made through: ..... border/customer control post

The validity period of this licence is from ....., 20..... to ....., 20.....

This licence is subject to the following conditions:

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....

(attach a copy of authorization by the state to which the export is to be made)

Date: .....

Signature:.....

Director, Department of Environmental Affairs

EIGHTEENTH SCHEDULE reg. 56

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

LICENCE TO IMPORT WASTES

Licence No. IM/HW: .....

Name and address of importer: .....

(Plot No. village, town, city, district): .....

Purpose for which the imported wastes are licensed: .....

You are hereby licensed to import the following wastes: .....

From (name and address): .....

To (name and address): .....

This import shall be made through: border/customs control post: .....

The validity period of this licence is from: ....., 20..... to....., 20.....

This licence is subject to the following conditions:

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....

(attach a copy of authorization by the state to which the export is to be made)

Date: .....

Signature:.....

Director, Department of Environmental Affairs

NINETEENTH SCHEDULE reg. 22

REPUBLIC OF MALAWI

ENVIRONMENT MANAGEMENT ACT

(CAP. 60:02)

ENVIRONMENT MANAGEMENT (WASTE MANAGEMENT AND SANITATION) REGULATIONS

NOTIFICATION DOCUMENT FOR TRANS-BOUNDARY MOVEMENT OF WASTES (FOR TRANSIT PURPOSES ONLY)

1. NOTIFIER

2. GENERATOR(S) OF WASTES

Name: .....

Address:.....

.....

Telephone: ..... Telefax: .....

E-mail: .....

Contact person (name, address, telefax, E-mail)

Process by which the wastes were generated: .....

.....  
.....  
.....

Site of generation: .....

3. REASON FOR WASTES EXPORT/IMPORT

Why the wastes cannot be disposed, in the country of origin:

.....  
.....  
.....  
.....  
.....  
.....

Why the wastes would have to be exported/imported through Malawi:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

4. WASTES

Wastes Description:

Y number: .

H number:

UN class:

UN number:

Shipping name:.....

Physical state at 20°C:

Powder	solid	paste/viscous	sludge
liquid	gaseous	other	

Estimated quantity (Kg or L) per shipment: .....

Type of packaging:.....

Number of packages: .....

Special handling requirements including emergency provision in case of accidents:

.....  
.....  
.....  
.....

5. EXPORTER/IMPORTER OF THE WASTES

Component authority and details of approval: .....

.....  
.....  
.....  
.....

Exporter/Importer of the wastes in the country of origin/destination:

Name: .....

Address:.....

.....

Telephone: ..... Telefax: .....

E-mail: .....

6. DISPOSER OF THE WASTES

Name: .....

Address: .....

.....

Telephone: ..... Telefax: .....

E-mail: .....

(Contact person in case of emergency)

Approximate date of disposal: .....

Actual site of disposal: .....

Signature and official stamp of disposer:.....

7. TRANSIT

Projected length of time the wastes shipment shall be on transit on Malawi territory:

.....

Expected date of entry: .....

Expected date of exit:.....

Means of transport envisaged: .....

Information relating to insurance: .....

(Guarantee that the person responsible shall fully compensate any damage caused to human health, property or the environment, by the wastes in question during transit).

8. DECLARATION

I/we\* ..... being the exporter/importer\* hereby declare that on I/we\* entered into a contract with the disposer and that I/we\* shall be bound by the terms of the said contract (attach a copy of contract).

Signed: .....

(Exporter/Importer\*)

I/we\* ..... being the exporter/importer\* hereby guarantee/declare that the above information is correct and true.

Signed: .....

(Exporter/Importer\*)

TWENTIETH SCHEDULE regs 13, 14, 45, 50 and 56

FEES

Column 1	Column 2	Column 3
Matter	Fees payable on first application	Fees payable on renewal of licence
	K t	K t
1.	Application for a licence to own or operate a recycling facility .....	50,000 00 30,000 00
2.	Application for a licence to transport wastes .....	50,000 00 30,000 00
3.	Application for a license to store wastes	50,000 00      30,000 00
4.	Application for a licence to operate, own a disposal site or plant .....	50,000 00 30,000 00
5.	Application for a licence to export waste (movement document) .....	50,000 00 30,000 00
6.	Application for a licence to import wastes (movement document) .....	50,000 00 30,000 00

[Chap6003]CHAPTER 60:03

BIOSAFETY

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
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3. Application

## PART II

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8. Levy
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#### CONTAINERS, PACKAGES AND IDENTIFICATION OF GENETICALLY MODIFIED ORGANISMS OR PRODUCTS THEREOF

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#### APPEALS

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38. Secrecy to be observed
39. Offences
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41. Regulations

13 of 2002

G.N. 26/2007

An Act to provide for the safe management of biotechnological activities and to provide for matters connected therewith and incidental thereto

[20TH AUGUST 2007]

## PART I

### PRELIMINARY PROVISIONS

[Ch6003s1]1. Short title

This Act may be cited as the Biosafety Act.

[Ch6003s2]2. Interpretation

In this Act, unless the context otherwise requires—

“accident” means any incident involving an unintended general release of biotechnological products which could have an immediate or delayed adverse impact on the environment;

“appeals committee” means an appeals committee appointed under section 35;

“biotechnology” means any technique that uses living organisms or parts of organisms to—

- (a) make or modify products;
- (b) improve plants or animals: or
- (c) develop micro-organisms for specific purposes;

“contained use” means any activity in which organisms are genetically modified or in which genetically modified organisms are cultured, stored, used, transported, destroyed or disposed of and for which physical barriers or a combination of physical, chemical or biological barriers are used to limit contact thereof with the environment;

“environment” means the aggregate of surrounding objects, conditions and influences that affect the life and habits of man or any other organisms or collection of organisms;

“Fund” means the Biosafety Fund established under section 7;

“general release” means the introduction of genetically modified organisms into the environment, by whatever means, where the organisms are no longer under the control of any person;

“gene therapy” means a technique for delivering functional genes to replace aberrant ones into living cells by means of a genetically modified vector or by physical means in order to genetically alter the living cell;

“genetically modified organism” means an organism whose genes or genetic material has been modified in a way that does not occur naturally through mating or natural recombination;

“hazard” means an intrinsic biological chemical or physical characteristic of genetically modified organisms or products thereof which could lead to an adverse impact on the environment;

“inspector” means a person appointed as an inspector under section 30;

“organism” means any biological entity, whether microscopic or not, capable of replication;

“permit” means a permit issued under section 18;

“risk” means the combination of the magnitude of the consequences of a hazard, if it occurs, and the likelihood that the consequences will occur;

“trial release” means the deliberate release of genetically modified organisms into the environment under conditions where the degree of dissemination of the genetically organisms is limited by chemical or physical barriers or by built-in barriers which prevent the survival of such organisms in the environment;

“waste” means any matter, whether gaseous, liquid, solid or any combination thereof, which is an undesirable or superfluous by-product, emission, residue or remainder of any process or activity in connexion with genetically modified organisms.

### [Ch6003s3]3. Application

This Act shall apply to—

- (a) the genetic modification of organisms;
- (b) the importation, development, production, testing, release, use and application of genetically modified organisms; and

- (c) the use of gene therapy in animals, including human beings.

## PART II

### ADMINISTRATION

#### [Ch6003s4]4. Administration of the Act

This Act shall be administered by the Minister responsible for environmental affairs, and such other officers subordinate to him as may be appointed under this Part, whose offices shall be public offices.

#### [Ch6003s5]5. Appointment of other officers

In addition to the Minister, there shall be appointed in the public service such other officers subordinate to the Minister, as may be required for the proper performance of his functions.

#### [Ch6003s6]6. Functions of the Minister

The Minister shall—

- (a) formulate and review guidelines on biosafety;
- (b) establish contact and maintain liaison with appropriate bodies involved in biosafety;
- (c) promote awareness of biosafety issues;
- (d) maintain an inventory of all premises and persons involved in biotechnology;
- (e) approve safety aspects of import, export, manufacture, processing and selling of genetically modified organisms and products thereof;
- (f) conduct an inquiry, including a public inquiry, into any matter requiring an investigation under this Act;
- (g) collect or arrange for the collection of information relating to accidents involving biotechnological matter;
- (h) collect and disseminate information on safety procedures;
- (i) advise generally on all biosafety activities including—
  - (i) the application of biotechnology;
  - (ii) the biosafety manpower requirements of Malawi;
  - (iii) biosafety research and technology;
  - (iv) biosafety education, not only at advanced level in respect of quality and quantity of potential manpower training, but also at lower levels in respect of general science education for the public; and
  - (v) biosafety documentation, statistics, surveys and general information;

(j) carry out independently or in collaboration with any appropriate person, body of persons, agency or institution such surveys and investigations as he may consider necessary;

(k) sponsor such national and international biosafety conferences as he may consider appropriate;

(l) act as a channel for liaison with the outside world for the routing of information and resources of aid to assist the country's research efforts; and

(m) promote and ensure the maximum coordination of and cooperation in all biosafety activities in order to benefit from the concentration of efforts and to minimize undesired duplications in order to achieve maximum efficiency from, and throughout, the entire socio-economic system.

### PART III

#### BIOSAFETY FUND

##### [Ch6003s7]7. Establishment of the Biosafety Fund

(1) There is hereby established a fund to be known as the Biosafety Fund (in this Act otherwise referred to as the "Fund").

(2) The Fund shall consist of—

(a) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(b) all fees payable under this Act;

(c) the levy imposed under section 8;

(d) such sums or other assets as may be received for the purpose of the Fund by way of voluntary contributions or donations; and

(e) such sums as are paid by way of penalties or costs in respect of offences under this Act.

##### [Ch6003s8]8. Levy

The Minister may, from time to time, by order published in the Gazette, impose a levy on gross or net income accruing to any person or class of persons licensed under this Act and such levy shall be applied for the objects of the Fund as the Minister may specify in the order.

##### [Ch6003s9]9. Vesting of the Fund in the Minister

The Fund shall be vested in the Minister and, subject to this Act and the Finance and Audit Act, shall be administered in accordance with his directions. Cap. 37:01

##### [Ch6003s10]10. Advances to the Fund

If in any financial year the income of the Fund, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund,

the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise as the Minister responsible for finance may determine.

[Ch6003s11]11. Objects of the Fund

The objects for which the Fund is established shall be the safe management of biotechnological activities.

[Ch6003s12]12. Application of the Fund

Without derogation from the generality of section 11, the Fund may be applied to—

(a) research and training which is calculated to promote the safe management of biotechnological activities;

(b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(c) the cost of any scheme which the Minister considers to be in the interest of the safe management of biotechnological activities;

(d) meeting any expenses arising from the establishment and maintenance of the Fund;  
and

(e) any purpose which the Minister considers to be in the interest of the objects of the Fund.

[Ch6003s13]13. Books and other records of accounts, audit and reports of the Fund

(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Finance and Audit Act. Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General who shall have powers conferred upon him by the Finance and Audit Act. Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year an annual report on all the financial transactions of the Fund.

[Ch6003s14]14. Holdings of the Fund

(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister responsible for finance, may determine.

[Ch6003s15]15. Financial year

The financial year of the Fund shall be the period of twelve months commencing on 1st July in one year and ending on the 30th June of the following year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

#### PART IV

#### LICENCES AND PERMITS

##### [Ch6003s16]16. Licensing authority

The Minister shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licences under this Act.

##### [Ch6003s17]17. GMO licence

Subject to the provisions of this Act and except in accordance with a licence granted under this section (hereinafter referred to as a "GMO licence"), no person shall engage in—

- (a) the genetic modification of organisms;
- (b) the importation, development, production, testing, release, use and application of genetically modified organisms; and
- (c) the use of gene therapy in animals, including human beings.

##### [Ch6003s18]18. Special arrangements

(1) The Minister may grant a permit to an applicant authorizing him to engage in activities mentioned in section 17 for—

- (a) scientific research or experimental purposes; or
- (b) emergency supply of food for human beings.

(2) An application for permit under subsection (1) shall be made in the prescribed form and shall be accompanied by the prescribed fees.

(3) A permit issued under subsection (1) may exempt the holder thereof from any or all provisions of this Act.

(4) The Minister may, by notice in writing given to the holder of a permit under subsection (1)—

- (a) revoke the permit; or
- (b) vary or revoke the conditions to which the permit is subject or specify further conditions.

##### [Ch6003s19]19. Other classes of licences

(1) Subject to the provisions of this Act and except in accordance with a licence granted under this section (hereinafter referred to as a “product licence”), no person shall, in the course of business earned on by him—

- (a) sell, supply, export or import genetically modified organisms or products thereof;
- (b) procure for sale, supply or exportation of genetically modified organisms or products thereof; and
- (c) procure the manufacture of genetically modified organisms or products thereof for sale, supply or export.

(2) No person shall in the course of any business carried on by him, manufacture genetically modified organisms or products thereof except in accordance with a licence granted for that purpose (hereinafter referred to as a “manufacturer’s licence”).

(3) No person shall, in the course of any business carried on by him, sell or supply genetically modified organisms or products thereof by way of wholesale dealing except in accordance with a licence granted for that purpose (hereinafter referred to as a “wholesale dealer’s licence”).

(4) No person other than a person lawfully carrying on a retail pharmacy business shall sell or supply genetically modified organisms or products thereof by way of dispensing except in accordance with a licence granted for that purpose (hereinafter referred to as a “dispensing licence”).

#### [Ch6003s20]20. Exemptions

The provisions of section 19 shall not apply to the importation of genetically modified organisms or products thereof in such circumstances as may be specified by the Minister in a notice published in the Gazette.

#### [Ch6003s21]21. Application for a licence

(1) Any application for a licence under this Act shall be made in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of products to which the licence will relate.

#### [Ch6003s22]22. Matters to be considered before issuing a licence

Where an application is made for a licence under this Act the Minister shall, before issuing the licence to which the application relates, consider the following—

- (a) the safety of genetically modified organisms or products thereof of each description to which the application relates;
- (b) the efficacy of genetically modified organisms or products thereof of each such description for the purposes for which the organisms or products are proposed to be administered;



- (c) the quality of products of each description, according to the specification and the method or proposed method of manufacture of genetically modified organisms or products thereof, and the organisms or products when sold or supplied will be of that quality;
- (d) the operations and procedures proposed to be carried out pursuant to the licence;
- (e) the premises in which operations and procedures are to be carried out;
- (f) the equipment which is or will be available on the premises for carrying out operations and procedures;
- (g) the qualifications of the person under whose supervision operations and procedures will be carried out;
- (h) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, genetically modified organisms or products thereof manufactured or assembled in pursuance of the licence;
- (i) the premises on which genetically modified organisms or products thereof of the description to which the application relates will be stored;
- (j) the equipment which is or will be available for storing products on those premises;
- (k) the equipment and facilities which are or will be available or distributing genetically modified organisms or products thereof from those premises; and
- (l) the arrangement made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of genetically modified organisms or products thereof stored on or distributed from those premises.

[Ch6003s23]23. Issue of licences

(1) If the Minister is satisfied that the applicant is a fit and proper person to engage in activities set out in section 17 or to carry on any business set out in section 19, the Minister may issue to the applicant the licence appropriate to such business subject to such general or special conditions as the Minister may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in such form, and shall be for such duration, as may be prescribed.

(3) Where the Minister considers that the applicant is not fit and proper person to whom a licence should be issued, he shall refuse to issue a licence.

[Ch6003s24]24. Suspension and revocation of a licence

(1) Subject to this Part, the Minister may—

- (a) suspend licence for such period as he may determine;
- (b) revoke the licence; or

(c) vary the provisions of the licence.

(2) The suspension or revocation of a licence under this section may be limited to biotechnological products of one or more descriptions, or to any particular premises or to a particular part of any premises.

#### [Ch6003s25]25. Variation of a licence

Subject to section 21, the Minister may on the application of holder of a licence under this Part vary the provisions of the licence in accordance with any proposals contained in the application, if the Minister is satisfied that the variation will not adversely affect the safety, quality or efficacy of genetically modified organisms or products thereof.

### PART V

#### CONTAINERS, PACKAGES AND IDENTIFICATION OF GENETICALLY MODIFIED ORGANISMS OR PRODUCTS THEREOF

#### [Ch6003s26]26. Labelling

(1) No person shall, in the course of a business carried on by him, sell or supply or have in his possession for the purpose of selling or supplying genetically modified organisms or products thereof in a container or package which is not labelled in accordance with regulations made under section 41.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, sell or supply, genetically modified organisms or products thereof of any description in a container or package which is labelled or marked in such a way that the container or package—

(a) falsely describes the genetically modified organisms or product; or

(b) is likely to be misleading as to the nature, efficacy or quality of genetically modified organism or product or as to the uses or effects of genetically modified organisms or product of that description.

(3) Any person who contravenes this section shall be guilty of an offence.

#### [Ch6003s27]27. Leaflets

(1) No person shall, in the course of a business carried on by him, supply or have in his possession for the purpose of supplying together with genetically modified organisms or products thereof a leaflet relating to such organisms or products which does not comply with regulations made under section 41.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, supply together with genetically modified organisms or products thereof or have in his possession for the purpose of so supplying a leaflet which—

(a) falsely describes genetically modified organisms or products thereof to which it relates; or

(b) is likely to be misleading as to the nature, efficacy or quality of such genetically modified organisms or products thereof.

(3) Any person who contravenes this section shall be guilty of an offence.

## PART VI

### PROMOTION OF SALES OF GENETICALLY MODIFIED ORGANISMS OR PRODUCTS THEREOF

#### [Ch6003s28]28. Regulations on advertisement

The Minister may make regulations which may prohibit issue of advertisements—

(a) relating to genetically modified organisms or products thereof of a description or a class specified in the regulations;

(b) likely to lead to the use of genetically modified organisms or products thereof or any other substance or article, for the purpose of treating or preventing a disease so specified or of ascertaining the existence, degree or extent of a physiological condition so specified or of permanently or temporarily preventing or otherwise interfering with the normal operation of a physiological function so specified or for the purpose of artificially inducing a condition of body or mind so specified;

(c) likely to lead to the use of genetically modified organisms or products thereof of a particular description or class specified in the regulations or the use of any other substance or article of a description or class so specified for any such purpose as is mentioned in paragraph (b); and

(d) relating to genetically modified organisms or products thereof and containing a word or phrase specified in the regulations, as being a word or phrase which, in the opinion of the Minister, is likely to mislead the public as to the nature or effects of the organisms or products.

#### [Ch6003s29]29. Meaning of advertisement

(1) In this Part “advertisement” includes every form of advertising, whether in a publication, or by the display of any notice or by means of any catalogue, price list, letter, whether circular or addressed to a particular person, or by exhibition of a photograph or a cinematograph film, or by way of sound recording, sound broadcasting or television.

(2) Notwithstanding anything contained in subsection (1), “advertisement” does not include spoken words except—

(a) words forming part of a sound recording or embodied in a sound-track associated with a cinematograph film;

(b) words broadcast by way of sound broadcasting or television or transmitted to subscribers to a diffusion service; and

(c) anything spoken in public.

(3) Save as regulations made under section 28 may otherwise provide, the following shall not for purposes of this Part constitute an advertisement—

(a) the sale or supply, or offer or exposure for sale or supply of genetically modified organisms or products thereof in a labelled container or package; and

(b) the supply, together with genetically modified organisms or products thereof, of leaflet relating solely to the use of the organism or product supplied.

## PART VII

### INSPECTION

#### [Ch6003s30]30. Inspection

(1) The Minister shall, for purposes of ensuring compliance with the provisions of this Act, appoint such number of inspectors as he considers appropriate.

(2) Every inspector shall be issued with a certificate of authority and the certificate of authority shall constitute prima facie evidence that the holder thereof is an inspector duly appointed by the Minister under subsection (1).

(3) A person shall not be qualified for appointment as an inspector unless he is competent in biotechnology or biosafety.

(4) A person appointed under subsection (1) shall hold office subject to such conditions as the Minister may determine.

(5) An inspector shall, on demand by any person affected by the exercise of the powers under this Act, produce for inspection, the certificate of authority referred to in subsection (2).

#### [Ch6003s31]31. Entry into premises

(1) Subject to the provisions of this section, an inspector may, at any reasonable time and on production of his certificate of authority, enter any premises—

(a) for the purpose of ascertaining whether there is or has been on or in connexion with those premises any contravention of this Act, and

(b) generally for the purposes of discharging his functions under this Act.

(2) An inspector may, at any reasonable time and on production of his certificate of authority—

(a) enter any ship, aircraft or any vehicle for the purpose of ascertaining whether there is in the ship, aircraft or vehicle any substance or article imported in contravention of this Act; or

(b) enter any ship, aircraft or any vehicle for any purpose for which the inspector is authorized to enter any premises under subsection (1).

#### [Ch6003s32]32. Mode of inspection

(1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

(a) any substance or article appearing to him to be a genetically modified organism or product thereof;

(b) any article appearing to him to be a container or package used or intended to be used to contain any genetically modified organism or product thereof or to be a label or leaflet used or intended to be used in connexion with a genetically modified organism or product thereof; or

(c) any plant or equipment appearing to him to be used or intended to be used in connexion with the manufacture of a genetically modified organism or product thereof and the means employed, at any stage of the process of manufacture for testing the materials after they have been subjected to those processes.

(2) Where an inspector requires a sample of any substance or article appearing to him to be—

(a) a genetically modified organism or product thereof sold or supplied or intended to be sold or supplied; or

(b) a substance or article used or intended to be used as an ingredient in the manufacture or development of a genetically modified organism or product thereof,

he shall, if he does not obtain the sample by purchase, obtain the sample of that substance or article from the person by whom the product is sold and supplied or intended to be sold, supplied or manufactured.

(3) For the purpose of this section, an inspector may—

(a) require any person involved in the importation, development, production, use, application, release and distribution of genetically modified organisms or products thereof to produce any books or documents relating to the business which are in his possession or under his control; and

(b) take copies of, or of any entry in, any book or document produced in pursuance of paragraph (a).

(4) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be a substance or article in relation to which, or by means of which, an offence under this Act is being or has been committed, and any document which he has reasonable cause to believe to be a document which may be required as evidence in proceedings under this Act.

(5) In exercising the powers under this section, an inspector may, in order to ensure that the provisions of this Act are observed, require any person who owns the substance or article or has authority over the substance or article which is contained in a container or package or a vending machine, to break open any container or package or open any vending machine or to permit the inspector to do so.

(6) Where an inspector seizes any substance or article, including any document pursuant to subsection (4), he shall inform of that fact the person from whom it is seized and, in the case of anything seized from a vending machine, the person whose name and address are stated on the machine as being those of the owner of the machine or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

(7) An inspector entering any premises, ship, aircraft or vehicle, pursuant to section 31 may take with him such other persons and such equipment as may appear to him to be necessary and, on leaving any such premises, ship, aircraft or vehicle, he shall, if the premises are unoccupied or the occupier, or in the case of a ship, aircraft, vehicle, the master, commander or other person in charge of it is temporarily absent, leave it as effectively secured against trespass as he found it.

(8) Any person who—

(a) willfully obstructs an inspector in the discharge of his duties;

(b) willfully fails to comply with any requirement properly made to him by an inspector;

or

(c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act,

shall be guilty of an offence.

(9) If any person, in giving any such information as is mentioned in subsection (8) (c), makes any statement which he knows to be false or which he does not believe to be true, he shall be guilty of an offence.

(10) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or, where that person is married, the husband or wife of that person.

#### [Ch6003s33]33. Non-disclosure of information

(1) If any person discloses to any other person—

(a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered pursuant to this Act; or

(b) any information obtained by him or furnished to him pursuant to this Act,

he shall unless the disclosure was made in the performance of his duty and to an authorized person, be guilty of an offence and shall be liable to a fine of K100,000 and to imprisonment for two years.

#### [Ch6003s34]34. Inspectors not to be personally liable for acts done by them under this Act

An inspector shall not be personally liable in respect of any act done by him in good faith in the course of his employment and in the execution or purported execution of any duty under this Act.

## PART VIII

### APPEALS

#### [Ch6003s35]35. Appeals

(1) Any person who is aggrieved by—

(a) any refusal, suspension, revocation or variation of a licence, permit or certificate issued under this Act, or

(b) any decision directly applicable to him taken by the Minister or any person exercising powers under this Act,

may within thirty days appeal in writing to the Minister who shall appoint an appeals committee for purpose of hearing the appeal in question.

#### [Ch6003s36]36. Appeals committee

(1) An appeals committee shall consist of five persons who, in the opinion of the Minister, have expert knowledge and who are otherwise suitable to determine the issues raised in the appeal.

(2) The Minister shall designate one of the members of the appeals committee as chairperson of the committee.

(3) A member of the appeals committee shall excuse himself as a member of the appeals committee if he has any direct or indirect interest in the subject matter of the appeal or if for any reason there is likely to be conflict of interest as a result of his participation in the proceedings of the committee.

(4) There shall be paid to members of an appeals committee such remuneration or allowances as the Minister may determine.

#### [Ch6003s37]37. Powers of appeals committee

(1) An appeals committee shall have, in relation to the hearing of any appeal, the power to—

(a) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;

(b) refer the relevant matter back to the Minister for his reconsideration;

(c) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the appeal committee may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;

(d) award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed;

- (e) make such order as it may deem fit; and
- (f) the power to do all things which it is required or empowered to do by or under this Act.

(2) The decision of the appeal committee on any appeal shall be—

- (a) made in writing;
- (b) sent to all the parties to the appeal and, where he was not a party, to the Minister; and
- (c) available for public inspection.

(3) Any person who, having appealed under section 35, is aggrieved by the decision of the appeals committee may, within thirty days thereof, apply to the High Court for judicial review of the decision of the committee.

## PART IX

### MISCELLANEOUS PROVISIONS

#### [Ch6003s38]38. Secrecy to be observed

(1) Every person employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, be liable to a fine of K200,000 or to imprisonment for two years.

#### [Ch6003s39]39. Offences

Any person who—

(a) contravenes any provision of this Act, directive or order lawfully given or requirement lawfully imposed under this Act;

(b) omits or refuses—

- (i) to furnish any information when required by the Minister to do so: or
- (ii) to produce any document when required to do so by a notice issued by the Minister; or

(c) knowingly furnishes any false information to the Minister, shall be guilty of an offence.

#### [Ch6003s40]40. Penalty for offences



(1) A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K1,000,000 or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for ten years.

(2) Upon conviction of any person for an offence under this Act, the court may, in addition to any other penalty imposed, declare any genetically modified organism or product thereof, substance or article seized and detained by an inspector and found to have been used in, or in connexion with, the commission of that offence to be forfeited, and may order it to be destroyed, without compensation, in such manner as the court might specify, and any expenditure incurred, if any, shall be recoverable from the person as a civil debt owed to the Fund.

[Ch6003s41]41. Regulations

(1) The Minister may make regulations for better carrying into effect of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) anything required to be prescribed under, or for the purposes of, this Act;
- (b) any forms required for the purposes of this Act;
- (c) fees payable in respect of any service provided;
- (d) the furnishing of reports to the Minister on biosafety matters including accidents;
- (e) requirements pertaining to—
  - (i) release or contained use of genetically modified organisms or products thereof;
  - (ii) laboratories; and
  - (iii) registration of facilities where biotechnological processes are undertaken;
- (f) descriptions or classes of genetically modified organisms or products thereof or of any articles or substances required to be specified under this Act;
- (g) the control, regulation or regulation of the sale or supply, export or the importation, of genetically modified organisms or products thereof or any article or substance of any specified description or class;
- (h) the manner in which containers and packages of genetically modified organisms or products thereof may be labelled;
- (i) the manner in which leaflets relating to the advertisement of genetically modified organisms or products thereof may be made;
- (j) such requirements as may be necessary with respect to—

(i) the manner in which, or persons under whose supervision, genetically modified organisms or products thereof may be prepared or may be dispensed;

(ii) the amount of space to be provided in any premises for persons preparing or dispensing genetically modified organisms or products thereof, the separation of any such space from the remainder of the premises and the facilities to be provided in any premises for such persons;

(iii) the accommodation to be provided in any premises for the sale or supply of genetically modified organisms or products thereof;

(iv) the accommodation to be provided in any premises for members of the public to whom genetically modified organisms or products thereof are sold or supplied or for whom genetically modified organisms or products thereof are being prepared or assembled;

(v) the amount of space to be provided in any premises for members of the public and storage of genetically modified organisms or products thereof;

(vi) the safe keeping of genetically modified organisms or products thereof;

(vii) the disposal of genetically modified organisms or products thereof which have become unusable or otherwise unwanted;

(viii) precautions to be observed before genetically modified organisms or products thereof are sold or supplied;

(ix) the keeping of records relating to the sale or supply of genetically modified organisms or products thereof;

(x) the supply of genetically modified organisms or products thereof distributed as samples;

(xi) sanitation, cleanliness, temperature, humidity or other factors relating to the construction, location and use of automatic machines for the sale of genetically modified organisms or products thereof;

(k) fees payable upon registration or renewal of registration and upon application for a licence or certificate or renewal of licence or certificate; and

(l) anything to be prescribed under this Act.

(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K200,000 and imprisonment for up to two years for an offence committed against any provision of such regulation.

## SUBSIDIARY LEGISLATION

### BIOSAFETY (MANAGEMENT OF GENETICALLY MODIFIED ORGANISMS) REGULATIONS

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G.N. 30/2007

## BIOSAFETY (MANAGEMENT OF GENETICALLY MODIFIED ORGANISMS) REGULATIONS

under s. 41

### PART I

#### PRELIMINARY

##### 1. Citation

These Regulations may be cited as Biosafety (Management of Genetically Modified Organisms) Regulations.

##### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“applicant” means a person who submits an application for a licence or permit under the Act;

“Committee” means the National Biosafety Regulatory Committee established under regulation 3;

“Biosafety Registrar” means the officer appointed as such under regulation 8;

“operator” means any person who conducts activities under a licence or permit issued under the Act;

“register” means a register established under regulation 8 and containing particulars of Genetically Modified Organisms and activities that are licensed or permitted under the Act;

“risks to human health” means the potential adverse effects of biotechnology activities or their products on human health;

“reviewer” means a reviewer appointed under regulation 11.

### PART II

#### INSTITUTIONAL FRAMEWORK

##### 3. National Biosafety Regulatory Committee

(1) There shall be a National Biosafety Regulatory Committee which shall consist of the following members, nominated by their institutions and appointed by the Minister—

(a) the Secretary responsible for Agriculture and Food Security or his designated representative;

(b) the Secretary responsible for Health or his designated representative;

- (c) the Secretary responsible for Industry and Trade or his designated representative;
  - (d) the Director General of the Malawi Bureau of Standards or his designated representative;
  - (e) Secretary responsible for Labour or his designated representative;
  - (f) the Secretary responsible for Justice or his designated representative;
  - (g) the Director of Forestry or his designated representative;
  - (h) the Secretary responsible for Women and Child Welfare or his designated representative;
  - (i) the Secretary responsible for Nutrition, HIV and Aids or his designated representative;
  - (j) the Director of National Parks and Wildlife or his designated representative;
  - (k) the Executive Director for the Council for Non-Governmental Organizations or his designated representative;
  - (l) the Commissioner for Malawi Revenue Authority or his designated representative;
  - (m) the Inspector General of the Malawi Police Service or his designated representative;
- and
- (n) the Executive Director for Consumers Association of Malawi or his designated representative.

(2) Members of the Committee shall be paid such an allowance as the Minister shall determine:

Provided that the Minister may make provision for reimbursement of any reasonable expense incurred by a member of the Committee in connexion with the business of the committee.

(3) The Minister shall appoint the Chairperson of the National Biosafety Regulatory Committee.

(4) The members of the Committee shall, at their first meeting, elect a Vice-Chairperson from amongst their number.

(5) In the absence of the Chairperson and Vice Chairperson the members of the Committee present shall elect a person from their number to preside over a meeting.

(6) The person presiding over a meeting shall exercise all the powers and perform all the duties of the Chairperson whenever the Chairperson is not present.

(7) A member of the Committee whose period of office has expired may be eligible for reappointment.

(8) Each institution shall designate a member and an alternate to serve on the Committee.

(9) The quorum for any meeting of the Committee shall be a simple majority of members.

(10) A decision on any matter before the Committee shall be by a simple majority of votes of the members present.

(11) In the case of an equality of votes, the person presiding over a meeting shall have a casting vote.

(12) The committee shall determine its own procedures for meetings.

(13) The Biosafety Registrar shall be the Secretary to the Committee.

#### 4. Immunity from suit

No action, suit or other proceedings shall be brought or instituted personally against any member of the Committee or public officer in respect of any act done in good faith in the course of carrying out the provisions of the Act or these Regulations.

#### 5. Tenure of office and vacancies

(1) The members of the Committee shall hold office for a period of three (3) years and may be eligible for reappointment.

(2) A member of the Committee shall cease to be a member of the Committee if—

(a) he resigns as a member of the committee;

(b) he ceases to be a member or employee of the institution that nominated him for appointment as member of the Committee;

(c) upon, conviction of any offence, he is sentenced to a term of imprisonment without the option of a fine;

(d) he is of unsound mind or an undischarged bankrupt;

(e) he is absent from three (3) consecutive meetings of the Committee, without a valid excuse, of which he has had notice;

(f) he dies; or

(g) the member is compromised to such an extent that his ability to impartially exercise the duties of his office is seriously in question.

#### 6. Functions of the Committee

The Committee shall—

(a) evaluate all applications concerning or related to genetically modified organisms and products thereof and make recommendations to the Minister in that regard;

(b) advise, on request or of its own accord, the Minister on matters concerning genetic modification of organisms, inter alia—

- (i) on all aspects relating to the introduction of genetically modified organisms into the environment;
  - (ii) on all proposals for specific activities or projects concerning the genetic modification of organisms;
  - (iii) on all aspects concerning the contained use of genetically modified organisms;
  - (iv) on the exportation and importation of genetically modified organisms;
  - (v) on the amendment or withdrawal of a licence or permit issued under the Act; and
  - (vi) on proposed regulations and guidelines;
- (c) liaise, through the relevant institutions, with international groups or organizations concerned with biosafety and biotechnology;
- (d) invite knowledgeable persons to assist the Committee on any aspect related to genetically modified organisms and;
- (e) carry out such other functions that are necessary for the effective implementation of these Regulations.

#### 7. Disclosure of Interest

A member of the Committee who has an interest, direct or indirect, in any matter before the Committee shall disclose such interest and shall not take part in the consideration or discussion of the matter.

#### 8. Appointment of the Biosafety Registrar

(1) There shall be appointed, in the public service, a Biosafety Registrar and such other suitably qualified officers as may be required for the administration of these Regulations.

(2) The Biosafety Registrar shall exercise such powers and perform such duties as may be conferred upon him by the Minister, and the Committee.

#### 9. Functions of the Biosafety Registrar

(1) The Biosafety Registrar shall—

(a) ensure that the provisions of the Act and these Regulations are known to the relevant authorities and the general public;

(b) maintain a register of all biotechnological activities in Malawi and all licences and permits issued under the Act;

(c) receive all documents relating to applications and appeals and transmit them to the Committee and the Minister;



- (d) liaise with the Secretariat of the Convention on Biological Diversity;
- (e) transmit information on biosafety to the Biosafety Clearing House Mechanism;
- (f) facilitate and ensure the training of all inspectors in relevant aspects of biosafety and biotechnology;
- (g) maintain a register of experts in biotechnology and biosafety; and
- (h) perform any other functions as may be conferred upon him by the Minister or the Committee.

#### 10. Inspectors

(1) Subject to the provisions of section 30 (2) and (3) of the Act, the institutions represented on the Committee shall nominate from their institutions suitably qualified public officers for appointment as inspectors by the Minister in accordance with the section 30 of the Act.

(2) Where the Committee has ascertained or suspects, on reasonable grounds, that genetically modified organisms are being imported or locally produced or used contrary to the provisions of the Act, these Regulations or the conditions of a licence or permit issued thereunder, the Committee shall instruct inspectors to—

(a) require the cessation of any genetic modification activity at the facilities where the provisions of the Act or the conditions of a licence or permit have not been or are not being complied with;

(b) ensure that appropriate measures are undertaken by all users at all times with a view to protect human health and the environment from hazards;

(c) serve notice upon any person by whom or on whose behalf genetically modified organisms are being imported into, produced or used in Malawi contrary to the Act or these Regulations, for the removal of such genetically modified organisms, to a place or facility and in a manner prescribed by the Committee; or

(d) destroy such genetically modified organisms or cause them to be destroyed, subject to procedures stipulated in the guidelines issued by the Minister.

#### 11. Reviewers

(1) The Committee may, before it considers any application for a licence or a permit, appoint one or more experts in any relevant field to review the application so as to provide the Committee with sufficient information to enable it make an informed decision.

(2) In the performance of the powers of appointment in accordance with subregulation (1) above, the Committee shall ensure that the composition of the reviewers reflects the expertise necessary to undertake a proper review of the subject in question and shall determine the size of each review team.

(3) The reviewers shall be responsible for reviewing risk assessment reports and auditing processes in order to establish the impact of the biotechnological activities on the environment and human health.

(4) The reviewers shall submit a report to the Committee, in respect of any assessment undertaken, giving, inter alia,—

(a) an opinion of the viability of the project under consideration;

(b) a description of any measures or actions that need to be taken to ensure the safe use of genetically modified organisms; and

(c) an outline of any gaps, deficiencies and the adverse human and environmental concerns.

(5) The reviewers shall, when compiling their report, have regard to the provisions of regulation 15.

### PART III

#### LICENCES AND PERMITS

12. Required information for applications for licences and permits for trial release and contained use

(1) Any person making an application for a licence or a permit for trial release and contained use under the Act shall provide to the Committee the information contained in the First Schedule hereto.

(2) Notwithstanding the provisions of subregulation (1) a permit referred to in the said subregulation shall not be required for organisms that are used under conditions of contained use in academic and research facilities.

(3) A licence or permit issued under the Act shall be in the format contained in the Second Schedule hereto and shall be valid for a period of one (1) year.

(4) Any person making an application for a licence or permit to export or import genetically modified organisms shall take into account the requirements of the Cartagena Protocol on Biosafety.

13. Fees

(1) Any person making an application or granted a licence or permit under these Regulations shall pay the fees set out in the Third Schedule hereto and the fees shall accompany each application or be paid before any licence or permit is granted, as the case may be.

(2) The Committee may recommend to the Minister to exempt indigenous Malawian researchers from paying fees under these Regulations.

(3) The Minister, on the recommendation of the Committee, shall determine the fees under these Regulations and may revise the fees from time to time.

14. Applications for licence for general release of genetically modified organisms

(1) A person who has been granted a licence or permit under the Act and proposes to release into the environment genetically modified organisms, shall make an application for a licence to the Minister in accordance with requirements contained in the Fifth Schedule hereto.

(2) The applicant shall publish the application for the proposed general release of genetically modified organisms in two (2) widely circulating newspapers.

(3) The publication referred to in subregulation (2), shall contain the following details—

(a) full name and address of the applicant;

(b) a full description of the genetically modified organisms that the applicant proposes to release;

(c) a description of the proposed general release including the area and environment in which the release is to take place;

(d) a request that interested parties submit comments or objections in connexion with the intended release to the Biosafety Registrar within a period specified in the notice:

Provided that such period shall not be less than thirty (30) days after the date on which the notice appears in newspaper; and

(e) the address of the Biosafety Registrar, to which comments or objections may be submitted.

(4) The Biosafety Registrar shall refer any comments or objections received from interested parties to the Committee.

(5) The Committee shall, when reviewing an application for general release, consider all the comments and objections referred to the Committee in connexion with the said application.

15. Risk assessment of activities

(1) No licence shall be issued unless a suitable and sufficient assessment of the risks that may be created thereby to the environment or human health is undertaken.

(2) The applicant shall conduct risk assessment in a scientifically sound manner, appropriate to the type of permit or licence being sought and in accordance with internationally recognized risk assessment techniques and shall, inter alia, take into account available information concerning any potential exposure to the genetically modified organisms.

(3) Risk assessments shall be based on the information included in the application and shall also cover the information set out in the Fourth Schedule hereto and any other available scientific evidence.

(4) Lack of scientific knowledge or lack of consensus on the safe use of genetically modified organisms shall not in itself be interpreted as indicating a particular level of risk, an acceptable risk or an absence of risk.

16. Licensing of facilities and maintenance of records

(1) Subject to the provisions of subregulation (4), all facilities, for the purpose of carrying out genetic modification of organisms activities, shall be registered and licensed for such purposes.

(2) An application for the registration and licensing of a facility shall be made in a prescribed form and accompanied by a locality map that clearly indicates where the facility is situated and the construction materials to be used.

(3) Applications for licensing a facility that has already been active prior to the commencement of these Regulations, shall be made within six (6) months from the date of the commencement of these Regulations:

Provided that, where the Minister deems it necessary, upon the advice of the Committee, that a facility be registered prior to the expiration of the six (6) months period, the Minister may, by a written notice to the operator, require that a particular facility be licensed within a period specified in that notice.

(4) The Biosafety Registrar shall within three (3) weeks from the date of the issuance of facility licence, furnish the successful applicant a copy of the guidelines and conditions for the maintenance of the facility.

(5) The operator of a licensed facility shall, inter alia, keep and maintain the licence referred to in subregulation (4) and all records pertaining to risk assessments.

(6) The licence and records referred to in subregulation (5) shall, on request, be made available to the Biosafety Registrar or an inspector.

(7) The operator shall at all times, notify the Biosafety Registrar of any change to the information provided in terms of this regulation such as any extensions, improvements, modifications and damage to the facility.

(8) The operator shall not dispose of any list, register and record maintained in terms of this regulation except with the written permission of the Biosafety Registrar.

(9) Any person who contravenes the provisions of this regulation commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) and to imprisonment for three (3) years.

17. Time within which to determine applications

(1) The Minister shall attend to applications for licences and permits within a reasonable time and in any event decisions relating to any application shall be made not later than three (3) months from the date the committee receives the application.

(2) Notwithstanding subregulation (1), where an applicant is required to furnish further information for the determination of his application, the number of days taken by the applicant to submit the required information shall not be included in the time set down for determining the application.

18. Processing of applications

(1) All applications for licences and permits under the Act shall be made to the Biosafety Registrar.

(2) Upon receipt of an application, the Biosafety Registrar shall—

(a) acknowledge, in writing, receipt of such application within five (5) working days of such receipt; and

(b) determine whether the application conforms with the requirements of the Act, these Regulations and relevant international requirements, and if—

(i) the application does not conform to the relevant requirements in any respect, immediately refer the application back to the applicant and request the applicant to rectify the application; or

(ii) the application conforms to the relevant requirements submit the application to the Committee for consideration.

(3) The applicant or his authorized representative may appear in person before the Committee to answer any questions or provide any explanation pertaining to his application.

(4) The applicant shall publish in two (2) widely circulating newspapers a brief description of the application for a licence or permit under the Act and invite comments from members of the general public on such application.

(5) All public comments shall be made to the Biosafety Registrar within thirty (30) days of the publication of the application in accordance with subregulation (4).

(6) The Committee may—

(a) approve or reject the application depending on whether the proposed activity may pose significant risk to the conservation and sustainable use of biological diversity and human health and make the necessary recommendations to the Minister and shall give reasons for its decision; or

(b) refer the application back to the applicant for further and better particulars.

(7) When deciding an application for a general release licence, the Committee shall also consider the provisions of section 22 of the Act.

(8) In addition to the risk assessment report, the Committee shall consider the socio-economic impact of the general release of the genetically modified organism on a community living in the vicinity where the genetically modified organisms is proposed to be released.

(9) Where an applicant discovers any new information relating to the application that is being processed, he shall immediately notify the Biosafety Registrar of the new information.

(10) Upon receipt of the new information referred to in subregulation (9), the Biosafety Registrar shall refer the details thereof to the Committee which shall decide the effect of such information on the application.

#### 19. Review of decisions

(1) Any applicant may apply to the Minister to review his decision with respect to an activity conducted or proposed to be conducted by the applicant where the applicant considers that—

(a) change of circumstances has since occurred that may have had a material effect on the decision or the outcome of the risk assessment upon which the decision was based; or

(b) additional scientific or technical information has become available that may have a material effect on the decision including any conditions, limitations or requirements imposed under a licence or permit.

(2) If the Minister, upon consultation with the Committee, is satisfied that a change is warranted, he may revise the decision and any conditions in the licence or permit in a manner that is consistent with the new information.

### PART IV

#### MISCELLANEOUS PROVISIONS

#### 20. Accidents

(1) In the event of an accident involving genetically modified organisms, it shall be the responsibility of the operator to ensure that—

(a) the Biosafety Registrar is notified immediately both verbally and in writing of such accident regarding—

(i) the circumstances of the accident;

(ii) the identity and quantity of the genetically modified organisms released;

(iii) any information that is necessary to assess the impact of the accident on the environment and human health;

(iv) the emergency measures taken to avoid or mitigate any adverse impact of such accident on the environment and human health: and

(v) the capacity to deal with the situation occasioned by the accident; and

(b) all appropriate short term, medium term and long term measures are taken to avoid or mitigate any adverse impact of such accident on the environment and human health.

#### 21. Caution and determination of liability

(1) Operators shall take appropriate measures to avoid any adverse impact on the environment and human health, which may arise from any trial release or contained use involving genetically modified organisms.

(2) The liability for damage caused to the environment and biodiversity by the use or release of a genetically modified organism shall be borne by the operator.

22. Public access to information and confidentiality

(1) Subject to subregulation (2), every person shall have access to information submitted to the Biosafety Registrar under these Regulations.

(2) No person shall disclose any information acquired by him through the exercise of his powers or the performance of his duties in terms of these Regulations, except—

- (a) in so far as it is necessary for the proper application of the provisions of the Act;
- (b) for the purposes of any legal proceedings under the Act;
- (c) when ordered to do so by any competent court; or
- (d) if he is authorized to do so by the Committee or Minister.

(3) The Biosafety Registrar shall, after consultation with the applicant, recommend to the Committee which information should be kept confidential and shall inform the applicant of his decision provided that the following information shall not be kept confidential—

- (a) the description of the genetically modified organisms, the name and address of the applicant, and the purpose of the contained use, confined field trial or general release;
- (b) the methods and plans for the monitoring of the genetically modified organisms and for emergency measures in the case of an accident; and
- (c) the evaluation of foreseeable impacts, in particular any pathogenic or ecologically disruptive impacts.

(4) Notwithstanding the provisions of subregulation (2), the Biosafety Registrar may, after being satisfied on the grounds of information furnished by the applicant that certain information should be withheld in order to protect the intellectual property of the applicant, withhold such information for the period needed to protect such rights.

(5) If, for whatever reasons, the applicant withdraws an application, any party who has knowledge of the details of the application shall keep confidential the information supplied.

(6) Any person who contravenes subregulation (5), commits an offence and shall, upon conviction, be liable to the penalty prescribed under section 33 of the Act.

23. Requirements for effective management of waste

(1) An operator who possesses or controls waste arising from biotechnology activities shall manage and dispose of the waste in such a manner that the waste shall not negatively impact on the environment and human health.

(2) An operator shall comply with all relevant national and local authority legislation in force in the management and disposal of waste arising from biotechnology activities.

(3) Any person who contravenes subregulations (1) and (2) commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) and to two (2) years imprisonment:

Provided that if the person commits a further offence he shall be liable to a fine of twenty thousand Kwacha (K20,000) during each day the offence continues.

#### 24. Advertisements

(1) No person shall advertise genetically modified organisms in a manner which misleads the general public or makes false claims regarding the use of genetically modified organisms.

(2) The Biosafety Registrar shall, after consultation with the Committee, instruct an inspector to confiscate genetically modified organisms which contravene subregulation (1).

(3) Any person who contravenes subregulation (1) commits an offence and shall, upon conviction, be liable to a fine of two hundred thousand Kwacha (K200,000) or to an amount equivalent to the financial gain generated by the offence.

#### 25. Guidelines

In addition to the information required for all applications under these Regulations, the Minister shall issue guidelines to be followed by applicants in the conduct of biotechnology activities.

#### 26. Appeals

(1) An appeal under the Act shall—

(a) be lodged in writing within thirty (30) days from the date on which the applicant was notified in writing of the decision or action concerned and shall state:

(i) the reference number and the date of the document by means of which such applicant was notified of that decision or action; and

(ii) the grounds on which the appeal is based; and

(b) be accompanied by the fees set out in the Third Schedule contained hereto.

(2) The applicant shall lodge the appeal with the office of the Biosafety Registrar.

(3) The applicant shall be notified in writing by the Biosafety Registrar not less than fourteen (14) days in advance of the date, time and place at which he is to appear before the appeals committee.



(4) The applicant shall be entitled to legal representation during any appearance before the appeals committee.

(5) An appeals committee shall provide the Minister with a decision on the appeal within thirty (30) days after the hearing of the appeal.

FIRST SCHEDULE regs. 12 and 14

## REQUIRED INFORMATION FOR APPLICATIONS OF LICENCES AND PERMITS

### SECTION ONE

#### PART I

##### GENERAL INFORMATION

1. The name and address of the applicant, and the name, qualifications and experience of the scientists and of every other person responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.

2. The name and address of the collaborating institution or institutions, and of the name, qualifications and experience of the scientists and of every other person responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.

3. The curriculum vitae of all the scientists and other persons involved in paragraphs 1 and 2 above.

4. The title of the project.

#### PART II

##### INFORMATION RELATING TO THE PARENTAL OR RECIPIENT PLANT

5. The full name of the plant—

- (a) family name;
- (b) genus;
- (c) species;
- (d) subspecies;
- (e) cultivar/breeding line; and
- (f) common name.

6. Information concerning—

- (a) the reproduction of the plant—
  - (i) the mode or modes of reproduction;

- (ii) any specific factors affecting reproduction; and
- (iii) generation time, and

(b) the sexual compatibility of the plant with other cultivated or wild plant species, including the distribution in Malawi of the compatible species.

7. Information concerning the survivability of the plant—

- (a) its ability to form structures for survival or dormancy; and
- (b) any specific factors affecting survivability of the plant.

8. Information concerning the dissemination of the plant—

- (a) the means and extent (such as an estimation of how viable pollen and/or seeds decline with distance, where applicable) of dissemination; and
- (b) any specific factors affecting dissemination.

9. The geographical distribution of the plant.

10. Where the application relates to a plant species which is not normally grown in Malawi, a description of the natural habitat of the plant, including information on natural predators, parasites, competitors and symbionts.

11. Any other potential interactions, relevant to the genetically modified organism, of the plant with organisms in the ecosystem where it is usually grown, or elsewhere, including information on toxic effects on humans, animals and other organisms.

### PART III

#### INFORMATION RELATING TO THE GENETIC MODIFICATION

12. A description of the methods used for the genetic modification.

13. The nature and source of the vector used.

14. The size, intended function and name of the donor organism or organisms of each constituent fragment of the region intended for insertion.

### PART IV

#### INFORMATION RELATING TO THE GENETICALLY MODIFIED PLANT

15. A description of the trait or traits and characteristics of the genetically modified plant which have been introduced or modified.

- The information on the sequences actually inserted.
- The information on the expression of the insert such as the parts of the plant where the insert is expressed, such as roots, stem or pollen.

16. Information on how the genetically modified plant differs from the parental recipient plant in the following respects—

- (a) mode or modes and/or the rate of reproduction;
- (b) dissemination, and
- (c) survivability.

17. The genetic stability of the insert and phenotypic stability of the genetically modified plant.

18. Any change to the ability of the genetically modified plant to transfer genetic material to other organisms.

19. Information on any toxic, allergenic or other harmful effects on human health arising from the genetic modification.

20. Information on the safety of the genetically modified plant to animal health, particularly regarding any toxic, allergenic or other harmful effects arising from the genetic modification, where the genetically modified plant is intended to be used in animal feeding stuffs.

21. The mechanism of interaction between the genetically modified plant and target organisms, if applicable.

22. The potential changes in the interactions of the genetically modified plant with non-target organisms resulting from the genetic modification.

23. The potential interactions with the abiotic environment.

24. A description of detection and identification techniques for the genetically modified plant.

25. Information about previous releases of the genetically modified plant, if applicable.

## PART V

### INFORMATION RELATING TO THE SITE OF RELEASE

(Applications for Licences or Permits for release only)

26. The location and size of the release site or sites.

27. Details of any sexually compatible wild relatives or cultivated plant species present at the release sites.

28. The proximity of the release sites to officially recognized biotopes or protected areas which may be affected.

## PART VI

### INFORMATION RELATING TO THE RELEASE

(Applications for Licences or Permits for Trial release only)

29. The purpose of the release of the genetically modified plant, including its initial use and any intention to use it as or in a product in the future.

30. The foreseen date or dates and duration of the release.

31. The method by which the genetically modified plants will be released.

32. The method for preparing and managing the release site, prior to, during and after the release, including cultivation practices and harvesting methods.

33. The approximate number of genetically modified plants (or plants per square meter) to be released.

#### PART VII

#### INFORMATION ON CONTROL, MONITORING, POST-RELEASE AND WASTE TREATMENT PLANS

(Applications for Licences or Permits to release only)

34. A description of any precautions to—

(a) maintain the genetically modified plant at a distance from sexually compatible plant species, both wild relatives and crops; and

(b) any measures to minimize or prevent dissemination of any reproductive organ of the genetically modified plant (such as pollen, seeds, tuber).

35. A description of the methods for post-release treatment of the site or sites.

36. A description of the post-release treatment methods for the genetically modified plant material, including wastes.

37. A description of monitoring plans and techniques.

38. A description of any emergency plans.

39. Methods and procedures to protect the site.

#### PART VIII

#### INFORMATION ON METHODOLOGY

40. A description of the methods used or a reference to standardized or internationally recognized methods used to compile the information required by this Schedule, and the name of the body or bodies responsible for carrying out the studies.

SECOND SCHEDULE regs. 12 and 14

LICENCE/PERMIT

FORM C

This Licence/Permit is hereby granted to: .....

.....

.....

..... (Name, Contact Address and description of applicant) in accordance with the Biosafety Act.

.....

.....

.....

..... (description of the genetically modified organism, products, trials and release) located at: .....

.....

.....

.....

..... (geographical description of the location of the site of the facility).

This Licence/Permit is issued subject to the Regulations under which it is issued and the conditions attached hereto. It may be withdrawn should the holder breach any provisions of the Act, Regulations or the attached conditions.

..... (Name of applicant) being the holder, including his/her agents, undertakes to abide by the conditions of this Licence/Permit and to promptly report any matter that may prejudice the interests of Malawi and other conditions attached to the grant of this Licence/permit.

This Licence/Permit is not transferable.

Signed: .....

Dated: .....

Minister

THIRD SCHEDULE reg. 13

FEES

- 1. Every application shall be accompanied by a non-refundable scrutiny fee of K300,000.
- 2. Fees payable on the application of a permit or licence—

Matter Fee Payable on Grant of Licence

Application for— K t

- |     |  |           |    |
|-----|--|-----------|----|
| (a) | development of genetically modified organisms                    | 500,000   | 00 |
| (b) | contained use of genetically modified organisms                  | 1,000,000 | 00 |
| (c) | confined field trial of genetically modified organisms           | 3,000,000 | 00 |
| (d) | general release and marketing of genetically modified organisms  | 3,000,000 | 00 |
| (e) | importation of genetically modified organisms for commercial use | 3,000,000 | 00 |
| (f) | exportation of genetically modified organisms                    | 10,000    | 00 |
| (g) | appeal   | 50,000    | 00 |

FOURTH SCHEDULE reg. 15

PART I

INFORMATION TO BE INCLUDED IN A ASSESSMENT REPORT

1. An identification of the characteristics of the recipient organism which are relevant to the assessment of the relevant genetically modified organisms.

2. A description of the way in which the characteristics of the organisms have been affected by genetic modification.

3. An identification of any known risks of damage to the environment resulting from the release into the environment of the recipient non-modified organism.

4. An assessment of whether the genetic modification has been characterized sufficiently for the purpose of evaluating any risks of damage to the environment.

5. An identification of any new risks of damage to the environment that may arise from the release of the relevant genetically modified organisms as compared to the release of the corresponding non-modified organism, based on the environmental risk assessment.

6. A conclusion which addresses the proposed use of the product, risk management and the proposed monitoring plan, and states whether the relevant genetically modified organisms should be marketed and under which conditions, or should not be marketed, including reasons for that conclusion.

PART II

RISK ASSESSMENT PROCEDURES

Objective of Risk Assessment

1. The objective of risk assessment under these Regulations is to identify and evaluate the potential adverse effects of genetically modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment, taking also into account risks to human health.

#### Use of Risk Assessment

2. Risk assessment is, inter alia, used by competent authorities to make informed decisions regarding genetically modified organisms.

#### General Principles

3. Risk assessment shall be carried out in a scientifically sound and transparent manner, and take into account expert advice of, and guidelines developed by, relevant international organizations.

4. Lack of scientific knowledge or scientific consensus shall not necessarily be interpreted as indicating a particular level of risk, an absence of risk or an acceptable risk.

5. Risks associated with genetically modified organisms or products thereof, namely, processed materials that are of genetically modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology, shall be considered in the context of the risks posed by the non-modified recipients or parental organisms in the likely potential receiving environment.

6. Risk assessment shall be carried out on a case-by-case basis. The required information may vary in nature and level of detail from case to case, depending on the living genetically modified organism concerned, its intended use and the likely potential receiving environment.

#### Methodology

7. The process of risk assessment may on the one hand give rise to a need for further information about specific subjects, which may be identified and requested during the assessment process, while on the other hand, information on other subjects may not be relevant in some instances.

8. Risk assessment entails, as appropriate, the following steps:

(a) an identification of any novel genotypic and phenotypic characteristics associated with the genetically modified organism that may have adverse effects on biological diversity in the likely potential receiving environment, taking also into account risks to human health;

(b) an evaluation of the likelihood of these adverse effects being realized, taking into account the level and kind of exposure of the likely potential receiving environment to the genetically modified organism;

(c) an evaluation of the consequences should these adverse effects be realized;

(d) an estimation of the overall risk posed by the genetically modified organism based on the evaluation of the likelihood and consequences of the identified adverse effects being realized;

(e) recommendation as to whether or not the risks are acceptable or manageable, including, where necessary, identification of strategies to manage these risks; and

(f) where there is uncertainty regarding the level of risk, it may be addressed by requesting further information on the specific issues of concern or by implementing appropriate risk management strategies and/or monitoring the genetically modified organism in the receiving environment.

#### Points to Consider

9. Depending on the case, risk assessment takes into account the relevant technical and scientific details regarding the characteristics of the following subjects—

(a) recipient organism or parental organisms: the biological characteristics of the recipient organism or parental organisms, including information on taxonomic status, common name, origin, centres of origin and centres of genetic diversity, if known, and a description of the habitat where the organisms may persist or proliferate;

(b) donor organism or organisms: taxonomic status and common name, source, and the relevant biological characteristics of the donor organisms;

(c) vector: characteristics of the vector, including its identity, if any, and its source or origin, and its host range;

(d) insert or inserts and/or characteristics of modification: genetic characteristics of the inserted nucleic acid and the function it specifies, and/or characteristics of the modification introduced;

(e) genetically modified organisms: identity of the genetically modified organism, and the differences between the biological characteristics of the genetically modified organism and those of the recipient organism or parental organisms;

(f) detection and identification of the genetically modified organism: suggested detection and identification methods and their specificity, sensitivity and reliability;

(g) information relating to the intended use: information relating to the intended use of the genetically modified organism, including new or changed use compared to the recipient organism or parental organisms; and

(h) receiving environment: information on the location, geographical, climatic and ecological characteristics, including relevant information on biological diversity and centres of origin of the likely potential receiving environment.

FIFTH SCHEDULE reg. 4

SECTION ONE



## INFORMATION TO BE INCLUDED IN APPLICATIONS FOR GENERAL RELEASE OR MARKETING OF GENETICALLY MODIFIED ORGANISMS

### PART I

#### GENERAL INFORMATION

1. The name and address of the applicant, and the name, qualifications and experience of the scientist and of every other person who will be responsible for planning and carrying out the release of the organisms, and for the supervision, monitoring and safety of the release.

2. The title of the project.

### PART II

#### INFORMATION RELATING TO THE ORGANISMS

##### Characteristics of Donor, Parental and Recipient Organisms

3. Scientific name and taxonomy.

4. Usual strain, cultivator or other name.

5. Phenotypic and genetic markers.

6. The degree of relatedness between donor and recipient or between parental organisms.

7. The sensitivity, reliability (in quantitative terms) and specificity of detection and identification techniques.

8. The description of the geographic distribution and of the natural habitat of the organisms including information on natural predators, prey, parasites and competitors, symbionts and hosts.

9. The organisms with which transfer of genetic material is known to occur under natural conditions.

10. Verification of the genetic stability of the organisms and factors affecting that stability.

11. The following pathological, ecological and physiological traits—

(a) the classification of hazard according to existing legislation concerning the protection of human health and the environment; and

(b) the generation time in natural ecosystems and the sexual and asexual reproductive cycle.

(c) information on survivability, including seasonability and the ability to form survival structures, including seeds, spores and sclerotia;

(d) pathogenicity, including infectivity, toxigenicity, virulence, allergenicity, ability to act as a carrier (vector) of pathogen, possible vectors, host range including non-target organisms and possible activation of latent viruses (pro-viruses) and ability to colonise other organisms;

(e) antibiotic resistance, and potential use of these antibiotics in humans and domestic organisms for prophylaxis and therapy; and

(f) involvement in environmental processes, including primary production, nutrient turnover, decomposition of organic matter and respiration.

12. The sequence, frequency of mobilization and specificity of indigenous vectors, and the presence in those vectors of genes which confer resistance to environmental stresses.

13. The history of previous genetic modifications.

#### Characteristics of the Vector

14. The nature and source of the vector.

15. The sequence of transposons, vectors and other non-coding genetic segments used to construct the genetically modified organisms and to make the introduced vector and insert functions in those organisms.

16. The frequency of mobilization, genetic transfer capabilities and/or methods of determination of the inserted vector.

17. The degree to which the vector is limited to the DNA required to perform the intended function.

#### Characteristics of the Modified Organisms

18. The methods used for the modification.

19. The methods used—

(a) to construct the insert or inserts and to introduce it or them into the recipient organism, and

(b) to delete a sequence.

20. The description of any insert and/or vector construction.

21. The purity of the insert from any unknown sequence and information on the degree to which the inserted sequence is limited to the DNA required to perform the intended function.

22. The methods and criteria used for selection.

23. The sequence, functional identity and location of the altered, inserted or deleted nucleic acid segment or segments in question, and in particular any known harmful sequence.

#### Characteristics of the Genetically Modified Organisms in their Final Form

24. The description of genetic trait or traits or phenotypic characteristics and in particular any new traits and characteristics which may be expressed or no longer expressed.

25. The structure and amount of any vector or donor nucleic acid remaining in the final construction of the modified organisms.

26. The stability of the organisms in terms of genetic traits.

27. The rate and level of expression of the new genetic material in the organisms, and the method and sensitivity of measurement of that rate and level.

28. The activity of the gene product.

29. The description of identification and detection techniques, including techniques for the identification and detection of the inserted sequence and vector.

30. The sensitivity, reliability (in quantitative terms), and specificity of detection and identification techniques.

31. The history of previous releases or uses of the organisms.

32. In relation to human health, animal health and plant health—

- (a) the toxic or allergenic effects of the organisms and/or their metabolic products;
- (b) the comparison of the organisms to the donor, recipient or (where appropriate) parental organisms regarding pathogenicity;
- (c) the capacity of the organisms for colonization; and
- (d) if the organisms are pathogenic to humans who are immunocompetent—
  - (i) diseases caused and mechanism of pathogenicity including invasiveness and virulence;
  - (ii) communicability;
  - (iii) infective dose;
  - (iv) host range and possibility of alteration;
  - (v) possibility of survival outside of human host;
  - (vi) presence of vectors or means of dissemination;
  - (vii) biological stability;
  - (viii) antibiotic resistance patterns;
  - (ix) allergenicity;
  - (x) availability of appropriate therapies; and
- (e) the other product hazards.

## INFORMATION RELATING TO THE CONDITIONS OF RELEASE

### The Release

33. The description of the proposed deliberate release, including the initial purpose or purposes of the release and any intention to use the genetically modified organism as or in a product in the future.

34. The intended dates of the release and time planning of the experiment including frequency and duration of releases.

35. The preparation of the site before the release.

36. The size of the site.

37. The method or methods to be used for the release.

38. The quantity of organisms to be released.

39. The disturbance on the site, including the type and method of cultivation, and mining, irrigation or other activities.

40. The worker protection measures taken during the release.

41. The post-release treatment of the site.

42. The techniques foreseen for elimination or inactivation of the organisms at the end of the experiment or other purpose of the release.

43. Information on, and the results of, previous releases of the organisms, and in particular, releases on a different scale or into different ecosystems.

### The environment (both on the site and in the wider environment)

44. The geographical location and national grid reference of the site or sites on to which the release will be made, or the foreseen areas of use of the product.

45. The physical or biological proximity of the site of the organisms to humans and other significant biota.

46. The proximity to significant biotopes, protected areas or drinking water supplies.

47. The climatic characteristics of the region or regions likely to be affected.

48. The geographical, geological and pedological characteristics.

49. The flora and fauna, including crops, livestock and migratory species.

50. The description of the target and non-target ecosystems likely to be affected.

51. The comparison of the natural habitat of the recipient organisms with the proposed site or sites of release.

52. Any known planned developments or changes in land use in the region which could influence the environmental impact of the release.

#### PART IV

### INFORMATION RELATING TO THE INTERACTIONS BETWEEN THE ORGANISMS AND THE ENVIRONMENT

#### Characteristics Affecting Survival, Multiplication and Dissemination

53. The biological features which affect survival, multiplication and dissemination.

54. The known or predicted environmental conditions which may affect survival, multiplication and dissemination, including wind, water, soil, temperature and pH.

55. The sensitivity to specific agents.

#### Interactions with the Environment

56. The predicted habitat of the organisms.

57. The studies on the behaviour and characteristics of the organisms and their ecological impact carried out in simulated natural environments, such as microcosms, growth rooms and greenhouses.

58. The capability of post-release transfer of genetic material—

- (a) from the genetically modified organisms into organisms in affected ecosystems; and
- (b) from indigenous organisms to the genetically modified organisms.

59. The likelihood of post-release selection leading to the expression of unexpected or undesirable traits in the genetically modified organisms.

60. The measures employed to ensure and to verify genetic stability, the description of genetic traits which may prevent or minimize dissemination of genetic material, and methods to verify genetic stability.

61. The routes of biological dissemination, known or potential modes of interaction with the disseminating agent, including inhalation, ingestion, surface contact and burrowing.

62. The description of ecosystems to which the organisms could be disseminated.

63. The potential for excessive population increase of the organisms in the environment.

64. The competitive advantage of the organisms in relation to the unmodified recipient or parental organism or organisms.

65. The identification and description of the target organisms if applicable.

66. The anticipated mechanism and result of interaction between the released organisms and the target organisms if applicable.

67. The identification and description of non-target organisms which may be adversely affected by the release of the genetically modified organisms, and the anticipated mechanisms of any identified adverse interaction.

68. The likelihood of post-release shifts in biological interactions or in the host range.

69. The known or predicted interactions with non-target organisms in the environment, including competitors, preys, hosts, symbionts, predators, parasites and pathogens.

70. The known or predicted involvement of the organisms in biogeochemical processes.

71. Any other potential interactions of the organisms with the environment.

## PART V

### INFORMATION ON MONITORING, CONTROL, WASTE TREATMENT AND EMERGENCY RESPONSE PLANS

#### Monitoring Techniques

72. Methods for tracing the organisms and for monitoring their effects.

73. Specificity (to identify the organisms, and to distinguish them from the donor, recipient or, where appropriate, the parental organisms), sensitivity and reliability of the monitoring techniques.

74. Techniques for detecting transfer of the donated genetic material to other organisms.

75. Duration and frequency of the monitoring.

#### Control of the Release

76. Methods and procedures to avoid and/or minimize the spread of the organisms beyond the site of release or the designated area for use.

77. Methods and procedures to protect the site from intrusion by unauthorized individuals.

78. Methods and procedures to prevent other organisms from entering the site.

#### Waste Treatment

79. Type of waste generated.

80. Expected amount of waste.

81. Description of treatment envisaged.

#### Emergency Response Plans

82. Methods and procedures for controlling the organisms in case of unexpected spread.

83. Methods, such as eradication of the organisms, for decontamination of the areas affected.

84. Methods for disposal or sanitation of plants, animals, soils, and any other thing exposed during or after the spread.

85. Methods for the isolation of the areas affected by the spread.

86. Plans for protecting human health and the environment in case of the occurrence of an undesirable effect.

## PART VI

### INFORMATION ON METHODOLOGY

87. A description of the methods used or a reference to standardized or internationally recognized methods used to compile the information required by this Schedule, and the name of the body or bodies responsible for carrying out the studies.

## SECTION TWO

### INFORMATION TO BE INCLUDED IN APPLICATIONS FOR LICENCE TO MARKET GENETICALLY MODIFIED ORGANISMS

#### PART I

##### GENERAL INFORMATION

1. The proposed commercial name of the product and names of the genetically modified organisms in the product, and any specific identification, name or code used by the applicant to identify the genetically modified organism.

2. The name and address in Malawi of the person who is responsible for the marketing, whether it be the manufacturer, importer or distributor.

3. The name and address of the supplier or suppliers of control samples.

4. A description of how the product and the genetically modified organism are intended to be used, highlighting any differences in use or management of the genetically modified organism compared to similar non-genetically modified products.

5. A description of the geographical area or areas and types of environment where the product is intended to be used within Malawi, including, where possible, an estimate of the scale of use in each area.

6. A description of the intended categories of users of the product, such as industry, agriculture or consumer use by the public.

7. Information on the genetic modification for the purposes of placing on one or several registers modifications in organisms, which can be used for the detection and identification of particular products to facilitate post-marketing control and inspection. This information should include where appropriate the lodging of samples of the genetically modified organism or its genetic material with the Minister, and details of nucleotide sequences or other type of information which is

necessary to identify the product and its progeny, for example, the methodology for detecting and identifying the product, including experimental data demonstrating the specificity of the methodology. Information that cannot be placed, for confidentiality reasons, in the publicly accessible part of the register should be identified.

8. The proposed labelling, which must include, in a label or an accompanying document, at least in summarized form, a commercial name of the product, a statement that this product contains genetically modified organisms”, the name of the genetically modified organism and the name and address of the person established in Malawi who is responsible for marketing the product, and how to access the information in the publicly accessible part of the register.

## PART II

### ADDITIONAL RELEVANT INFORMATION

9. The measures to be taken in the event of the escape of the organisms in the product or misuse of the product.

10. Specific instructions or recommendations for storage and handling of the product.

11. Specific instructions for carrying out monitoring and reporting to the applicant stipulated in the Guidelines issued by the Minister.

12. The proposed restrictions in the approved use of the genetically modified organism, such as where the product may be used and for what purposes.

13. The proposed packaging.

14. The estimated production in and/or imports to Malawi.

[Chap6101]CHAPTER 61:01

MINES AND MINERALS

ARRANGEMENT OF SECTIONS

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1 of 1981

2 of 1983

G.N. 31/1981

An Act to make provision with respect to searching for and mining minerals, to repeal the Mining Act and certain other Acts and to provide for matters connected therewith and incidental thereto

[1ST JUNE 1981]

PART I

PRELIMINARY

[Ch6101s1]1. Short title

This Act may be cited as the Mines and Minerals Act.

[Ch6101s2]2. Vesting of minerals, etc.

(1) The entire property in, and control over, minerals in land in Malawi are vested in the President on behalf of the people of Malawi; but without prejudice to the exercise of any right under or pursuant to this Act.

(2) Nothing in subsection (1) shall operate so as to affect any interest of a person in earth, clay, granite, limestone, marble, sand, stone or other similar substance upon or in land, being an interest created by virtue of any Certificate of Claim or ownership of land or other disposition made by or on behalf of the British Crown.

(3) Subject to sections 115 and 116, no person shall carry on in Malawi reconnaissance, prospecting or mining operations, except under and in accordance with a Mineral Right, a non-exclusive prospecting licence, a claim or a mineral permit.



(4) Any person who contravenes subsection (3) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

[Ch6101s3]3. Interpretation

2 of 1983(1) In this Act, unless the context otherwise requires—

“authorized officer”, in relation to any provision of this Act, means a person designated as such under section 6 (2) for the purposes of that provision;

“body corporate” means a company or a corporation;

“building and industrial minerals” means basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, sand, sandstone, or salt, used for agricultural, building, roadmaking or industrial purposes in Malawi, and includes such other minerals as may be prescribed;

“claim” means a claim registered under Part IV;

“claim area” means an area of land subject to a claim;

“Commissioner” means the Commissioner for Mines and Minerals appointed pursuant to section 5;

“company” means a corporate body incorporated under the Companies Act; Cap. 46:03

“conditions” includes terms, limitations and stipulations;

“conserve” means, in relation to natural resources, to protect, improve and use natural resources in accordance with principles that will ensure the highest sustainable benefit in terms of economic, social, cultural and aesthetic values;

“corporation” means a corporate body incorporated in or outside Malawi, whether by Act or otherwise, but does not include a company;

“customary land” has the meaning assigned by the Land Act: Cap. 57:01

“drilling” means the perforation of the earth’s surface otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled with extraneous matter (including water);

“exclusive prospecting licence” means a licence granted under section 26;

“holder” means—

(a) in relation to a Mineral Right, the person whose name is for the time being recorded pursuant to section 58 or 60 as being the holder of the Mineral Right; or

(b) in relation to a claim, the person whose name is for the time being registered pursuant to section 76;

“in default” means in breach of any provision of this Act or of any condition of a Mineral Right, a non-exclusive prospecting licence or a claim;

“land” includes land beneath water;

“lawful occupier”, in relation to any customary land, includes such persons, or such class of persons, as may be prescribed;

“mine”, when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground, for the purpose of winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

“mine”, when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary for or incidental to mining operations;

“mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but does not include—

(a) water, not being water taken from a borehole, well, excavation or natural saltpan for the extraction therefrom of a substance in solution therein and of commercial value; or

(b) soil, not being soil taken from the earth for the extraction therefrom of a substance of commercial value contained therein or for the manufacture therefrom of a product of commercial value; or

(c) petroleum as defined in section 3 of the Petroleum (Exploration and Production) Act; Cap. 61:02

“mineral permit” means a permit issued under section 81;

“Mineral Right” means a reconnaissance licence, an exclusive prospecting licence or a mining licence;

“mining area” means an area of land subject to a mining licence;

“mining licence” means a licence granted under section 38;

“mining operation” means operations carried out in the course of mining;

“monument” has the meaning assigned by the Monuments Act; Cap. 29:01

“non-exclusive prospecting licence” means a licence issued under section 73;

“private land” has the meaning assigned by the Land Act; Cap. 57:01

“prospect” means intentionally to search for minerals and includes the determination of their extent and economic value;

“prospecting area” means the area of land subject to an exclusive prospecting licence;

“prospecting operations” means operations carried out in the course of prospecting;

“public land” has the meaning assigned by the Land Act; Cap. 57:01

“radioactive mineral” means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or any combination thereof, and includes—

(a) monazite sand and other ore containing thorium; and

(b) carnotite, pitchblende and other ore containing uranium;

“reconnaissance area” means an area of land subject to a reconnaissance licence;

“reconnaissance licence” means a licence granted under section 17;

“reconnaissance operations” means the search for minerals by geophysical surveys, geochemical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith;

“Register” means the Register referred to in section 58;

“the Regulations” means regulations made under section 128;

“relic” has the meaning assigned by the Monuments Act; Cap. 29:01

“salt” means—

(a) sodium chloride or sodium carbonate, occurring naturally, whether individually or as a mixture;

(b) any naturally occurring salt or mixture of salts, soluble in water, which may be prescribed;

“this Act” includes the Regulations;

“working for profit” means producing a mineral for use or sale.

(2) In this Act, a reference to minerals in any land includes a reference to minerals on or under the land.

(3) In this Act—

(a) a reference to the conditions of a Mineral Right is a reference to the conditions on which the Mineral Right is granted, as from time to time varied; and

(b) a reference to the conditions of a claim is a reference to the conditions on which the claim is, for the time being, registered.

(4) In this Act, a reference to a programme of reconnaissance operations, prospecting operations, or mining operations, in relation to the holder of a Mineral Right, is a reference to operations of that kind which the holder is, from time to time, required to carry on.

[Ch6101s4]4. Service of documents

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(a) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business or at the address kept pursuant to section 66;

(b) in the case of the Minister or the Commissioner, in the manner prescribed;

(c) in the case of a body corporate—

(i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;

(ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or

(iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.

(2) For the purposes of subsection (1) (c), the principal office of a body corporate incorporated outside Malawi is its principal office within Malawi or the address kept pursuant to section 66.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

## PART II

### ADMINISTRATION

[Ch6101s5]5. Commissioner for Mines and Minerals

The Minister may appoint a person to be the Commissioner for Mines and Minerals, and such other persons to be officers as he may consider necessary for the administration of this Act.

[Ch6101s6]6. Performance of Commissioner's functions, etc.

(1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any public officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.

(2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act or any provision of this Act.

[Ch6101s7]7. Prohibition against disclosure of information

(1) Subject to subsection (2), no information furnished, or information in a report submitted, pursuant to section 66 by the holder of a Mineral Right, shall, for as long as the Mineral Right has effect, be disclosed, except with the consent of the holder of the Mineral Right.

(2) Nothing in subsection (1) operates to prevent the disclosure of information where the disclosure is made—

- (a) for or in connexion with the administration of this Act;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Act;
- (d) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

[Ch6101s8]8. Officers holding certain shares to notify Minister

(1) In this section, “officer” means a public officer for the time being engaged in the administration of this Act.

(2) Where an officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a Mineral Right, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.

(3) For the purposes of this section, the holding by the wife or husband (not herself or himself being an officer) of an officer of any shares of the kind referred to in subsection (2), is deemed to be a holding by the officer of the shares.

(4) This section applies with respect to shares whether acquired before or after the commencement of this Act, or whether acquired by a person before he became an officer.

[Ch6101s9]9. Indemnity

2 of 1983A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

## PART III

### MINERAL RIGHTS

#### Division 1—General

##### [Ch6101s10]10. Agreements with respect to the grant of Mineral Rights

The Minister, on behalf of the Republic, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—

- (a) the grant to that person, or to any person (including anybody corporate to be formed) identified in the agreement, of a Mineral Right on the conditions (if any) specified in the agreement;
- (b) conditions or the conditions to be included in the Mineral Right as granted or renewed; or
- (c) any matter incidental to or connected with the foregoing.

##### [Ch6101s11]11. Applications

(1) An application under this Part—

- (a) shall be made to the Minister, or, if so prescribed, to the Commissioner;
- (b) shall be in or to the effect of a form approved by the Minister;
- (c) shall be accompanied by the prescribed fee; and
- (d) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.

(2) Any application under this Part required to be made to the Minister shall be made to him through the Commissioner.

(3) The Minister may, by notice served on an applicant for the grant or renewal of a Mineral Right, or for the enlargement of a prospecting area or a mining area under section 68, direct the applicant to publish details of his application at a time or times and in the manner specified in the notice, or give details of his application to such persons and in a manner specified in the notice.

##### [Ch6101s12]12. Power of Minister to obtain information concerning applications, etc.

(1) The Minister may, by notice served on an applicant for the grant of a Mineral Right, require the applicant to furnish him, within such reasonable, time as is specified in the notice,—

- (a) with such further information relevant to the application as may be described in the notice; and
- (b) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in

the direction of the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual or individuals resident outside Malawi.

(2) To enable him to dispose of an application for the grant of a Mineral Right, the Minister—

(a) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and

(b) may, by notice served on the applicant for the grant of the Mineral Right, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

[Ch6101s13]13. Restriction on persons to whom Mineral Right may be granted

No Mineral Right—

(a) shall be granted to an individual unless he is a citizen of Malawi or has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a Mineral Right is made;

(b) being a reconnaissance licence or an exclusive prospecting licence, shall be granted to a body corporate unless the body corporate is—

(i) a company;

(ii) a corporation incorporated in Malawi; or

(iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or

(c) being a mining licence, shall be granted to a body corporate unless the body corporate is—

(i) a company; or

(ii) a corporation incorporated in Malawi.

[Ch6101s14]14. Form of Mineral Right

A Mineral Right shall be in accordance with such form as the Minister approves.

[Ch6101s15]15. Restriction on exercise of rights by holder of Mineral Right

Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a Mineral Right to do the Act—

(a) otherwise than in accordance with the written law; and

(b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

## Division 2—Reconnaissance Licences

### [Ch6101s16]16. Application for reconnaissance licence

An application for the grant of a reconnaissance licence—

(a) shall give in respect of the person or, if there is more than one person, of each person making the application—

(i) in the case of an individual, his full name and nationality; or

(ii) in the case of a body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(b) shall be accompanied by a plan of the area over which the licence is sought, drawn in such manner and showing such particulars as the Minister may require;

(c) shall identify the minerals in respect of which the licence is sought;

(d) shall be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence;

(e) shall give or be accompanied by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the area of land over which the licence is sought, an estimate of the cost of carrying out the programme and of the period required for completion of the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment or on any monument or relic in the area over which the licence is sought; and

(f) may set out any other matter which the applicant wishes the Minister to consider.

### [Ch6101s17]17. Disposal of application for reconnaissance licence

(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a reconnaissance licence over any area of land.

(2) The area of land over which a reconnaissance licence is granted shall be of such shape, orientation and dimensions, as may be prescribed in, or as may be determined in accordance with, the Regulations.

### [Ch6101s18]18. Restriction on grant of reconnaissance licence

(1) No reconnaissance licence shall be granted over an area of land in, or which constitutes,—



(a) a prospecting area if a person, other than the person to whom the reconnaissance licence would be granted, is the holder of an exclusive prospecting licence over the area in respect of a mineral of which the reconnaissance licence would relate;

(b) a mining area; or

(c) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (4), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area, no other reconnaissance licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which that exclusive right relates.

(3) Where it is necessary to fly over any land for the purpose of the exercise of any right under section 23, nothing in this section operates to prevent any such flight from being undertaken.

[Ch6101s19]19. Notice of decision on application for reconnaissance licence

(1) The Minister shall give notice to an applicant for the grant of a reconnaissance licence of his decision on the application and, if he is prepared to grant the licence, he shall give in the notice details of the proposed licence.

(2) If an applicant, within sixty days after he is given notice pursuant to subsection (1) that the Minister is prepared to grant a reconnaissance licence, fails to give notice to the Minister of his willingness to accept the proposed licence, his application lapses.

[Ch6101s20]20. Contents of reconnaissance licence

(1) A reconnaissance licence shall—

(a) state the date of the grant of the licence and the period for which it is granted;

(b) include a description and, if the Minister so directs, a plan of the area of land over which it is granted;

(c) state the conditions on which it is granted; and

(d) identify any mineral to which the licence relates.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a reconnaissance licence either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the reconnaissance area, the holder of the licence will, during a specified period, carry out the programme of reconnaissance operations and expend the amounts specified in the licence; or

(b) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a

programme of reconnaissance operations and the expenditure of amounts in, or in relation to, the reconnaissance area during that period.

(3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on reconnaissance operations, he may specify in a reconnaissance licence a period (not exceeding three months) as the preparation period.

(4) A reconnaissance licence may, in respect of any mineral to which the licence relates, confer on the holder of the licence the exclusive right to carry on reconnaissance operations in the reconnaissance area.

#### [Ch6101s21]21. Term of reconnaissance licence

(1) The term of a reconnaissance licence is the period for which the licence is granted, not exceeding twelve months, stated in the licence, and any preparation period specified in the licence pursuant to section 20 (3).

(2) The term of a reconnaissance licence commences on and includes the date on which the licence is granted, as stated in the licence.

#### [Ch6101s22]22. Miscellaneous provisions concerning reconnaissance licences

(1) Subject to this section, where the holder of a reconnaissance licence applies for the grant of an exclusive prospecting licence over an area of land in the reconnaissance area and the application has not been finally dealt with before the date on which the reconnaissance licence would, but for this subsection, cease to have effect, the reconnaissance licence continues to have effect over the area of land until—

(a) notice is given to the applicant pursuant to section 28 of the refusal to grant the exclusive prospecting licence; or

(b) as the case may be, the date of the grant of the exclusive prospecting licence, as stated in the exclusive prospecting licence.

(2) Where an exclusive prospecting licence is granted to the holder of a reconnaissance licence, the land subject to that exclusive prospecting licence ceases to be subject to that reconnaissance licence, but no other reconnaissance licence is affected by the grant of that exclusive prospecting licence.

(3) Where an area of land becomes a mining area, it ceases to be subject to any reconnaissance licence to which it was subject immediately before becoming a mining area.

(4) Subsection (1) shall not have effect—

(a) to prevent the cancellation under this Act of a reconnaissance licence; or

(b) if an application for the grant of an exclusive prospecting licence is withdrawn.

#### [Ch6101s23]23. Rights of holder of reconnaissance licence

(1) Subject to this Act and the conditions of the licence, a reconnaissance licence, while it has effect, confers on the holder of the licence the right to carry on reconnaissance operations in or over the reconnaissance area, and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of employees or agents, enter the reconnaissance area, and erect camps and temporary buildings, or erect installations in any waters forming part of the reconnaissance area.

(2) The holder of a reconnaissance licence shall not engage in drilling, excavation or other subsurface techniques, except where and to the extent he is authorized by his licence to use any of those techniques.

#### [Ch6101s24]24. Duties of holder of reconnaissance licence

(1) The holder of a reconnaissance licence—

(a) shall, subject to subsection (2), carry on reconnaissance operations in accordance with his programme of reconnaissance operations;

(b) shall, subject to subsection (2), expend in, or in relation to, the reconnaissance area an amount not less than the amount required by the licence or otherwise to be so expended; and

(c) shall carry on reconnaissance operations in accordance with the requirements of this Act.

(2) The Minister may, on application made to him by the holder of a reconnaissance licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (a) or (b) either conditionally or unconditionally.

#### Division 3—Exclusive Prospecting Licences

#### [Ch6101s25]25. Application for exclusive prospecting licence

An application for the grant of an exclusive prospecting licence—

(a) shall give information of the kind referred to in section 16 (a), and shall give or be accompanied by a statement giving particulars of the kind referred to in section 16 (d)

(b) shall identify the minerals in respect of which the licence is sought;

(c) shall be accompanied by a plan of the kind referred to in section 16 (b);

(d) shall state the period for which the licence is sought;

(e) shall give or be accompanied by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the area of land over which the licence is sought and an estimate of the cost of carrying out the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought;

(f) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malawi;

(g) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(h) may set out any other matter which the applicant wishes the Minister to consider.

[Ch6101s26]26. Disposal of application for exclusive prospecting licence

(1) Subject to this Act and to any relevant agreement of a kind referred to in section 10, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, an exclusive prospecting licence over any area of land.

(2) The area of land over which an exclusive prospecting licence is granted shall be of such shape, orientation and dimensions as may be prescribed in, or as may be determined in accordance with, the Regulations.

[Ch6101s27]27. Restriction on grant of exclusive prospecting licence

(1) No exclusive prospecting licence shall be granted over an area of land in, or which constitutes—

(a) a mining area; or

(b) a claim area.

(2) Where an area of land is subject to an exclusive prospecting licence, no other exclusive prospecting licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which the subsisting exclusive prospecting licence relates.

(3) Where an area of land is subject to a reconnaissance licence which gives, pursuant to section 20 (4), to the holder of the licence an exclusive right to carry on reconnaissance operations in respect of the land, an exclusive prospecting licence shall not be granted in respect of any mineral to which that exclusive right relates, over land in, or which constitutes, that area, to a person other than the holder of the reconnaissance licence.

(4) No exclusive prospecting licence shall be granted to an applicant unless—

(a) the applicant has adequate financial resources, technical competence and experience to carry on effective prospecting operations;

(b) the programme of proposed prospecting operations is adequate;

(c) the applicant's proposals for the employment and training of citizens of Malawi are adequate; and

(d) the applicant is not in default.

[Ch6101s28]28. Section 19 to apply to application for exclusive prospecting licence

The provisions of section 19 apply in relation to an application for the grant of an exclusive prospecting licence as they apply in relation to an application for the grant of a reconnaissance licence.

[Ch6101s29]29. Contents of exclusive prospecting licence

(1) An exclusive prospecting licence shall—

- (a) state the date of the grant of the licence and the period for which it is granted;
- (b) identify the mineral in respect of which it is granted;
- (c) include a description and, if the Minister so directs, a plan of the area of land over which it is granted; and
- (d) state the conditions on which it is granted.

(2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on prospecting operations he may, in an exclusive prospecting licence, specify a period (not exceeding three months) as the preparation period.

(3) There shall be appended to an exclusive prospecting licence a programme for the employment and training of citizens of Malawi.

[Ch6101s30]30. Programme prospecting operations

(1) In addition to conditions included in an exclusive prospecting licence under section 29 (1), or on any extension of the licence under section 50,—

- (a) the licence is subject to the condition that not later than one month before the anniversary in any year of the grant of the licence, the holder of the licence shall submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the licence immediately following; and
- (b) the programme so submitted is deemed to constitute a requirement of the licence with respect to prospecting operations and expenditure.

(2) The requirement in subsection (1) (a) that the programme submitted shall be adequate is deemed to have been met where the programme submitted satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10.

[Ch6101s31]31. Option

There may be included in an exclusive prospecting licence provision with respect to the exercise, by the Republic or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any mining venture which may be carried on in relation to land in, or which constitutes, the prospecting area.

[Ch6101s32]32. Term of exclusive prospecting licence

(1) The term of an exclusive prospecting licence is the period for which the licence is granted, not exceeding three years, stated in the licence, and any preparation period specified in the licence pursuant to section 29 (2).

(2) The term of an exclusive prospecting licence commences on and includes the date of the grant of the licence, as stated in the licence.

[Ch6101s33]33. Miscellaneous provisions concerning exclusive prospecting licences

(1) Subject to this section, where the holder of an exclusive prospecting licence applies for the grant of a mining licence over any area of land in, or which constitutes, the prospecting area, and the application has not been finally dealt with before the date on which the exclusive prospecting licence would, but for this subsection, cease to have effect, the exclusive prospecting licence continues to have effect over that area of land until—

(a) notice is given to the applicant pursuant to section 40 of the refusal to grant the mining licence; or

(b) as the case may be, the date of the grant of the mining licence, as stated in the mining licence.

(2) Where a mining licence is granted over any area of land wholly or partly in one, or more than one, prospecting area—

(a) the exclusive prospecting licence held by the person to whom the mining licence is granted ceases to have effect in the mining area; and

(b) the exclusive prospecting licence held by any other person—

(i) ceases to have effect if the prospecting area covered by the licence is within, or is constituted by the same area of land as, the mining area; or

(ii) as the case may be, continues to have effect only in relation to land outside the mining area.

(3) Subsection (1) shall not have effect—

(a) to prevent the cancellation under this Act of an exclusive prospecting licence; or

(b) if an application for the grant of a mining licence is withdrawn.

(4) An exclusive prospecting licence may continue to have effect pursuant to this section notwithstanding that the prospecting area has ceased to be in the shape or to have the dimensions prescribed in respect of prospecting areas or, as the case may be, approved in respect of that area.

[Ch6101s34]34. Rights of holder of exclusive prospecting licence

Subject to this Act and the conditions of the licence, an exclusive prospecting licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting operations in the prospecting area for the mineral to which the licence relates, and for the purpose

of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of his employees or agents, enter the prospecting area and erect camps and temporary buildings, or erect installations in any waters forming part of the prospecting area.

[Ch6101s35]35. Duties of holder of exclusive prospecting licence

The holder of an exclusive prospecting licence—

- (a) shall commence prospecting operations within three months of the date of the grant of the licence, as stated in the licence;
- (b) shall, subject to sections 36 and 54, carry on prospecting operations in accordance with his programme of prospecting operations;
- (c) shall give to the Minister notice of the discovery—
  - (i) of any mineral to which his licence relates of possible commercial value; and
  - (ii) of any mineral deposit of possible commercial value, within thirty days of the discovery;
- (d) shall, subject to section 36, expend in, or in relation to, the prospecting area an amount not less than the amount required by the licence or otherwise to be so expended;
- (e) shall, subject to section 36, employ and train citizens of Malawi in accordance with the proposals in that connexion particulars of which have been given in or appended to the licence; and
- (f) shall carry on prospecting operations in accordance with the requirements of this Act.

[Ch6101s36]36. Variation, etc., of obligations

(1) The Minister may, on application made to him by the holder of an exclusive prospecting licence, limit, reduce, vary or suspend any obligation arising pursuant to section 35 (b), (d) or (e) either conditionally or unconditionally.

(2) To enable him to dispose of an application under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

Division 4—Mining Licences

[Ch6101s37]37. Application for mining licence

(1) An application for the grant of a mining licence may be made by the holder of an exclusive prospecting licence or by a person who is not such a holder.

(2) Where an application for the grant of a mining licence is made by the holder of an exclusive prospecting licence, the application shall be made—

(a) only in respect of land subject to the exclusive prospecting licence;

(b) only if the holder has given notice to the Minister of the discovery in commercial quantities of any mineral to which his licence relates; and

(c) not later than two months, or such further period as the Minister may allow, after that notice was given to the Minister.

(3) An application for the grant of a mining licence—

(a) shall give information of the kind referred to in section 16 (a);

(b) shall identify the minerals which it is proposed to mine;

(c) shall state the number of the exclusive prospecting licence (if any) held by the applicant and shall give details of any exclusive prospecting licence held by the applicant, or by any person controlling, controlled by or under joint or common control with, the applicant, during the preceding four years;

(d) shall be accompanied by a plan of the area over which the licence is sought drawn in such manner as the Minister may require and showing—

(i) the name of each lawful occupier of a holding in, or partly in, that area and, in the case of more than one such holding, the boundaries within that area of each such holding; and

(ii) such other particulars as the Minister may require;

(e) shall state the period for which the licence is sought;

(f) shall give or be accompanied by a statement giving details of the mineral deposits in the area of land over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;

(g) shall be accompanied by a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;

(h) shall give or be accompanied by a statement giving particulars of the programme of proposed mining operations including a statement of—

(i) the estimated date by which the applicant intends to work for profit;

(ii) the estimated capacity of production and scale of operations;

(iii) the estimated overall recovery of ore and mineral products;

(iv) the nature of the products;

(v) proposals for the prevention of pollution, the treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of land disturbed



by mining and for the minimization of the effects of mining on surface water and ground water and on adjoining or neighbouring lands;

(vi) the residual effects on the environment of the mining operations and proposals for their minimization;

(vii) any particular risks (whether to health or otherwise) involved in mining the mineral, and proposals for their control or elimination; and

(viii) any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought and proposals for eliminating or controlling that effect;

(i) shall give or be accompanied by a statement giving a detailed forecast of capital investment, operating costs and revenues and the anticipated type and source of financing;

(j) shall be accompanied by a report on the goods and services required for the mining operations which can be obtained within Malawi and the applicant's proposals with respect to the procurement of those goods and services;

(k) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malawi;

(l) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(m) may set out any other matter which the applicant wishes the Minister to consider.

(4) Where an application for the grant of a mining licence is made by a person who is not the holder of an exclusive prospecting licence the application shall, in addition to the matter referred to in subsection (3), give or be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence.

[Ch6101s38]38. Disposal of application for mining licence

(1) Subject to this section, section 39 and to any relevant agreement of a kind referred to in section 10, on application duly made by the holder of an exclusive prospecting licence the Minister shall grant, on such conditions as he may determine, the mining licence applied for.

(2) Subject to this section and section 39, on application duly made by a person who is not the holder of an exclusive prospecting licence, the Minister may grant, on such conditions as he may determine, or refuse to grant, the mining licence applied for.

(3) To enable him to dispose of an application for the grant of a mining licence, the Minister may, by notice given to the applicant, require the applicant, at his own expense, to commission an independent study by consultants acceptable to the Minister for the purpose of—

(a) assessing the feasibility of the programme of mining operations proposed in the application; or

(b) assessing, or making recommendations about, such other matters arising out of, or connected with, the application, as the Minister may specify in the notice.

[Ch6101s39]39. Restriction on grant of mining licence

(1) No mining licence shall be granted over an area of land in, or which constitutes,—

- (a) a mining area; or
- (b) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (3), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area in respect of any mineral, a mining licence shall not be granted over land in, or which constitutes, the reconnaissance area, in respect of any such mineral, to any person other than the holder of the reconnaissance licence.

(3) No mining licence over land in, or which constitutes, a prospecting area shall be granted to a person who is not the holder of a prospecting licence over that land.

(4) Subject to any relevant agreement of a kind referred to in section 10, no mining licence shall be granted to an applicant unless—

- (a) the programme of proposed mining operations—
  - (i) takes proper account of environmental and safety factors; and
  - (ii) will ensure the most efficient and beneficial use of the mineral resources concerned;
- (b) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out that programme;
- (c) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;
- (d) the applicant's proposals for the employment and training of citizens of Malawi are adequate;
- (e) the applicant's proposals with respect to the procurement of goods and services obtainable within Malawi are satisfactory;
- (f) any relevant option given pursuant to section 31 has been exercised and given effect to or satisfactory arrangements have been made for that purpose; and
- (g) the applicant is not in default.

(5) Where an application for the grant of a mining licence is duly made by the holder of an exclusive prospecting licence, the Minister shall not refuse an application for the grant of a mining licence on a ground referred to in subsection (3) (a), (b), (d), (e), (f) or (g) unless he has—

(a) given notice to the applicant of his intention to refuse to grant the licence on that ground (giving particulars); and

(b) specified in the notice a date before which the applicant may make appropriate proposals to remove the ground for refusal or, as the case may be, remedy the default, or make representations in relation thereto, and the applicant has not, before that date—

(c) given notice to the Minister containing proposals or representations which the Minister accepts; or

(d) remedied the default.

#### [Ch6101s40]40. Section 19 to apply to application for mining licence

The provisions of section 19 apply in relation to an application for the grant of a mining licence as they apply in relation to an application for the grant of a reconnaissance licence.

#### [Ch6101s41]41. Contents of mining licence

(1) A mining licence shall—

(a) state the date of the grant of the licence and the period for which it is granted; and

(b) identify the mineral in respect of which it is granted.

(2) There shall be appended to a mining licence particulars of the holder's proposals for the employment and training of citizens of Malawi which shall form part of the licence.

(3) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a mining licence either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the mining area, the holder of the licence will, during a specified period, carry out the programme of mining operations and expend the amounts specified in the licence; or

(b) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of mining operations and the expenditure of amounts in, or in relation to, the mining area during that period.

(4) There may be included in a mining licence conditions with respect to the processing, disposal or sale of the minerals to be mined.

#### [Ch6101s42]42. Term of mining licence

(1) The term of a mining licence is the period (not exceeding twenty-five years), or the estimated life of the ore body which it is proposed to mine, whichever is the shorter, stated in the licence.

(2) The term of a mining licence commences on and includes the date of the grant of the licence, as stated in the licence.

[Ch6101s43]43. Rights of holder of mining licence

(1) Subject to this Act and the conditions of the licence, a mining licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting and mining operations in the mining area and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular—

(a) use employees and agents;

(b) take all reasonable measures in that area, including the use of necessary equipment and the erection of necessary installations, plant and buildings for mining, and transporting, dressing, treating, smelting or refining any mineral recovered; and

(c) dispose of any mineral product recovered, and stack or dump any mineral or waste products in a manner approved by the Minister.

(2) The holder of a mining licence—

(a) shall not intentionally carry on prospecting or mining operations for a mineral unless it is a mineral to which his licence relates; and

(b) shall not mine any mineral deposit, particulars of which have not been given pursuant to section 37 (3) (f) in his application, or in a statement accompanying his application, for the grant of the licence, without the approval of the Minister given under subsection (3).

(3) Where in the exercise of his rights the holder of a mining licence discovers any mineral deposit particulars of which were not given pursuant to section 37 (3) (f) in his application, or in a statement accompanying his application, for the grant of the licence, the holder—

(a) shall within the period of thirty days after the discovery give notice and particulars of the mineral deposit and the circumstances in which the discovery was made; and

(b) may, in the notice, request the Minister to give his approval to the mining of the mineral deposit in accordance with a programme of mining operations stated in the notice.

(4) Subject to subsection (5), on a request made pursuant to subsection (3) (b), the Minister—

(a) shall, if the mineral deposit consists, or consists primarily, of minerals to which the mining licence relates, and the programme of mining operations stated in the notice containing the request is satisfactory, give his approval to the request; or

(b) may, in any other case, give or refuse to give his approval to the request.

(5) The Minister may, pursuant to subsection (4), by notice served on the holder of the licence, give his approval—

- (a) to the request as made; or
- (b) to the request as amended with the agreement of that holder,

unconditionally or subject to such conditions as are agreed by the holder.

(6) The instrument in which the Minister gives an approval under subsection (5) is deemed to form part of the mining licence concerned.

(7) Before giving his approval to any request under this section the Minister may, by notice served on the holder of the licence, require the holder to comply with any of the requirements of section 37 (3) as if the request were an application for the grant of a mining licence in respect of the minerals to which the request relates.

#### [Ch6101s44]44. Duties of holder of mining licence

(1) The holder of a mining licence—

(a) shall, subject to subsection (2) and section 54, carry on mining and development operations and commence production in accordance with his programme of mining operations;

(b) shall, subject to subsection (2), employ and train citizens of Malawi in accordance with the instrument containing proposals in that connexion appended to the licence;

(c) shall, subject to subsection (2), expend in, or in relation to, the mining area an amount not less than the amount required by the licence or otherwise to be so expended;

(d) shall carry on mining operations in accordance with the requirements of this Act;

(e) shall demarcate, and keep demarcated, in the manner prescribed the area of land subject to the licence; and

(f) shall give notice to the Minister when he begins to work for profit.

(2) The Minister may, on application made to him by the holder of a mining licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (a), (b) or (c) either conditionally or unconditionally.

#### [Ch6101s45]45. Use of wasteful practices

(1) Where the Commissioner considers that the holder of a mining licence is using wasteful mining or treatment practices, he may give notice to the holder accordingly (giving in the notice particulars of the practices) and require the holder to show cause, by notice given to the Commissioner, within such period as the Commissioner shall specify in the notice given to the holder, why he should not cease to use those practices.

(2) Where, within the period specified in a notice given to the holder of a mining licence pursuant to subsection (1), the holder fails, by notice given to the Commissioner, to satisfy the Commissioner that he is not using the wasteful practices concerned, or that the practices are not wasteful, or that the use of those practices is justified, the Commissioner may give notice to the

holder directing him to cease using all of those practices or the practices specified, by such date as is so specified, and the holder shall do so.

[Ch6101s46]46. Cessation, etc., of production from mine

(1) The holder of a mining licence shall give notice to the Commissioner—

(a) twelve months in advance, if he proposes to cease production from a mine in the mining area concerned;

(b) six months in advance, if he proposes to suspend production from any such mine; or

(c) three months in advance, if he proposes to curtail production from any such mine,

and shall give in the notice the reason for the cessation, suspension or curtailment.

(2) Where, for any reason beyond his control, the holder of a mining licence ceases, suspends or curtails production from a mine in the mining area concerned he shall, within fourteen days after the cessation, suspension or curtailment, give notice thereof to the Commissioner.

[Ch6101s47]47. Power of Commissioner on cessation, etc.

Where, pursuant to section 46 (1) or (2), notice is given to him, or if he otherwise becomes aware, of any cessation, suspension or curtailment of production from a mine, the Commissioner shall cause the matter concerned to be investigated and thereafter—

(a) he shall give his approval, conditionally or unconditionally, to the cessation, suspension or curtailment by notice to the holder of the mining licence; or

(b) he shall direct the holder of the mining licence by notice given to the holder to resume full production, or production at such level as is specified in the notice, by such date as is so specified, and the holder shall do so.

[Ch6101s48]48. Unit development

(1) This section applies where the Minister determines that, in the interest of the effective recovery of minerals from neighbouring or contiguous mining areas, it is desirable that the holders of mining licences in respect of those areas should coordinate their operations for the recovery of the minerals.

(2) Where this section applies the Minister may direct the holders of the mining licences concerned to enter into an agreement, within the period specified by the Minister, for or in relation to the co-ordination of their operations for the recovery of minerals, and to lodge the agreement with the Minister forthwith for approval.

(3) Before giving any direction under subsection (2) the Minister shall afford each holder of a mining licence concerned reasonable opportunity to make representations to him in writing.

Division 5—Renewal and Amendment of Mineral Rights

[Ch6101s49]49. Application for renewal of reconnaissance licence

(1) The holder of a reconnaissance licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the reconnaissance area.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied—

(i) by a report on reconnaissance operations then carried out; and

(ii) by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall, if renewal of the licence is sought in respect of part only of the reconnaissance area, be accompanied by a plan identifying that part of the reconnaissance area; and

(d) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 16 (a) and (d).

(3) On application duly made for the renewal of a reconnaissance licence, the Minister—

(a) may, if he is satisfied that it would be in the public interest to do so, renew the licence, with or without variation of the conditions of the licence, for a period not exceeding twelve months; and

(b) if not so satisfied, shall refuse to renew the licence.

[Ch6101s50]50. Application for renewal of exclusive prospecting licence

(1) The holder of an exclusive prospecting licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of an area of land—

(a) of such shape as may be prescribed; and

(b) which is not greater in extent than half of the prospecting area as at the date of the grant of the licence, unless the Minister otherwise permits.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied—

(i) by a report on prospecting operations then carried out and the costs incurred in carrying them out; and

(ii) by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall be accompanied by a plan identifying the area of land in respect of which renewal of the licence is sought; and

(d) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 25 (a).

(3) Subject to subsections (4) and (5), on application duly made for the renewal of an exclusive prospecting licence, the Minister shall renew the licence for a period not exceeding two years.

(4) The Minister shall refuse to renew an exclusive prospecting licence—

(a) if—

(i) the applicant is in default;

(ii) the programme of prospecting operations proposed to be carried out is not satisfactory; or

(iii) the area of land in respect of which renewal of the licence is sought does not meet the requirements of subsection (1) (a) and (b);

(b) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(c) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or made representations, which in the opinion of the Minister remove the ground for the intended refusal.

(5) An application under subsection (1) for the renewal of an exclusive prospecting licence may be made on not more than two occasions and, accordingly, the power under subsection (3) may be exercised in relation to an exclusive prospecting licence on not more than two occasions.

(6) Where a prospecting licence has been renewed pursuant to subsection (3) on two occasions, the Minister—

(a) on the request of the holder of the licence; and

(b) if he considers it in the public interest to do so,



may, by instrument in writing, extend the term of the licence with effect from the date of expiry of the last period of renewal for such period, and on such conditions, as are specified in the instrument.

[Ch6101s51]51. Application for renewal of mining licence

(1) The holder of a mining licence may, not later than twelve months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the mining area.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied by a statement giving particulars of the programme of mining operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall be accompanied by a statement giving details of—

(i) the latest proved, estimated or inferred ore reserves;

(ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;

(iii) any expected changes in methods of mining and treatment; and

(iv) any expected increase or reduction in mining activities and the estimated life of the mine;

(d) shall, if renewal of the licence is sought in respect of part only of the mining area, be accompanied by a plan indentifying that part of the mining area; and

(e) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 37 (3) (a), (d), (h) (v), (vi) and (vii), (j) and (l).

(3) Subject to subsection (4), on application duly made for the renewal of a mining licence, the Minister shall renew the licence, with or without variation of the conditions of the licence, for a period not exceeding fifteen years.

(4) The Minister shall refuse to renew a mining licence—

(a) if—

(i) the applicant is in default;

(ii) the development of the mining area has not proceeded with reasonable diligence;

(iii) minerals in reasonable quantities do not remain to be produced; or

(iv) the programme of mining operations proposed to be carried out is not satisfactory;

(b) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(c) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or make representations which, in the opinion of the Minister, remove the ground for the intended refusal.

(5) In determining whether or not to vary the conditions of a mining licence on renewal, the Minister shall have regard and give effect to any relevant agreement of a kind referred to in section 10.

#### [Ch6101s52]52. Notice of disposal of application for renewal of Mineral Right

(1) The Minister shall give notice to an applicant for the renewal of a reconnaissance licence, an exclusive prospecting licence or a mining licence of his decision on the application and, if he renews the licence, the notice—

(a) shall state the period of renewal;

(b) shall set out any variation in the conditions of the licence; and

(c) shall include a plan of the area of land in respect of which the licence is renewed if that area differs from the area of land subject to the licence immediately before the renewal of the licence.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a notice referred to in subsection (1) either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the reconnaissance area, prospecting area or mining area, as the case may be, the holder of the licence concerned will, during a specified period, carry out the programme of reconnaissance, prospecting or mining operations, as the case may be, specified in the notice; or

(b) a condition requiring the holder of the licence concerned, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of reconnaissance, prospecting or mining operations, as the case may be, and the expenditure of amounts, in or in relation to, the reconnaissance area, the prospecting area or the mining area, as the case may be, during that period.

#### [Ch6101s53]53. Licence to have effect pending disposal of application for renewal

(1) Subject to this section, where an application under this Part for the renewal of a Mineral Right is not finally dealt with before the date on which the Mineral Right would, but for this subsection, cease to have effect, the Mineral Right continues to have effect over the area of land over which renewal of the Mineral Right is sought until notice is given pursuant to section 52 of the refusal to renew or, as the case may be, of the renewal of the Mineral Right.

(2) The period for which a Mineral Right is renewed commences on and includes the date on which the Mineral Right would have ceased to have effect if an application for the renewal of the Mineral Right had not been made.

(3) Subsection (1) shall not have effect—

- (a) to prevent the cancellation under this Act of a Mineral Right; or
- (b) if an application for the renewal of a Mineral Right is withdrawn.

#### [Ch6101s54]54. Amendment of prospecting or mining programme

(1) The holder of an exclusive prospecting licence or a mining licence may amend his programme of prospecting or mining operations and, subject to subsection (2), the amendment has effect when particulars of the amendment are given in a notice served on the Minister.

(2) An amendment which substantially alters a programme of prospecting or mining operations does not have effect unless application has been made pursuant to section 36 or 44 (2) to the Minister and the Minister has, under section 36 or 44 (2), agreed to the amendment.

#### Division 6—Surrender, Cancellation and Suspension of Mineral Rights

##### [Ch6101s55]55. Surrender

(1) The holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence who wishes to surrender all or part of the land subject to the licence shall apply to the Commissioner for a certificate of surrender, in respect of the land, not less than three months before the date on which he wishes the surrender to have effect.

(2) An application under subsection (1)—

- (a) shall state the date on which the applicant wishes the surrender to have effect;
- (b) shall, if part only of the land subject to the licence is to be surrendered, identify the land to be surrendered by the inclusion of a plan thereof;
- (c) shall give particulars of reconnaissance, prospecting or mining operations carried on in respect of the land to be surrendered; and
- (d) shall be supported by such records and reports in relation to those operations as the Commissioner may reasonably require.

(3) Subject to subsections (4) and (5), on application duly made under subsection (1) the Commissioner shall issue a certificate of surrender, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

(4) Where an application is made under subsection (1) the Commissioner shall consult with the Minister.

(5) The Commissioner shall not issue a certificate of surrender—

(a) to an applicant who is in default;

(b) to an applicant who fails to comply with any reasonable requirement of the Commissioner for the purposes of subsection (2) (d); or

(c) if the Commissioner is not satisfied that the applicant will leave land to be surrendered and on which reconnaissance, prospecting or mining operations have been carried on in a condition which is safe and which accords with good mining practice.

#### [Ch6101s56]56. Effect of certificate of surrender

(1) Where, pursuant to section 55 (3), a certificate of surrender is issued, the Commissioner—

(a) shall, if part only of the land subject to a reconnaissance licence, an exclusive prospecting licence or a mining licence is surrendered, amend the licence accordingly; or

(b) shall, in any other case, cancel the licence,

and in either case the Commissioner shall give notice to the applicant for the certificate of surrender of the amendment or, as the case may be, the cancellation, and of the issue of the certificate of surrender.

(2) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given pursuant to subsection (1) to the applicant for the certificate.

(3) The surrender of any land does not affect any liability incurred before the date on which the surrender has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of the liability against the applicant for the certificate may be commenced or continued against that applicant.

#### [Ch6101s57]57. Suspension or cancellation of Mineral Right

(1) Subject to this section, where the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence—

(a) fails to use in good faith the land subject to the licence for the purpose for which the licence was granted;

(b) uses that land for any purpose other than the purpose for which the licence was granted;

(c) fails to comply with any requirement of this Act (not being exempted under this Act from doing so) with which he is bound to comply;

(d) fails to comply with a condition of the licence (not being exempted under this Act from doing so);

(e) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act;

(f) fails to comply with the conditions, relating to the exercise of his rights under his licence, which are contained in a relevant agreement of a kind referred to in section 10; or

(g) fails to pay any amount payable by him under this Act within one month after the amount becomes due,

the Minister may, on that ground, by notice in writing served on the holder of the licence, suspend or cancel the licence.

(2) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in that subsection unless—

(a) he has, by notice in writing served on the holder of the licence, given not less than thirty days notice of his intention to so suspend or cancel the licence on that ground;

(b) he has, in the notice, specified a date before which the holder of the licence may, in writing, submit any matter which he wishes the Minister to consider; and

(c) he has taken into account—

(i) any action taken by the holder of the licence to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to him by the holder of the licence pursuant to paragraph (b).

(3) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in paragraph (g), if, before the date specified in a notice referred to in subsection (2), the holder of the licence pays the amount of money concerned together with an amount of interest (if any) which the Minister considers reasonable in all the circumstances of the case.

(4) The Minister may, by notice in writing served on the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, cancel the licence—

(a) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(b) if, in the case of a holder that is a body corporate, an order is made or a resolution is passed winding up the affairs of the company or corporation, unless the winding up is for the purpose of amalgamation or reconstruction and the Minister has been given notice thereof.

(5) Where two or more persons constitute the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the holder, of an event entitling the Minister to so cancel the licence, unless he is satisfied that any other person or persons constituting the holder are unwilling, or would be unable, to carry out the duties and obligations of the holder of the licence.

(6) On the cancellation of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the rights of the holder of the licence thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the licence may be commenced or continued against him.

#### Division 7—Transfers and Registration

##### [Ch6101s58]58. Records

(1) The Commissioner shall cause a record to be kept in a Register of every Mineral Right granted and of any dealings with, or affecting, a Mineral Right.

(2) When a Mineral Right is granted the Commissioner shall cause the name of the person to whom the Mineral Right is granted to be recorded in the Register as the registered holder of the Mineral Right.

##### [Ch6101s59]59. Interest in Mineral Right to be created by instrument in writing

(1) A legal or equitable interest in, or affecting, a Mineral Right, is not capable of being created, transferred, assigned, effected or dealt with, whether directly or indirectly, except by instrument in writing.

(2) The creation of a legal or equitable interest in, or affecting, a Mineral Right, does not affect the liability of the holder of the Mineral Right for any breach of the conditions of the Mineral Right or of any of the provisions of this Act.

##### [Ch6101s60]60. Transfer of Mineral Right to be approved by Minister, etc.

(1) Unless the Minister approves—

(a) the transfer of a Mineral Right; or

(b) an instrument by which a legal or equitable interest in, or affecting, a Mineral Right, is created, assigned, effected or dealt with, whether directly or ,indirectly,

the transfer, or the instrument (in so far as it operates as provided in paragraph (b)), is of no force.

(2) An application for the approval by the Minister under subsection (1) of a transfer or an instrument shall be made to the Commissioner in accordance with the Regulations.

(3) Subject to subsections (4) and (5), on application duly made under subsection (2), the Minister may give, or refuse to give, his approval, or may give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall not give his approval to the transfer of, or to any instrument operating as provided in subsection (1) (b) in relation to, a reconnaissance licence.

(5) The Minister shall give his approval to the transfer of an exclusive prospecting licence or a mining licence when the transferee—

(a) is a person controlling, controlled by, or under common control with, the transferor; and

(b) is not a person disqualified under any provision of this Act from holding a Mineral Right.

(6) If the Minister gives his approval to the transfer of a Mineral Right the Commissioner shall cause the name of the transferee to be recorded in the Register as the registered holder of the Mineral Right, but legal proceedings that might have been commenced or continued against the former registered holder may be commenced or continued against him notwithstanding the transfer.

(7) The reference in subsection (1) (a) to “the transfer of a Mineral Right” includes a transfer of a Mineral Right by operation of law.

#### [Ch6101s61]61. Minister may require information

The Minister may require any person making application under section 60 to the Commissioner to furnish to the Commissioner such information as the Minister may reasonably require to enable him to dispose of the application, and the applicant shall comply with the requirement.

#### [Ch6101s62]62. Evidentiary provision

(1) The Commissioner may give a certificate with respect to any matter referred to in subsection (2).

(2) A certificate of the Commissioner—

(a) that a Mineral Right was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;

(b) that any land, identified in the certificate is, or was on a date specified in the certificate, subject to a Mineral Right;

(c) that a mineral specified in the certificate is a mineral to which a Mineral Right relates;

(d) that any condition specified in the certificate is, or was on a date so specified, a condition of a Mineral Right;

(e) that a certificate of surrender was issued in respect of land identified, on a date specified, in the certificate given by the Commissioner;

(f) that any condition specified in the certificate is a condition on which a certificate of surrender was issued or on which any consent or approval so specified was given; or

(g) that a person named in the certificate is, or was on a date specified in the certificate, the holder of a Mineral Right,

shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

#### [Ch6101s63]63. Inspection of Register

(1) A copy of any entry in the Register may be obtained on payment of the prescribed fee.

(2) The Register shall, at all reasonable times, be open for inspection by any person on payment of the prescribed fee, and a person may take copies of any licence or entry in the Register on payment of the prescribed fee.

#### [Ch6101s64]64. Register may be rectified

Where the Commissioner is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in, the Register, he shall rectify the Register by correcting that mistake or incorrect entry.

#### [Ch6101s65]65. Offences in relation to registration

A person who wilfully—

(a) makes, or causes to be made or concurs in making, a false entry in the Register; or

(b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the Register or of or from an instrument lodged with the Commissioner under this Division,

is guilty of an offence and liable on conviction to a fine of two hundred and fifty Kwacha or to imprisonment for a term of six months, or to both.

#### Division 8—Miscellaneous Duties with respect to submitting Reports, etc.

#### [Ch6101s66]66. First Schedule

(1) The First Schedule applies with respect to the duty of the holder, or former holder, of a Mineral Right to furnish information, submit reports or keep records.



(2) The holder of a Mineral Right—

(a) shall establish immediately after the grant of the Mineral Right, and keep established while the Mineral Right subsists, an address in Malawi; and

(b) shall give notice of that address to the Minister, and of any variation of the address which may be made from time to time.

#### Division 9—Miscellaneous

#### [Ch6101s67]67. Application for inclusion of additional minerals in licence

(1) This section applies where—

(a) the holder of an exclusive prospecting licence or mining licence, in the course of searching for or mining the mineral to which his licence relates, finds another mineral (in this section called an “additional mineral”); and

(b) in the circumstances it would be impracticable or impossible to mine the mineral to which the licence relates without also mining that additional mineral.

(2) Where this section applies, the holder of the exclusive prospecting licence or mining licence concerned may make application to the Minister for the inclusion in the licence of the additional mineral and the Minister, subject to this section, if satisfied that this section applies, shall approve the application.

(3) The Minister is not required to approve an application referred to in subsection (2) if the applicant is unwilling to make such alterations to his programme of prospecting or mining operations as are reasonably necessary to cover adequately the searching for or mining of the additional mineral.

(4) Where the Minister approves an application referred to in subsection (2) he shall do so subject to the condition that the exclusive right to search for or mine the additional mineral shall arise only where that mineral is found together with a mineral to which the licence otherwise relates in such circumstances that it would not be practicable, or possible, to mine such last-mentioned mineral without also mining the additional mineral.

(5) Notice of the Minister’s decision under subsection (2) shall be given to the holder of the exclusive prospecting licence or, as the case may be, mining licence concerned; and in the event that the Minister approves the application, the licence is, subject to subsection (4), deemed to relate to the additional mineral.

(6) In any case where this section would not apply by reason of the requirement of subsection (1) not being met, the Minister may, if he considers that it would be in the interest of the development of the mineral resources of Malawi to do so, approve an application by the holder of an exclusive prospecting licence or a mining licence to include a further mineral in the licence; and in that event the licence is deemed to relate to the further mineral, subject to any conditions imposed on the giving of the approval.

[Ch6101s68]68. Enlargement of prospecting area or mining area

(1) The holder of an exclusive prospecting licence or a mining licence may apply to the Minister to have his prospecting area or, as the case may be, mining area enlarged in the manner specified in the application and the Minister may, subject to subsection (2), approve the application or refuse to do so.

(2) The Minister shall not approve an application made under subsection (1)—

(a) unless he is satisfied that to do so would be in the interest of the development of the mineral resources of Malawi; or

(b) if, by reason of this Act, the Minister could not then grant to the holder making the application an exclusive prospecting licence or, as the case may be, a mining licence over the area of land by the addition of which the prospecting area or mining area is to be enlarged, or could only do so subject to any condition which could not be satisfied.

(3) The approval of the Minister under subsection (1) may be given unconditionally, or subject to such conditions as the Minister may determine and specify in a notice given pursuant to subsection (4).

(4) Notice of the Minister's decision under subsection (1) shall be given to the holder of the prospecting licence or, as the case may be, mining licence concerned, and in the event that the Minister approves the application, the prospecting or mining area is deemed to have been enlarged accordingly.

(5) To enable him to dispose of an application made under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

[Ch6101s69]69. Recovery of unexpended amounts

(1) Subject to subsection (3), when the amount expended in, or in relation to, a reconnaissance area, a prospecting area or a mining area is less than the amount required to be so expended by a reconnaissance licence, an exclusive prospecting licence or a mining licence, or otherwise, the amount of the shortfall is a debt due to the Republic and may be recovered in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount is payable by an identified person shall be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(3) The right to recover an amount pursuant to this section is subject to the provisions of a relevant agreement of a kind referred to in section 10 limiting that right.

[Ch6101s70]70. Control of company not to be given without consent of Minister

2 of 1983(1) A company which is the holder of a mining licence shall not, without the prior consent in writing of the Minister—

(a) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(b) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,

if the effect of doing so would be to give to the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section—

(a) a person is deemed to have control of a company—

(i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of equity shares in the company;

(b) “equity shares”, in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;

(c) “preference shares” means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights; and

(d) the reference in paragraph (a) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

#### PART IV

#### NON-EXCLUSIVE PROSPECTING LICENCES AND CLAIMS

[Ch6101s71]71. Definition

In this Part, “District” means one of the districts into which Malawi is divided for purposes of administration in accordance with the Regional and District Boundaries and Place Names Act. Cap. 18:04

[Ch6101s72]72. Restriction on exercise of rights by holder of non-exclusive prospecting licence or claim

Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a non-exclusive prospecting licence or a claim to do the act—

- (a) otherwise than in accordance with the written law; and
- (b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

[Ch6101s73]73. Non-exclusive prospecting licence

(1) Subject to this section, the Commissioner may issue to any person a non-exclusive prospecting licence.

(2) Subject to subsection (5), a non-exclusive prospecting licence—

- (a) shall not be issued to an individual unless he is a citizen of Malawi;
- (b) shall not be issued to a company unless it is a company whose entire share capital is beneficially owned by citizens of Malawi or by a corporation which, in the opinion of the Minister, has been established for a public purpose, or partly by such citizens and partly by such a corporation;
- (c) shall not be issued to a corporation unless it is a corporation incorporated in Malawi.

(3) A non-exclusive prospecting licence shall not be issued to a person unless the Commissioner is satisfied that that person intends, within the limits of his competence and resources, to undertake prospecting operations.

(4) The power to issue a non-exclusive prospecting licence is subject to the Regulations.

(5) Where the Minister is satisfied that it is in the public interest to do so and so certifies to the Commissioner, the Commissioner may issue a non-exclusive prospecting licence—

- (a) to an individual who is not a citizen of Malawi but who has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a licence is made; or
- (b) to a company or corporation other than one of a kind referred to in subsection (2) (b) or (c).

[Ch6101s74]74. Rights under non-exclusive prospecting licence

(1) A non-exclusive prospecting licence may authorize the holder of the licence to prospect in all districts, or in any district or part of a district identified in the licence, for any mineral identified in the licence.

(2) The holder of a non-exclusive prospecting licence may, subject to this Act and the conditions of the prospecting licence, enter on any land in which he is authorized to prospect, and carry on prospecting operations for any mineral to which his licence relates.

(3) The holder of a non-exclusive prospecting licence shall not prospect—

(a) in land—

(i) in a reconnaissance area for any mineral in respect of which the holder of the reconnaissance licence has been granted exclusive rights pursuant to section 20 (4);

(ii) in a prospecting area for any mineral to which the prospecting licence relates; or

(iii) in a mining area;

(b) in land in a claim area, unless he is the holder of the claim.

(4) Subject to this Act and the conditions of the non-exclusive prospecting licence, for the purpose of the exercise of the right referred to in subsection (2), the holder of a non-exclusive prospecting licence may, in particular, erect camps and temporary buildings, or erect installations in any waters forming part of the land on which he is authorized to prospect.

#### [Ch6101s75]75. Term and renewal of non-exclusive prospecting licence

(1) A non-exclusive prospecting licence has effect for the period of twelve months from and including the date of the issue of the licence.

(2) Subject to subsections (3) and (4) and the Regulations, the Commissioner, on application duly made, may renew a non-exclusive prospecting licence for a period of twelve months from the date on which it would cease to have effect if not renewed.

(3) The Commissioner shall not renew a non-exclusive prospecting licence unless he is satisfied—

(a) that the applicant has undertaken, in good faith, within the limits of his competence and resources during the period for which he has held the licence, prospecting operations; and

(b) intends, within those limits, to undertake in good faith further prospecting operations.

(4) The Commissioner shall not renew a non-exclusive prospecting licence if the applicant is in default.

#### [Ch6101s76]76. Pegging of claim

(1) Subject to this Act, the holder of a non-exclusive prospecting licence may peg a claim or claims in accordance with the Regulations.

(2) Where the holder of a non-exclusive prospecting licence, pursuant to subsection (1), pegs a claim, he shall, within thirty days of doing so, apply in accordance with the Regulations for registration, in the manner prescribed, of the claim.

(3) Subject to the Act, on application duly made for the registration of a claim, the claim shall be registered, either unconditionally or subject to such conditions as are specified.

[Ch6101s77]77. Restriction on registration of claim

(1) A claim shall not be registered pursuant to section 76 in respect of land in which the person applying for registration of the claim is not entitled to prospect.

(2) The Commissioner shall refuse to register a claim—

(a) if he has reasonable grounds to believe that minerals in payable quantities have not been discovered within the proposed claim area;

(b) if he has reasonable grounds to believe that the applicant does not intend to carry on, in good faith, within the limits of his competence and resources, mining operations in the proposed claim area;

(c) if he has reasonable grounds to believe that it is not in the public interest that a claim should be registered in respect of the proposed claim area; or

(d) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to register a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

(4) The Commissioner may refuse to register a claim if the applicant fails, within a reasonable period specified by the Commissioner, to furnish the Commissioner with satisfactory evidence of the existence of the mineral for which the claim is pegged, within the area of the claim.

[Ch6101s78]78. Period of validity and renewal of claim

(1) Subject to this Act, a claim registered pursuant to section 76—

(a) is valid from the day when the claim was pegged until the 31st March next following that day; and

(b) on application made to the Commissioner in accordance with the Regulations, may be renewed for further periods of twelve months each, commencing on the 1st April in each year.

(2) A claim shall not be renewed pursuant to subsection (1)—

(a) unless the Commissioner is satisfied that minerals in payable quantities remain in the claim area;

(b) unless the Commissioner is satisfied that the applicant has carried on, in good faith, within the limits of his competence and resources, mining operations in the claim area and intends to continue doing so; or

(c) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to renew a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

#### [Ch6101s79]79. Rights and duties of holder of claim

(1) Subject to this Act and the conditions of the claim, the holder of a claim has the right to enter a claim area and the exclusive right, while the claim is registered, to prospect and mine therein, and to remove therefrom and dispose of, the minerals in respect of which the claim is registered pursuant to section 76.

(2) The holder of a claim shall—

(a) within the limits of his competence and resources carry on, in good faith, in the claim area mining operations;

(b) furnish the Commissioner with such information relating to his mining or prospecting operations carried on in the claim area as the Commissioner may reasonably require or as may be prescribed; and

(c) carry put promptly any directions relating to his mining or prospecting operations which may be given to him by the Commissioner for the purpose of ensuring safety, or good mining practice.

#### [Ch6101s80]80. Cancellation of claim

(1) Where the holder of a claim—

(a) fails to use, in good faith, the land in the claim area for mining operations;

(b) uses the land in the claim area for any purpose other than mining operations;

(c) fails to comply with any requirement of this Act (not being exempted from doing so) with which he is bound to comply;

(d) fails to comply with a condition of the claim (not being exempted from doing so);

(e) fails to comply with a direction lawfully given under this Act or with a condition on which any exemption or consent is given; or

(f) fails to pay any amount payable under this Act by him within one month after the amount becomes payable,

the Commissioner may, on that ground, by notice in writing served on the holder of the claim cancel the claim.

(2) The Commissioner may, by notice in writing served on the holder of a claim, cancel the claim—

(a) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into an agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors;

(b) if, in the case of a holder that is a company or a corporation, an order is made or a resolution is passed winding up the affairs of the company or corporation unless the winding up is for the purpose of amalgamation or reconstruction and the Commissioner has been given notice thereof.

(3) On the cancellation of a claim, the rights of the holder of the claim thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the claim may be commenced or continued against him.

(4) Where the Commissioner has cancelled a claim under subsection (1) or (2), the person who was the holder of the claim may appeal against the cancellation to the Minister whose decision is final.

## PART V

### MINERAL PERMITS

#### [Ch6101s81]81. Issue of mineral permit

A District Commissioner, or a person authorized by the Minister for the purposes of this section, may, on the prescribed fee being paid, issue to any person a mineral permit.

#### [Ch6101s82]82. Rights under mineral permit

Subject to this Act, the holder of a mineral permit may enter upon public land or customary land and mine any prescribed mineral.

#### [Ch6101s83]83. Restriction on exercise of rights under mineral permit

(1) The holder of a mineral permit shall not, pursuant to section 82, enter—

(a) a forest reserve as defined in section 2 of the Forest Act; Cap. 63:01

(b) a national park established under section 3 of the National Parks Act; Cap. 66:07

(c) a game reserve declared or proclaimed under section 10 of the Game Act; or Cap. 66:03

(d) upon any monument or relic which is protected under section 7 of the Monuments Act, Cap. 29:01



nor mine therein any prescribed mineral.

(2) The holder of a mineral permit shall not, pursuant to section 82, mine any prescribed mineral in a prospecting area, a claim area or a mining area, without the consent of the holder of the licence or claim concerned.

(3) The holder of a mineral permit shall not, pursuant to section 82,—

(a) carry on mining operations underground;

(b) use explosives; or

(c) use any powered machinery in his mining operations except for the purpose of loading material in, or moving material from, the area where he carries on those operations.

[Ch6101s84]84. Cancellation of mineral permit

The Minister may, where he considers it necessary or desirable to do so, cancel a mineral permit.

[Ch6101s85]85. Record of mineral permits

Any person issuing a mineral permit shall supply a copy of the permit to the Commissioner who shall maintain a record, in such manner and containing such particulars as he may determine, of copies so supplied to him.

## PART VI

### FINANCIAL

[Ch6101s86]86. Royalty on minerals obtained under mining licence, etc.

(1) Subject to this Act, the holder of a mining licence shall, in accordance with this Act and his licence, pay, to the Republic, royalty in respect of minerals obtained by him in the mining area.

(2) Royalty is payable pursuant to subsection (1)—

(a) at the rate fixed in, or computed in accordance with the provisions of, the mining licence concerned; or

(b) if no rate is so fixed or provision so made in the mining licence concerned, at the rate prescribed.

(3) Provision may be made in the Regulations for the payment of royalty in respect of minerals obtained in a reconnaissance area or a prospecting area.

[Ch6101s87]87. Royalty on minerals obtained under a claim

(1) Subject to this Act, the holder of a claim shall, in accordance with this Act, pay royalty to the Republic in respect of minerals obtained by him in the claim area.

(2) Royalty is payable pursuant to subsection (1) at the rate prescribed.

[Ch6101s88]88. Prohibition on disposal of minerals

If the holder of a mining licence fails to pay any royalty payable by him on or before the due date or any extension thereof allowed by the Minister, the Minister may, by notice served on the holder of the mining licence, prohibit the disposal of any mineral from the mining area concerned, or from any other mining area held by that holder, until all outstanding royalty has been paid or until an arrangement has been made, acceptable to the Minister, for the payment of the royalty, and the holder shall comply with the notice.

[Ch6101s89]89. Remission of royalty, etc.

(1) The Minister may, after consultation with the Minister for the time being responsible for finance, remit in whole or in part, any royalty payable on any mineral, or on any mineral obtained from a particular deposit, for such period as he may determine, if he considers it expedient in the interests of the production of the mineral to do so.

(2) The Commissioner may exempt from liability with respect to royalty samples of minerals acquired for the purpose of assay, analysis or other examination.

(3) The Minister may, on application made to him by the holder of a mining licence or a claim, defer payment of any royalty due from the holder for such period and subject to such conditions as he may determine.

[Ch6101s90]90. Annual charges in respect of Mineral Rights

(1) There shall be payable to the Republic by the holder of any Mineral Right an annual charge of such amount as may be prescribed, or as may be computed in such manner as may be prescribed.

(2) The annual charge payable pursuant to subsection (1) is payable on the grant of a Mineral Right and thereafter annually on the anniversary of the grant until the termination of the Mineral Right.

[Ch6101s91]91. Security for compliance

The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a Mineral Right complies with this Act, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of that compliance.

[Ch6101s92]92. Minister may require information to be furnished

(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available books or documents relating to minerals obtained, or the value of minerals obtained, he may, by instrument in writing served on that person, order that person—

(a) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information;

(b) to attend before him or a person specified in the instrument, at such time and place as is so specified, and there to answer questions relating to minerals obtained, or the value of minerals obtained; or

(c) to produce or make available to a person specified in the instrument, at such time and place as is so specified, books or documents in his custody, power or control relating to minerals obtained or the value of minerals obtained.

(2) A person is not excused from furnishing information, answering a question or producing or making available books or documents when required to do so under this section, on the ground that the information so furnished, the answer to the question, or the production or making available of any books or documents, might tend to incriminate him or make him liable to a penalty, but the information so furnished is not admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where books or documents are made available pursuant to a requirement under subsection (1) (c) the person to whom the books or documents are made available may make copies of, or take extracts from, the books or documents.

(4) A person shall not—

(a) refuse or fail to comply with a requirement under subsection (1) to the extent to which he is capable of complying with it;

(b) in purported compliance with such a requirement, knowingly furnish information that is false or misleading in a material particular;

(c) when attending before the Minister or any person in pursuance of such a requirement, knowingly make a statement or produce a document which is, or produce books which are, false or misleading in a material particular; or

(d) when making available books or documents in pursuance of such a requirement, knowingly make available books which are, or a document which is, false or misleading in a material particular.

(5) Any person who contravenes subsection (4) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to a term of imprisonment of two years, or to both.

[Ch6101s93]93. Recovery of royalty, etc.

(1) Royalty payable under section 86 or 87 and any annual charge payable under section 90, are debts due to the Republic and are recoverable in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount of royalty, or an annual charge of a specified amount, is payable by an identified person shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(3) Where two or more persons constitute the holder of a mining licence or a claim when royalty becomes payable, those persons are jointly and severally liable for the payment of royalty under section 86 or 87, or any annual charge payable under section 90; but without prejudice to any right to contribution existing between them.

## PART VII

### PROTECTION OF THE ENVIRONMENT

#### [Ch6101s94]94. Protection of natural resources to be taken into account

(1) In deciding whether or not to grant a Mineral Right, the Minister shall take into account the need to conserve the natural resources in or on the land over which the Mineral Right is sought, or in or on neighbouring land.

(2) In deciding whether or not to issue a non-exclusive prospecting licence or to register a claim, the Commissioner shall take into account the need to conserve the natural resources in or on land to be covered by the licence or over which the claim is to be registered, or in or on neighbouring land.

(3) The Minister may, pursuant to section 38 (3), require environmental impact studies to be carried out.

#### [Ch6101s95]95. Conditions for the protection of the environment, etc.

(1) There may be included in a Mineral Right conditions with respect to—

- (a) the prevention, limitation or treatment of pollution;
- (b) the minimization of the effects of mining on adjoining or neighbouring areas and their inhabitants.

(2) On the registration of a claim, any condition of a kind referred to in subsection (1) may be imposed as a condition on which the claim is registered.

#### [Ch6101s96]96. Rehabilitation of area damaged by prospecting or mining

(1) There may be included in a prospecting or mining licence such conditions relating to—

(a) the reinstatement, levelling, regrassing, reforesting and contouring of any part of the prospecting or mining area that may have been damaged or deleteriously affected by prospecting or mining operations; and

(b) the filling in, sealing or fencing off, of excavations, shafts and tunnels,

as may be prescribed, or as the Minister may, in any particular case, determine.

(2) There may be included as a condition on which a claim is registered any condition, of a kind referred to in subsection (1), which may be prescribed for the purposes of that subsection.

(3) Where any condition is to be included in a prospecting or mining licence pursuant to subsection (1) the Minister may require the applicant for the licence to lodge with the Commissioner, within such time as the Minister may require, security for the performance of the conditions in such amount and form as the Minister deems appropriate.

[Ch6101s97]97. Direction to comply with conditions of Mineral Right for protection of environment

(1) Where a Mineral Right over any land is wholly or partly determined or cancelled, or expires, the Minister may, by notice served on the person who is or was the last holder of the Mineral Right, direct him to take such steps within such time as may be specified in the notice, to give effect, in relation to the land which is no longer subject to the Mineral Right, to any conditions included in the Mineral Right pursuant to section 95 or 96.

(2) Any person to whom a direction is given under subsection (1) who, without reasonable excuse, fails or neglects to comply with the direction is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate to a fine of twenty thousand Kwacha.

(3) If a person to whom a direction is given under subsection (1) does not comply with the direction, the Minister may cause to be taken any steps specified in the notice containing the direction.

(4) Costs and expenses incurred pursuant to subsection (3) in taking any steps referred to in that subsection are a debt due to the Republic and are recoverable in a court of competent jurisdiction.

(5) In any proceedings instituted for the recovery from a person to whom a direction was given under subsection (1) of a debt due by that person to the Republic under subsection (4), a certificate of the Minister that a specified amount is the amount of the debt due shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(6) A debt due by any person to the Republic under subsection (4) is recoverable notwithstanding that that person is convicted of an offence under subsection (2).

(7) Where two or more persons constitute, or constituted, the holder of a Mineral Right, those persons are jointly and severally liable for the payment of any costs and expenses which may be recovered under this section from the person who is or was the last holder of the Mineral Right; but without prejudice to any right to contribution existing between them.

## PART VIII

### RESERVED MINERALS

[Ch6101s98]98. Definitions

In this Part, unless the context otherwise requires—

“precious metals” means gold, silver, platinum and platinoid metals, in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable for their content of the aforementioned precious metals;

“precious stones” means rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed;

“reserved minerals” means precious metals, precious stones and any other mineral which may be prescribed;

“reserved minerals licence” means a licence issued under section 100.

[Ch6101s99]99. Possession, etc., of reserved minerals

(1) Subject to this section, no person—

(a) shall possess any reserved minerals—

(i) unless they were obtained by him pursuant to the exercise of rights under a Mineral Right, a non-exclusive prospecting licence, or a claim, of which he is the holder; or

(ii) unless he is the holder of a reserved minerals licence authorizing him to buy the mineral concerned, or an employee of any such holder duly authorized and acting as such; or

(b) shall, in Malawi, buy any reserved minerals unless he is the holder of a reserved minerals licence authorizing him to buy the minerals.

(2) Nothing in subsection (1) operates to prevent a bona fide museum, educational or scientific establishment from possessing or purchasing reasonable amounts of reserved minerals for the purpose of display, teaching or scientific study.

(3) This section is subject to such exceptions as may be prescribed.

[Ch6101s100]100. Reserved minerals licence

(1) Subject to the Regulations, the Commissioner may, on the prescribed fee being paid, issue to any person a reserved minerals licence.

(2) Subject to subsection (3), a reserved minerals licence authorizes the holder to buy such reserved minerals as are identified in the licence.

(3) The holder of a reserved minerals licence shall not buy any reserved minerals from any person unless that person is entitled, under this Part, to possess those reserved minerals.

(4) The holder of a reserved minerals licence shall keep such records in such form and containing such particulars as may be prescribed.

(5) The Regulations may make provision with respect to the term, renewal and cancellation of reserved minerals licences.

[Ch6101s101]101. Offences

Any person who contravenes section 99 (1) or 100 (3) is guilty of an offence and liable on conviction—

- (a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or
- (b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

PART IX

RESTRICTIONS AND SURFACE RIGHTS

[Ch6101s102]102. Definition

In this Part, “Authority” means—

- (a) a Mineral Right;
- (b) a non-exclusive prospecting licence;
- (c) a claim; or
- (d) a mineral permit.

[Ch6101s103]103. Restrictions on exercise of rights in relation to certain land

2 of 1983(1) The holder of an Authority shall not exercise any of his rights under the Authority or under this Act—

- (a) except with the written consent of the President in respect of—
  - (i) any land set apart for any public purpose (other than mining);
  - (ii) any land dedicated as a place of burial or which is a place of religious significance; or
- (b) except with the written consent of the lawful occupier thereof in respect of—
  - (i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;
  - (ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise bona fide prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);
  - (iii) any land from which, during the year immediately preceding, agricultural crops have been reaped;

(iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip-tank, dam, or other body of water, not being public water as defined in the Water Resources Act, Cap. 72:03

but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;

(c) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;

(d) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township; or

(e) in respect of any land comprising a street, road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof. Cap. 69:02

(f) in respect of a production area (as defined in section 3 of the Petroleum (Exploration and Production) Act), except with the written consent of the holder of the petroleum production licence concerned. Cap. 61:02

(2) Any dispute as to whether or not subsection (1) (b) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.

(3) Any consent under subsection (1) (a), (c), (d) or (e) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(4) For the purposes of subsection (1) (a), "public purpose" means a purpose prescribed as such.

[Ch6101s104]104. Right to graze stock, etc.

(1) The lawful occupier of any land in a reconnaissance area, a prospecting area, a mining area or a claim area, retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with reconnaissance, prospecting or mining operations in any such area.

(2) The lawful occupier of land in a mining area or a claim area shall not erect any building or structure in the area without the consent of the holder of the mining licence or claim concerned; but if the Minister considers that the consent is being unreasonably withheld, he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.

(3) The rights conferred by an Authority shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier, or of the land subject to the Authority, or on



which rights under the Authority are exercised, consistent with the reasonable and proper conduct of operations pursuant to the Authority.

[Ch6101s105]105. Compensation for disturbance of rights, etc.

(1) Where, in the course of reconnaissance, prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused—

(a) the holder of the Authority, by virtue of which the operations are carried on; or

(b) if the operations are carried on by or on behalf of a person who is not the holder of an Authority or otherwise than in accordance with an Authority, every person by or on whose behalf the operations are carried on,

is liable to pay to the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

(2) The amount of the compensation payable to a lawful occupier pursuant to this section may be determined by agreement between the holder of the Authority, or the person referred to in subsection (1) (b), concerned and the lawful occupier or, if not so agreed, may be assessed by the Commissioner under Part XI.

[Ch6101s106]106. Notice of intention to commence reconnaissance or prospecting operations, etc.

(1) Subject to such exceptions as may be prescribed, the holder of a reconnaissance or an exclusive prospecting licence, before commencing prospecting operations in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

(2) The reference in subsection (1) to “prospecting operations” includes a reference to reconnaissance operations, but only to the extent that the reconnaissance operations involve surface or subsurface techniques.

[Ch6101s107-109]107—109

[PART X: Affecting sections 107–109 repealed by 2 of 1983].

PART XI

DISPUTES

[Ch6101s110]110. Commissioner may decide disputes

(1) The Commissioner may inquire into and decide all disputes between persons engaged in reconnaissance, prospecting or mining operations, either among themselves, or in relation to themselves and third parties (other than the Government) not so engaged, in connexion with—

(a) the boundaries of any reconnaissance, prospecting, mining or claim area;

- (b) any act committed or omitted, or alleged to have been committed or omitted in the course of, or ancillary to, reconnaissance, prospecting or mining operations;
- (c) the assessment and payment of compensation pursuant to this Act; or
- (d) any other matter which may be prescribed.

(2) Subject to subsection (3), the Commissioner may, in his discretion, refuse to decide any dispute referred to him under this Part and, if he does so, he shall notify the parties to the dispute in writing accordingly.

(3) The Commissioner shall not refuse to act under subsection (1) (c) in respect of any compensation to be assessed for the purposes of section 105.

(4) The Commissioner may make any decree or order which may be necessary for the purpose of giving effect to his decision in proceedings pursuant to this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

[Ch6101s111]111. Enforcement of Commissioner's decrees and orders

(1) The Commissioner may send a copy, certified under his hand, of any decree or order made by him to the Registrar of the High Court, and the High Court shall enforce the decree or order of the Commissioner in the same manner in which it would enforce its own decrees or orders; but no such decree or order shall be so enforced until the period for an appeal under section 112 has passed or, if there is such an appeal within that period, unless the Minister rejects the appeal or the appeal is withdrawn.

(2) Where on an appeal under section 112 the Minister varies or alters any decree or order of the Commissioner or makes a new decree or order, the appeal shall be treated, for the purposes of subsection (1), as having been dismissed and the decree or order as so varied, altered or made shall be enforced under that subsection.

(3) The fees payable upon the enforcement of a decree or order are those which would be payable upon the enforcement of a like decree or order made by the High Court.

[Ch6101s112]112. Appeal to Minister

(1) Any person aggrieved by a decision, decree or order of the Commissioner made or given pursuant to this Part may appeal to the Minister within the period of thirty days after the date on which notice of the decision, decree or order is given to that person.

(2) No appeal lies to the Minister against a decision of the Commissioner under section 110 (2).

(3) On appeal under subsection (1), the Minister may rescind or affirm the decision, decree or order appealed from or make a new decision, decree or order, and that decision, decree or order is final.

[Ch6101s113]113. Jurisdiction of courts excluded

(1) No person shall commence proceedings in a court in respect of any dispute of a kind referred to in section 110, or prescribed pursuant to section 110 (1) (d), unless the Commissioner has refused pursuant to subsection (2) of that section to decide the dispute.

(2) Where the Commissioner refuses pursuant to section 110 (2) to decide a dispute the period of limitation for bringing any action with respect to the matter giving rise to the dispute commences when the Commissioner so refuses

[Ch6101s114]114. Regulations with respect to proceedings

The Regulations may make provision with respect to—

- (a) the initiation and conduct of proceedings under section 110 and the keeping of records and notes of evidence concerning any such proceedings; and
- (b) appeals under section 112.

## PART XII

### MISCELLANEOUS

[Ch6101s115]115. Right to take building and industrial minerals

(1) Subject to this section and the Regulations, nothing in this Act operates to prevent—

(a) a citizen of Malawi from taking minerals of any kind from customary land, to the extent and in the manner which custom permits, and from which it has been customary to take minerals of that kind;

(b) a person from taking from land, in respect of which he is the lawful occupier, building and industrial minerals for the purpose of construction, on the land, of any dwelling house, factory, workshop or store, including the outbuildings or appurtenances thereof;

(c) any forest officer, game control officer or national parks officer, in his official capacity, from taking in a forest reserve, a game reserve or a national park, as the case may be, building and industrial minerals for the purposes of building, bridge-building, road-making and other constructional purposes in the reserve or park;

(d) the exercise of the right under the proviso to paragraph (a) of section 15 of the Land Act; Cap. 57:01

(e) the exercise of the power under section 29 of the Public Roads Act; Cap. 69:02

(f) the Capital City Development Corporation established under the Capital City Development Corporation Act from taking from the land designated under section 9 of that Act building and industrial minerals for the purpose of building, bridge-building, road-making and other constructional purposes on that land. Cap. 39:02

(2) Nothing in subsection (1) or in any Act referred to in subsection (1) shall be treated as authorizing a person to take any mineral from a prospecting area, a mining area or a claim area

without the written consent of the holder of the prospecting licence, mining licence or claim concerned, as the case may be.

(3) Any dispute as to whether or not a person is entitled to take minerals pursuant to subsection (1) (a) shall be decided by the Minister responsible for land matters whose decision is final.

(4) In this section—

“forest reserve” and “forest officer” have the respective meanings assigned by section 2 of the Forest Act: Cap. 63:01

“game reserve” and “game control officer” have the respective meanings assigned by sections 10 and 2 of the Game Act; Cap. 66:03

“national park” and “national parks officer” have the respective meanings assigned by section 2 of the National Parks Act. Cap. 66:07

[Ch6101s116]116. Scientific investigation

(1) The Commissioner may, by instrument in writing, consent to the carrying on by any person of reconnaissance or prospecting operations in the course of a scientific investigation with respect to the geology or mineral resources of Malawi.

(2) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.

(3) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance or prospecting operations specified in the instrument—

- (a) in the area; and
- (b) subject to the conditions (if any),

specified in the instrument, in the course of the scientific investigation.

(4) Subject to subsections (5) and (6), any authorized officer, or any person authorized in writing for the purpose of this section by the Commissioner, for the purpose of collecting information on the geology and mineral resources of Malawi, may enter on any land and, for that purpose, carry on any prescribed operation.

(5) An Authorized officer or a person authorized shall not, pursuant to subsection (4), enter on any land or place referred to in section 103 without obtaining the consent required under that section in relation to the land or place.

(6) Where the doing of any act is regulated or prohibited by a written law (other than this Act) nothing in this section shall be construed as authorizing the person specified in the instrument to. do the Act—

- (a) otherwise than in accordance with the written law; and

(b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

(7) Notwithstanding any provision of that written law, if the President is satisfied that any licence, authority, or other instrument, required in pursuance of subsection (6) (b) is being unreasonably withheld he may, in his absolute discretion, direct the issue thereof.

[Ch6101s117]117. Power of Commissioner and authorized officers

(1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times,—

(a) may enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with reconnaissance, prospecting or mining operations;

(b) may inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (a);

(c) may take or remove for the purpose of analysis or testing, or for use in evidence in connexion with an offence against this Act, samples of minerals or other substances from a mine or any area where any of the operations referred to in paragraph (a) are being carried on;

(d) may inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);

(e) may, with respect to the health and safety of persons employed by a holder of a Mineral Right or a claim in or in connexion with any of the operations referred to in paragraph (a), issue directions to and impose restrictions on the holder or any persons so employed, by instrument in writing;

(f) may order, by instrument in writing—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (a); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed; or

(g) may make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the

Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

(4) On an appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or an authorized officer's powers under this section.

(7) Any person who—

(a) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or

(b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this section,

is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

[Ch6101s118]118. Removal of minerals

(1) Minerals shall not be removed from any land from which they have been obtained, nor disposed of, in any manner, except—

(a) subject to subsection (2), by the holder of a Mineral Right, a non-exclusive prospecting licence or a claim for the purpose of sampling or analysis;

(b) by such a holder in accordance with the terms of the Mineral Right, non-exclusive prospecting licence or claim concerned; or

(c) as otherwise permitted by this Act.

(2) The holder of a Mineral Right, a non-exclusive prospecting licence or a claim shall not, pursuant to subsection (1) (a), take or send out of any land samples of minerals without the written consent of the Commissioner.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or

(b) in the case of a body corporate, to a fine of ten thousand Kwacha.

[Ch6101s119]119. Permit to export minerals

(1) The Minister may grant to any person a permit to export minerals from Malawi on conditions determined by the Minister and specified in the permit; but the grant of such a permit does not exempt the person concerned from complying with the requirements of any other law relating to the export of minerals.

(2) Any person who exports any mineral from Malawi otherwise than under and in accordance with a permit granted under subsection (1) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

(3) This section shall not apply with respect to such minerals as may be prescribed.

[Ch6101s120]120. Acquisition of land

Where the President considers that any land is required to secure the development or utilization of the mineral resources of Malawi he may direct that the land be compulsorily acquired under the Lands Acquisition Act. Cap. 58:04

[Ch6101s121]121. Production of books, etc.

The Minister may direct the holder of a Mineral Right or a claim, at a reasonable time and place specified in the direction, to make available to, or to produce for inspection by, the Commissioner or an authorized officer, any books, accounts, vouchers, documents or records of any kind, concerning the Mineral Right or claim, and if the holder fails or neglects to do so he is guilty of an offence and liable on conviction to a fine of one thousand Kwacha.

[Ch6101s122]122. Identity, of persons exercising certain rights, to be established

A person exercising any right under a reconnaissance licence, a prospecting licence or a non-exclusive prospecting licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of such a licence; and if he fails to do so he may be treated as a trespasser.

[Ch6101s123]123. Removal of property by holder of Mineral Right

(1) Subject to any relevant agreement of a kind referred to in section 10, where a Mineral Right has been wholly or partly determined or cancelled, or has expired, the Minister may, by notice served on the person who is or was the holder of the Mineral Right, direct that person to remove or cause to be removed from the relinquished area concerned, all property brought into that area by any person engaged or concerned in the operations authorized by the Mineral Right, or to make arrangements that are satisfactory to the Minister with respect to that property.

(2) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice by which the direction was given is guilty of an offence and liable on conviction to a fine not exceeding five thousand Kwacha.

[Ch6101s124]124. Removal and sale of property

(1) Where a direction under section 123 has not been complied with, the Minister—

(a) may do or cause to be done all or any of the things required by the direction to be done;

(b) may remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the relinquished area concerned;

(c) may dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (b); and

(d) may, if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction or otherwise as he thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that he believe to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—

(a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;

(b) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under section 123 to be done by the person; and

(c) all or any part of any fees or amounts due and payable under this Act by the person.

(3) The costs and expenses incurred by the Minister under subsection (1)—

(a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic; or

(b) if incurred in relation to the doing of anything required by a direction under section 123 to be done by a person who is or was the holder of a Mineral Right, are a debt due by that person to the Republic,



and to the extent to which they are not recovered under subsection (2) are recoverable in a court of competent jurisdiction, as a debt due to the Republic.

(4) Subject to subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

[Ch6101s125]125. Obstruction of holder of Mineral Right, etc.

Any person who, without reasonable excuse, obstructs, molests, hinders or prevents the holder of a Mineral Right, a non-exclusive prospecting licence, or a claim, in or from the doing of any act which that holder is authorized to do by this Act, is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or both.

[Ch6101s126]126. Offence committed by body corporate

When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

[Ch6101s127]127. Miscellaneous offences

Any person who—

(a) in, or in connexion with, any application under this Act or in response to any invitation or requirement of the Minister or the Commissioner under this Act (otherwise than under section 117), knowingly or recklessly gives information which is false or misleading in a material particular;

(b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(c) places or deposits, or is accessory to the placing or depositing of, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place;

(d) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore with the intention to cheat, deceive or defraud,

is guilty of an offence and liable on conviction—

(e) in the case of an individual, to imprisonment for a term of two years; or

(f) in the case of a body corporate, to a fine of thirty thousand Kwacha.

PART XIII

## REGULATIONS

### [Ch6101s128]128. Regulations

(1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without limiting the generality of subsection (1), the Regulations may include provision for or with respect to—

(a) reconnaissance operations, prospecting for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to reconnaissances or prospecting operations;

(b) mining for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to mining operations;

(c) the functions of officers acting in the administration of this Act;

(d) the regulation of matters relating to sanitation and health;

(e) the reporting of cases of accident or death occurring in the course of reconnaissance, prospecting or mining operations, or in any related operations, and the holding of inquiries into accidents;

(f) the demarcation of reconnaissance, prospecting or mining areas;

(g) the determination and amount of royalty payable, and the manner of the payment and collection of royalty;

(h) the circumstances in which fees or rents may be charged and the amounts thereof;

(i) the making of searches in connexion with claims or Mineral Rights, or interests created therein, the granting of certificates in connexion therewith, and the effect of any such certificate;

(j) the issue and conditions of a non-exclusive prospecting licence and the exercise of rights thereunder;

(k) the pegging of claims (including the number and class of claims which may be pegged), and the registration of claims;

(l) the exercise of rights in, and the duties to be performed (including work obligations) in relation to, land subject to a claim;

(m) the transfer of, and the creation of shares in, a claim, and the respective rights of the transferor and transferee;

(n) the amalgamation, surrender or cancellation of claims, whether in respect of all or some only of the land in claim areas; or

(o) amending the First Schedule to this Act.

(3) Regulations made pursuant to subsection (2) (g)—

(a) may prohibit the export of any mineral unless or until royalty payable thereon has been paid or secured;

(b) may specify the person or persons by whom royalty shall be paid, and may specify whether two or more persons are jointly and severally liable to pay royalty;

(c) may provide for the examination of mineral consignments and the issue of export permits in respect thereof; and

(d) may provide for the performance by persons identified in the Regulations of functions with respect to royalty and its collection.

(4) The power under this section to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and

(b) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of case for different purposes of this Act; or

(ii) any such provision either unconditionally or subject to any specified condition.

#### PART XIV

#### TRANSITIONAL PROVISIONS AND SAVINGS

[Ch6101s129]129. Transitional provisions and savings

The transitional provisions and savings in the Second Schedule shall have effect.

[Ch6101s130]130. Repeals

Repeals\*

#### FIRST SCHEDULE (s. 66)

#### RECORDS AND REPORTS

1. Duties of holder of reconnaissance licence

(1) Subject to subparagraph (4), the holder of a reconnaissance licence—

(a) shall furnish such information in connexion with the programme of reconnaissance operations as the Minister may, from time to time, require; and

(b) shall, at half-yearly intervals commencing six months after the grant of the licence, submit to the Minister reports on the progress of the programme of reconnaissance operations.

(2) Where a reconnaissance licence is determined or cancelled, or expires, the person who was the holder of the licence immediately before the determination, cancellation or expiration shall, not later than three months thereafter, submit to the Minister a report setting forth his evaluation of the mineral prospects of the former reconnaissance area.

(3) A report submitted pursuant to subparagraph (2) shall be accompanied by the negatives of all aerial photographs taken in the course of carrying on the programme of reconnaissance operations, together with—

(a) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts made by or for the former holder;

(b) copies of all tests and analyses made by or for that holder;

(c) copies of all reports made by or for that holder, including interpretations concerning the mineral prospects in the reconnaissance area; and

(d) a statement of the costs incurred by that holder in the performance of the programme of reconnaissance operations.

(4) The Minister may, on application made to him by the holder or former holder of a reconnaissance licence, dispense with or modify all or any of the requirements of subparagraph (1), (2) or (3).

## 2. Duties of holder of exclusive prospecting licence

(1) Subject to subparagraph (2), the holder of an exclusive prospecting licence—

(a) shall keep; at the address referred to in section 66 (2) (a), full and accurate records of his prospecting operations which shall show—

(i) boreholes drilled;

(ii) strata penetrated; with detailed logs of the strata;

(iii) minerals discovered;

(iv) the results of any seismic survey or geochemical or geophysical analysis;

(v) the results of any analysis or identification of minerals removed under section 118;

(vi) the geological interpretation of the records maintained under subparagraphs (i) to (v) exclusive;

- (vii) the number of persons employed;
- (viii) other work done in connexion with the exclusive prospecting licence;
- (ix) costs incurred; and
- (x) such other matters as may be prescribed; and

(b) shall submit, at least once in every three months of the term of the licence, copies of those records to the Minister, together with any reports prepared as a result of those records.

(2) The Minister may, on application made to him by the holder of an exclusive prospecting licence, dispense with or modify all or any of the requirements of subparagraph (1).

### 3. Duties of holder of mining licence

(1) Subject to subparagraph (2), the holder of a mining licence shall—

(a) keep, at the address referred to in section 66 (2) (a), full and accurate technical records of his mining operations in the mining area, in such form as the Minister may approve;

(b) keep at that address copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and tests, and all other data, obtained and compiled by the holder in respect of the mining area;

(c) keep at that address accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; and if the holder is engaged in any other activity not connected with his mining operations he shall maintain separate books of account in respect of his mining operations;

(d) submit to the Minister such reports, records and other information as the Minister may, from time to time, require concerning the conduct of operations in the mining area; and

(e) furnish the Minister with a copy of every annual financial report within three months of the end of each financial year showing the profit or loss for the year and the state of financial affairs of the holder at the end of each financial year.

(2) The Minister may, on application made to him by the holder of a mining licence, dispense with or modify all or any of the requirements of subparagraph (1).

### 4. Duty on termination of Mineral Right, etc.

Where—

(a) a Mineral Right terminates pursuant to section 56 (1) (b) or 57; or

(b) the term of an exclusive prospecting licence or mining licence expires, the person who was the holder of the Mineral Right immediately before the termination or expiration shall deliver to the Minister—

(c) all records which the former holder maintained pursuant to this Act with respect to the Mineral Right;

(d) all plans or maps of the area of land that was subject to the Mineral Right and which were prepared by or on the instructions of the former holder; and

(e) such other documents as the Minister may, by notice given to the former holder, require him to so deliver.

## SECOND SCHEDULE (s. 129)

### TRANSITIONAL PROVISIONS AND SAVINGS

#### 1. Definitions

In this Schedule—

“the commencement” means the 1st day of June, 1981;

“the repealed Act” means the Mining Act repealed by section 130 (1).

#### 2. General savings

Except insofar as the context or subject-matter otherwise indicates or requires, nothing in this Schedule affects—

(a) anything duly done or commenced to be done under the repealed Act;

(b) any liability incurred under the repealed Act;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of the repealed Act; or

(d) any investigation, inquiry, legal proceedings or remedy in respect of any such liability, penalty, forfeiture or punishment,

and any such investigation may be continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been enacted.

#### 3. Prospecting rights

A prospecting right issued under section 13 of the repealed Act that is in force immediately before the commencement is deemed to be a non-exclusive prospecting licence issued on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the prospecting right issued under section 13; and

(b) authorizing the holder of the right so issued to prospect in all areas covered by the right for any mineral for which he is authorized by virtue of the right so issued to prospect,

and the provisions of this Act apply accordingly.

4. Exclusive prospecting licence

(1) An exclusive prospecting licence granted under section 18 of the repealed Act that is in force immediately before the commencement is deemed to be an exclusive prospecting licence granted on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the licence granted under section 18; and

(b) authorizing the holder of the licence so granted to prospect in the area of land identified in the licence for any mineral identified in the licence,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of an exclusive prospecting licence granted under section 18 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the exclusive prospecting licence.

5. Claims

(1) A claim that was registered under the repealed Act, and that subsists immediately before the commencement, is deemed to be a claim registered on the same conditions under this Act, and the provisions of this Act apply accordingly.

(2) The period of validity of a claim to which subparagraph (1) applies is the same as it would have been if this Act had not be enacted, but without prejudice to any right of renewal under and in accordance with this Act.

6. Mining leases

(1) A mining lease granted under section 43 of the repealed Act that is in force immediately before the commencement is deemed to be a mining licence granted on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the lease granted under section 43; and

(b) over the area of land subject to the lease so granted in respect of the minerals to which that lease relates,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of a mining lease granted under section 43 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the mining licence.

7. Mineral permits

A permit issued under section 98 of the repealed Act that is in force immediately before the commencement is deemed to be a mineral permit granted on the same conditions under this Act on the commencement, and the provisions of this Act apply accordingly.

8. General provision

For the avoidance of doubt it is hereby declared that any prospecting right, exclusive prospecting licence, mining lease or permit to which this schedule applies, is subject to the provisions of this Act which apply to the corresponding instrument under this Act, including, in particular, the provisions of this Act relating to cancellation.

9. Rules

The Minister may, by rules under this paragraph, make whatever provisions seem to him to be necessary or desirable for a smooth transition from arrangements under the repealed Act to arrangements under this Act.

SUBSIDIARY LEGISLATION

MINES AND MINERALS (CLAIMS) REGULATIONS

under s. 128

G.N. 35/1981

103/1988

1. Citation

These Regulations may be cited as the Mines and Minerals (Claims) Regulations.

2. Limitation on number of claims

A person may peg not more than three claims in respect of each non-exclusive prospecting licence held by him.

3. Shape, etc., of claim area

(1) A claim area shall, as nearly as circumstances permit, be in the shape of a rectangle.

(2) A claim area shall not exceed, in dimension, two hectares.

4. Mode of taking possession of a claim

(1) Any person pegging a claim shall, before lodging an application for registration thereof, erect—

(a) at one corner of the area claimed a beacon, as defined by subregulation (3), which shall be known as the “location beacon” and shall bear the following information, namely—

(i) the length and width of the area claimed in metres; and



(ii) the magnetic bearings of the boundary lines forming the corner at which the location beacon is erected; and

(b) at each of the remaining corners of the area claimed a substantial post or cairn of stones projecting at least one metre above the ground on which shall be clearly and indelibly marked the initials of the person pegging the claim and the date of pegging, and shall cut at each corner of the area claimed two trenches each not less than 3 metres in length and 30 centimetres in depth along the boundary lines forming each corner of the area claimed.

(2) The location beacon and corner posts or cairns and trenches shall be maintained in good order and condition by the holder of the claim during the time that the claim is held.

(3) A location beacon shall consist of a post not less than 2 metres long, and not less than 10 centimetres in diameter or 7 centimetres square, supported in an upright position by a mound of stones not less than one metre high and not less than one metre square at the base. When stones are not available earth may be used. A board or metal plate not less than 30 centimetres square shall be securely attached to the post and placed so as to face inward, and shall bear in painted characters the following information—

(a) the name of the applicant, and the company, syndicate or person represented, if any;

(b) the date of the erection of the beacon;

(c) the number of the non-exclusive prospecting licence of the applicant; and

(d) the magnetic bearing of the sides converging at, or passing through, the beacon.

#### 5. Mode of application

(1) Any person desiring to register a claim shall sign an application in Form I in the First Schedule in triplicate.

(2) The application shall be forwarded or produced to the Commissioner together with—

(a) a fee of K5; G.N. 103/1988

(b) the rent payable; and

(c) a plan in triplicate giving the dimensions in metres of the area of the claim to be registered and as full particulars and measurements as possible to enable the area to be located on the general maps of the district,

within thirty days after the claim is pegged.

(3) The Commissioner shall record on the application the date and time of its receipt by him.

#### 6. Registration

Subject to the provisions of the Act, if the approval of the Minister has been obtained, the Commissioner shall, if satisfied that the application is in order, issue a claim in Form II in the First Schedule and shall register the claim in the manner prescribed in these Regulations.

7. Number of claims to be posted

On receiving notification of the registration of the claim and of the official number thereof, the holder of the claim shall clearly paint and keep painted during the period of the claim that number on the location beacon of the claim.

8. Priority of application

If application is received for the same area or for overlapping areas from two or more persons, priority of claim shall be determined by reference to the time the application was received in proper form by the Commissioner, the area having been duly and correctly beaconed.

9. Application for renewal

(1) Application for the renewal of a claim shall be made by delivering the claim issued in Form II in the First Schedule together with the prescribed rent and a statement of the kind mentioned in regulation 23 (1) to the Commissioner not more than two months, nor less than one month, before the claim is due to expire.

(2) Where an application for the renewal of a claim has been duly made but the holder of the claim has not been notified as to whether his application is allowed before the date on which the claim would, but for this regulation, expire, the holder may continue his prospecting and mining operations unless and until notified that his application has been disallowed.

(3) The renewal of a claim runs from the date on which the claim would have expired if not renewed.

(4) The renewal of a claim shall not operate as a waiver of any breach of, or non-compliance with, any of the conditions or requirements of the Act or the Regulations.

10. Suspension of work

(1) The holder of a claim or a person duly authorized by him may apply to the Commissioner for the suspension or partial suspension of operations, and the Commissioner may allow or refuse to allow the application.

(2) An application shall be in Form III in the First Schedule, in duplicate, and a certificate of suspension shall be in Form V in the First Schedule.

(3) The Commissioner may grant a renewal of a certificate of suspension for such period as is endorsed on the certificate.

(4) The holder of a claim shall keep posted conspicuously within the claim area the certificate of suspension during the period of suspension.

11. Ground in excess

When any person has pegged more ground than he is entitled to, any other person may peg such ground on any side of the claim area, provided that no shaft is interfered with.

12. Taking forcible possession of claim

Any person taking forcible possession of the whole or any part of a claim area or commencing to work the same when his right to take possession thereof or to work the same is in dispute—

- (a) is liable to forfeit all right and title to possession of the claim; and
- (b) is guilty of an offence and liable to a fine not exceeding K100.

13. Obligations on abandonment

(1) Any person who abandons his claim shall forthwith notify the Commissioner of the abandonment.

(2) Any person who abandons his claim or whose claim expires or has been forfeited—

(a) shall forthwith fill up, fence or secure to the satisfaction of the Commissioner or an authorized officer all shafts, pits, holes and excavations in such manner as to prevent persons or stock inadvertently entering them; and

(b) shall remove all location beacons and all boundary posts thereon.

(3) Any person who fails or neglects to comply with subregulation (2) is guilty of an offence and liable to a fine not exceeding K250 or to imprisonment for a term not exceeding six months, and in addition shall be liable to pay such sum as the Commissioner may certify to be the estimated cost of ensuring compliance therewith.

14. Transfer of whole claim

(1) The holder of a claim may, in Form VI in the First Schedule, transfer the same, and the transferee shall, within thirty days of the date of the transfer, apply to the Commissioner for registration of the transfer, submitting Form VI in triplicate and, on payment of the prescribed fees, the Commissioner shall register the transfer in the Register of Claims kept pursuant to regulation 19.

(2) When a claim is transferred, the transferee shall, within thirty days of registration of the transfer, cause his name to be clearly painted on the location beacon of the claim in place of that of the former holder and shall maintain the same during the time that he holds the claim.

15. Transfer of share in claim, etc.

(1) The holder of a claim may divide his interest in the claim into such shares as he shall think fit, and may, subject to this regulation, allot shares or create or transfer any interest therein.

(2) The holder of a claim shall apply for the registration of any such transfer, allocation or interest with the Commissioner by submitting Form VII in the First Schedule to the Commissioner within thirty days of the transfer, allocation or division concerned.

(3) Where any interest in a claim rests in or devolves upon any person by way of testamentary disposition or otherwise (whether absolutely or as security only), that person shall within thirty days thereafter register the interest with the Commissioner.

(4) When a share in a claim is transferred, the transferee shall, within thirty days of registration of the transfer, cause his name to be clearly painted on the location beacon of the claim in addition to those of the other holders of shares and shall maintain the same during the time that he holds any share in that claim.

#### 16. Miscellaneous provisions with respect to transfer of claims

(1) The Commissioner may, for good and sufficient reason, extend the period of thirty days within which an application is required under regulation 14 or 15 to be made, on payment of the appropriate additional fee.

(2) The Commissioner may refuse to register the transfer of a claim, or of any rights or interest thereunder, to any person to whom the issue or renewal of a prospecting right could be refused under the Act or these Regulations.

(3) The transferor shall be liable for compliance with the requirements of the Act and these Regulations, and for the payment of fees, until the transfer is effected, and then such liability shall pass to the transferee.

#### 17. Amalgamation of claims

(1) The Commissioner may permit the amalgamation of adjoining claims of the same class so that the total working obligation on each of the claims so amalgamated may be performed on any one or more claims, and so that the prescribed return may be an aggregate in respect of all such amalgamated claims.

(2) An application to amalgamate claims shall be made in Form III in the First Schedule, in duplicate, to the Commissioner who may on payment of the prescribed fees give to the applicants a certificate of amalgamation in Form IV in that Schedule.

#### 18. Survey

The Commissioner may, if satisfied that a survey is necessary for the prevention of differences as to the boundaries of the land or for securing a proper definition of the area included or to be included in any claim, give notice to the applicant or the holder requiring the land to be surveyed and a plan approved by the Commissioner for Lands to be submitted.

#### 19. Registration

(1) The Commissioner shall keep a Register of Claims and of documents assigning or transferring the same or any right, title or interest thereunder.

(2) The Commissioner shall file in the Register of Claims a copy of every claim.

(3) Any person desiring to register any document assigning, transferring or surrendering any claim or any right or interest under the same, shall send the original document with two copies

thereof and two copies of any plan attached to the document, together with the prescribed fee, to the office of the Commissioner with a request that the same shall be registered.

(4) The Commissioner having first satisfied himself that the copy of the original document and of the plan (if any) is correct and that the requisite approval of the assignment, transfer or surrender has been obtained, and that the document if liable to stamp duty has been duly stamped, shall endorse on the document over his signature the word "Registered" together with the date on which the document was presented for registration and shall return the document so endorsed to the person who shall have presented the same for registration and shall file a copy in the Register of Claims.

(5) The Commissioner shall, upon request and on payment of the prescribed fees, allow searches in a Register of Claims at all reasonable times, and furnish copies of or extracts from any entry in such Register.

20. Notice of grant, etc., of claim

Notice shall be given by the Commissioner in the Gazette of the grant, cancellation or surrender of a claim.

21. Non-resident holder of claim to appoint attorney

Every holder of a claim when not resident in Malawi shall appoint and have at all times when not so resident an attorney who is resident in Malawi and who has full powers to represent the holder in all matters relating to the claim; the holder shall, as soon as possible after making such an appointment, send to the Commissioner for his retention a copy of the power of attorney and of any document by which the power of attorney is altered.

22. Accounts to be kept by the holder of a claim

There shall be kept, at the principal office within Malawi of the holder of a claim, accurate and regular accounts containing full particulars of all minerals obtained under the claim, and the manner in which they have been disposed of, and a record of the number of persons employed in mining operations in the claim area.

23. Returns to be furnished

(1) On or before the 30th September in each year every holder of a claim shall send to the Commissioner a written statement in duplicate setting forth—

- (a) the name of the holder;
- (b) the date and number of the claim;
- (c) any change which may have been made in the appointment of the attorney, and, in the case of a company, in the officers of the company, during the preceding 12 months;
- (d) the nature of the operations being conducted in the claim area;

(e) the average number of persons employed in the area in mining or prospecting during the preceding 12 months;

(f) the amount paid in wages to persons actually engaged in mining or prospecting operations in the claim area or in supervising such operations during the preceding 12 months, and the amount of wages paid;

(g) the nature and value of any machinery or plant brought on to or removed from the claim area since the previous return;

(h) the kind and quantity of minerals obtained during the preceding 12 months and the manner in which they have been disposed of; and

(i) particulars of the occurrence of the death of, or any accident to, any of the persons mentioned in paragraph (f) during the preceding 12 months,

and shall furnish any further particulars relating to the foregoing that the Commissioner may require.

(2) The Commissioner may demand that, as soon as circumstances permit after the date of renewal of a claim, a written statement in duplicate showing the working costs of the mining or prospecting operations in the claim area during the preceding year shall be sent to him by the holder of a claim.

(3) The statements required by this regulation shall be signed and certified to be correct—

(a) in the case of an individual holder resident in Malawi, by the holder; or

(b) in the case of an individual holder not so resident, by the duly appointed attorney of the holder.

#### 24. Titles to be produced when demanded

The holder of a claim shall produce his title whenever demanded by any officer of the Department of Lands or by any District Commissioner.

#### 25. Fees and rent

(1) The fees set out in the Second Schedule shall be paid in respect of the matters and things specified in that Schedule.

(2) The holder of a claim shall pay rent of K30 for every year or part of a year ending on the 31st March. G.N. 103/1988

(3) The rent payable under subregulation (2) is payable in advance to the Commissioner without demand and is in addition to any royalty payable.

### FIRST SCHEDULE

#### FORMS

FORM I

MINES AND MINERALS ACT

APPLICATION FOR REGISTRATION OF A CLAIM

(regulation 5)

To the Commissioner for Mines and Minerals—

Please register the Claim or Transfer mentioned in the following particulars:

Name, nationality and address of applicant      No. and date of non-exclusive prospecting licence  
Kind of Claim to be registered      Date when Claim was pegged      Locality of Claim

I hereby declare the above to be true in every particular.

Dated the ..... day of ....., 19.....

.....

Signature of Applicant

Received the above application this ..... day of  
....., 19..... at .....a.m./p.m.

.....

Commissioner for Mines and Minerals

FORM II

MINES AND MINERALS ACT

CLAIM

(regulations 6 and 9)

No. ....

THE EXCLUSIVE RIGHT, subject to the provisions of the Mines and Minerals Act, and of the Regulations thereunder now in force or which may come into force during the continuance of this claim or any renewal thereof, from the ..... day of ....., 19..... to the 31st day of March, 19....., IS HEREBY GRANTED to .....

(here insert name, address and description of claim-holder)

of ..... to prospect and mine for ..... within the area described on the application for registration of this claim and on the plan attached thereto.

Rent: K10 No. .... of .....

This ..... day of ....., 19.....

.....

Commissioner for Mines and Minerals

FORM III

MINES AND MINERALS ACT

APPLICATION FOR (1) AMALGAMATION

SUSPENSION OF WORK

(regulations 10 and 17)

To the Commissioner for Mines and Minerals—

We, the undersigned, being the owners of (2) ..... claims adjoining Nos. (3) ..... and situate at ..... in the ..... District hereby

apply for permission to (1) amalgamate the said .....

suspend work on

Dated the ..... day of ....., 19.....

Registered Nos. (3) Titles (3) Reasons for which (1) is desired Amalgamation  
Suspension of work

.....



Signature of Applicants

- (1) Strike out whichever is inapplicable.
- (2) State how many adjoining claims.
- (3) State serial title numbers in register.

FORM IV

MINES AND MINERALS ACT

CERTIFICATE OF AMALGAMATION OF CLAIMS

(regulation 17)

No. ....

I CERTIFY THAT I have this day amalgamated the .....  
 ..... Claims Nos. .... respectively, held by  
 ..... and situate at  
 .....

Dated the ..... day of ....., 19.....

.....

Commissioner

for Mines and Minerals

FORM V

MINES AND MINERALS ACT

CERTIFICATE OF SUSPENSION

(regulation 10)

No. ....

I CERTIFY THAT suspension of work on the Claim No.  
 ..... at ..... held by  
 ..... is allowed until the ..... day of  
 ....., 19.....

CONDITIONS

(here set out the conditions, if any)

Dated the ..... day of ....., 19.....

.....

Commissioner

for Mines and Minerals

FORM VI

MINES AND MINERALS ACT

TRANSFER OF CLAIM

(regulation 14)

I, ....., of ..... in consideration of ..... do hereby transfer to him my claim No. .... subject to all and singular the terms and conditions under which the said claim has been held by me and I, ..... of ....., do hereby accept the said ..... subject to the terms and conditions aforesaid.

Dated the ..... day of ....., 19.....

....., Transferor

....., Transferee

Witness .....

Address .....

.....

FORM VII

MINES AND MINERALS ACT

TRANSFER OF SHARE IN CLAIM

(regulation 15)

I, ..... of ..... in consideration of ..... paid to me by ..... of ..... do hereby transfer to him a ..... share in Claim No. .... situate at ..... (locality of claim) subject to all and singular the terms and conditions under which the said claim or share therein has been held by me, and I, ..... of ..... do hereby accept the said ..... share subject to the terms and conditions aforesaid.

Dated at ..... this ..... day of ....., 19.....

....., Transferor

....., Transferee

Witness .....

Address .....

.....

## SECOND SCHEDULE

### FEES

(regulation 25)

#### K

For the registration of any document in the office of the Commissioner for Mines and Minerals 2

Certificate of amalgamation of claims 5

Certificate of suspension of working conditions of claim 5

For search in register, for every half-hour or part thereof 5

For copy of or extract from any registered document, for every folio (A4 size) 2

## MINES AND MINERALS (DISPUTES) REGULATIONS

under s. 128

G.N. 36/1981

### 1. Citation

These Regulations may be cited as the Mines and Minerals (Disputes) Regulations.

### 2. Procedure

The mode of proceeding in a dispute under Part XI of the Act shall be as follows—

(a) the person complaining shall lodge a memorandum in duplicate at the office of the Commissioner;

(b) the memorandum shall be in or to the effect of a form approved by the Commissioner and shall specify shortly the subject-matter of the complaint and the relief claimed;

(c) upon receipt of the memorandum the Commissioner shall give notice, in such form as the Commissioner approves, by post or otherwise to the person complained against, of the nature of the complaint, and of the time and place at which the same will be heard and determined; and

(d) at the time and place appointed the parties shall attend and state their cases before the Commissioner and may call evidence on oath in support thereof, and the Commissioner having heard the statement and any such evidence shall give his decision.

3. Power of Commissioner

(1) the Commissioner may—

- (a) adjourn any hearing to any other time or place;
- (b) proceed in the absence of any party; or
- (c) seize or cause to be seized any mineral and detain it pending his decision.

(2) The law concerning procedure for the time being regulating proceedings before and the powers of subordinate courts of the first grade in the exercise of their civil jurisdiction shall, so far as practicable and subject to any necessary modifications, apply to proceedings before the Commissioner.

4. Commissioner to keep record and take notes

(1) The Commissioner shall keep a record of all cases heard and complaints decided by him and shall take or cause to be taken notes in writing of all evidence given before him.

(2) Any person interested in any dispute is entitled to obtain a copy of any decision given or order made in respect of the dispute on payment of the prescribed fee.

5. Fees

The fees set out in the Schedule shall be paid in respect of the matters and things specified in the Schedule.

SCHEDULE reg. 5

Fees

K

On making a complaint by lodging a memorandum	20
For every notice to be given pursuant to regulation 2 (c)	5
For every order of the Commissioner	5
For every witness summons	5
Hearing fee	10
For a copy of an order of the Commissioner	5
For a copy of a decision of the Commissioner, for every folio (A4 size)	2

## MINES AND MINERALS (MINERAL RIGHTS) REGULATIONS

under s. 128

G.N. 32/1981

101/1988

4/2001

### 1. Citation

These Regulations may be cited as the Mines and Minerals (Mineral Rights) Regulations.

### 2. Shape of area of land over which a Mineral Right is granted or renewed

(1) Subject to subregulation (2), the area of land over which a Mineral Right is granted or renewed shall be rectilinear in outline, and in the case of a reconnaissance or an exclusive prospecting licence the corners shall be formed either at trigonometrical stations, international boundary pillars or bench marks, or if necessary at other fixed points which are marked on the 1:50 000 maps of the National Topographical Series.

(2) Where the Minister is satisfied in any particular case (whether the grant or renewal of a Mineral Right) that it is not desirable or possible to comply with any one or more of the requirements of subregulation (1) the area of land concerned shall be as determined by the Minister in that particular case.

### 3. Dimensions of Mineral Right

(1) Subject to subregulation (4), the area of land over which a reconnaissance licence is granted or renewed shall not exceed 100,000 square kilometres.

(2) Subject to subregulation (4), the area of land over which an exclusive prospecting licence is granted shall not exceed 2,500 square kilometres.

(3) Subject to subregulation (4), the area of land over which a mining licence is granted—

(a) shall not, where the applicant for the licence is not the holder of an exclusive prospecting licence, exceed 250 square kilometres; and

(b) shall not, in any other case, exceed the area of land subject to the exclusive prospecting licence held by the applicant.

(4) Where the Minister is satisfied in any particular case that it is desirable that the area of land over which a reconnaissance licence is granted or renewed, or over which an exclusive prospecting licence or a mining licence is granted, should exceed the area referred to in subregulation (1), (2) or (3) (a), as the case may be, the area of land concerned shall be of such dimension as is determined by the Minister in that particular case.

4. Demarcation of mining area

(1) The manner in which the holder of a mining licence shall, for the purpose of complying with section 44 (1) (e) of the Act, demarcate and keep demarcated the area of land subject to the licence shall be as provided in this regulation.

(2) A mining area shall be demarcated by the erection of beacons so placed as to afford evidence of the boundaries of the mining area, or in such other manner as may be agreed between the Commissioner and the holder of the mining licence concerned.

5. Service of documents on Minister, etc.

A document or notice required or permitted under or for the purposes of the Act to be served on or given to the Minister or the Commissioner may be served or given—

(a) by sending it by post in an envelope addressed to the Secretary for Forestry and Natural Resources, Private Bag 350, Capital City, Lilongwe 3; or

(b) by leaving it with the Secretary for Forestry and Natural Resources or his sufficient deputy, or the Commissioner, at the Ministry of Forestry and Natural Resources, Capital City, Lilongwe 3.

6. Application for approval of transfer, etc.

A person seeking the approval of the Minister under section 60 (2) of the Act shall deliver, or cause to be delivered, to the Commissioner—

(a) an application for approval giving particulars of the proposed transfer and including a certified copy of the instrument by which the transfer is to be effected, or

(b) as the case may be, an application for approval giving particulars of the legal or equitable interest concerned and including a certified copy of such instrument.

7. Fees

The fees set out in the Schedule shall be paid in respect of the matters and things specified in the Schedule.

8. Annual charges

(1) Subject to subregulation (2), annual charges payable pursuant to section 90 of the Act are—

4/2001(a) in the case of a reconnaissance licence, K10 per square kilometre; G.N. 101/1988

(b) in the case of an exclusive prospecting licence, K100 per square kilometre; and

(c) in the case of a mining licence, K10,000 per square kilometre.

(2) Where the annual charges payable in respect of a Mineral Right are specified, or the manner of their calculation is specified, in a relevant agreement of a kind referred to in section 10 of the Act the annual charges payable in respect of the Mineral Right shall be, or shall be calculated, as so specified.

SCHEDULE reg. 7

Fees G.N. 101/1988, 4/2001

Application for—	K
(a) a reconnaissance licence	10,000 00
(b) an exclusive prospecting licence	5,000 00
(c) a mining licence	10,000 00
(d) renewal of a Mineral Right	2,000 00
(e) a certificate of surrender	1,000 00
(f) approval of the Minister (under section 60 of the Act)	1,000 00

#### MINES AND MINERALS (MISCELLANEOUS FEES) REGULATIONS

under s. 128

G.N. 40/1981

10/1988

5/2001

#### 1. Citation

These Regulations may be cited as the Mines and Minerals (Miscellaneous Fees) Regulations.

#### 2. Fees

The fees specified in the Schedule hereunder are payable in respect of the matters referred to therein.

#### SCHEDULE

Matter Fee

K t

(a)	For the grant of a permit to export minerals under section 119 of the Act	250	00
(b)	For the issue of a mineral permit under section 81 of the Act—		
(i)	for excavation of clay or earth and burning of bricks, per 1,000 bricks	200	00
(ii)	for excavation of raw limestone, per tonne	300	00
(iii)	in respect of lime excavated and burnt, per tonne	300	00
(iv)	for excavation of sand or other like substance, per tonne	100	00
(v)	for excavation of building stone, per tonne	100	00
(c)	For a reserved mineral licence— G.N. 95/1985 10/1988 5/2001		
(i)	upon issue	3,000	00
(ii)	upon each renewal	3,000	00
(iii)	upon issue of an export permit under the Mines and Minerals (Reserved Minerals Licence) Regulations sub. leg. p. 87	250	00

#### MINES AND MINERALS (NON-EXCLUSIVE PROSPECTING LICENCE) REGULATIONS

under s. 128

G.N. 33/1981

102/1988

6/2001

#### 1. Citation

These Regulations may be cited as the Mines and Minerals (Non-Exclusive Prospecting Licence) Regulations.

#### 2. Application for licence

Any person wishing to obtain a non-exclusive prospecting licence shall make application therefor in duplicate to the Commissioner; the application shall be in or to the effect of a form approved by the Commissioner.

#### 3. Application for renewal of licence

(1) Any person wishing to renew a non-exclusive prospecting licence shall make application in writing in that behalf to the Commissioner not more than two months nor less than one month before the expiry of the licence which is to be renewed.



(2) An applicant for the renewal of a non-exclusive prospecting licence shall submit to the Commissioner—

(a) his licence; and

(b) in such detail as the Commissioner may require, a report on the prospecting operations carried out by the applicant together with a description of the prospecting operations which the applicant intends to carry out during the renewal period.

4. Filing of application

Every application for the grant or renewal of a non-exclusive prospecting licence shall be filed in the office of the Commissioner for a period of three years from the date of the application and shall be open for inspection by the public on payment of a fee of K250.

5. Information

An applicant for the grant or renewal of a non-exclusive prospecting licence may be required to give information as to whether he has been convicted of a criminal offence and, if he has been so convicted, to give particulars of every such conviction.

6. Restriction

A non-exclusive prospecting licence shall not be issued to an individual, whether alone or in partnership, who is under 18 years of age.

7. Duties of holder of licence

(1) The holder of a non-exclusive prospecting licence—

(a) shall, himself or by his agent, be present and in control at the place at which prospecting work is being carried out under the authority of the licence; and

(b) shall produce to the Commissioner, an authorized officer or a police officer, when required to do so, his licence.

(2) Any person who fails or neglects to comply with subregulation (1) is guilty of an offence and liable on conviction to a fine of K5,000.

8. Licence not transferable

A non-exclusive prospecting licence may not be transferred.

9. Form of licence

A non-exclusive prospecting licence shall be in a form approved by the Commissioner.

10. Fees

The fees to be paid in respect of a non-exclusive prospecting licence are, in respect of each District or part of a District included in the licence— G.N. 102/1988

- (a) on issue, K200; and
- (b) on each renewal, K100.

#### MINERAL PERMITS (PRESCRIBED MINERALS) REGULATIONS

under s. 128

G.N. 14/1982

1. Citation

These Regulations may be cited as the Mineral Permits (Prescribed Minerals) Regulations.

2. Prescribed minerals

For the purposes of section 82 of the Act the prescribed minerals are those listed in the Schedule hereto.

#### SCHEDULE

Basalt Laterite

Clay Salt

Granite Sand

Gravel Sandstone

Gypsum

#### MINES AND MINERALS (PRESCRIBED OPERATIONS) REGULATIONS

under s. 128

G.N. 39/1981

1. Citation

These Regulations may be cited as the Mines and Minerals (Prescribed Operations) Regulations.

2. Prescribed operations

The operations which may be carried on under section 116 (4) of the Act are—

(a) entering at all reasonable times upon any land with such persons, vehicles, appliances, instruments and materials as are necessary for the purpose of collecting information on the geology and mineral resources of Malawi;

- (b) breaking up for that purpose the surface of any land;
- (c) taking and carrying away for that purpose samples and specimens of soils, rocks or minerals;
- (d) fixing any post, stone, mark or object to be used in the survey of any land for that purpose;
- (e) digging up any ground in order to fix any post, stone, mark or object referred to in paragraph (d); or
- (f) entering into or upon and passing over any land through which it may be necessary to pass for that purpose, but—
- (g) no act of a kind referred to in paragraph (d) shall be effected within any walled or fenced garden or orchard without the consent of the owner or lawful occupier thereof; and
- (h) before abandoning any land in respect of which any such right has been exercised all excavations made shall be backfilled or otherwise made safe.

### 3. Manner of carrying on operations

Any person carrying on operations under section 116 (4) of the Act shall cause as little damage and inconvenience as possible in doing so, and the owner and lawful occupier of any land on which any such operations are carried on is entitled to recover from the Republic compensation for any damage sustained by him which is directly attributable to those operations having been carried on.

## MINES AND MINERALS (PUBLIC PURPOSES) (PRESCRIPTION) REGULATIONS

under s. 128

G.N. 38/1981

### 1. Citation

These Regulations may be cited as the Mines and Minerals (Public Purposes) (Prescription) Regulations.

### 2. Public purpose

For the purposes of section 103 of the Act, a purpose is a public purpose when it is necessary or expedient in the interests of defence, public safety, public order, public health, town and country planning, or the development or utilization of any property for the public benefit.

## MINES AND MINERALS (RESERVED MINERALS) REGULATIONS

under s. 128

G.N. 119/1988

### 1. Citation

These Regulations may be cited as the Mines and Minerals (Reserved Minerals) Regulations.

2. Reserved Minerals

In addition to precious metals and precious stones defined in section 98 of the Act, the minerals specified in the Schedule hereto are reserved minerals.

SCHEDULE reg. 2

RESERVED MINERALS

(Additional to those defined in section 98)

Acquamarines

Amethysts

Topaz

Smoky quartz

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

under s. 128

G.N. 99/1985

1. Citation

These Regulations may be cited as the Mines and Minerals (Reserved Minerals Licence) Regulations.

2. Application for licence

An application for a reserved minerals licence shall be made to the Commissioner and shall be in the form set out in Part I of the First Schedule. First Schedule, Part I

3. Form of licence

A reserved minerals licence shall be in the form set out in Part II of the First Schedule. First Schedule, Part II

4. Records

(1) A licensee shall, in respect of every reserved mineral under his licence, keep records of the particulars specified in subregulation (2) and such other records or particulars as the Commissioner may, in any particular case, specify.

(2) Where the licensee—

(a) is the purchaser of a reserved mineral, he shall keep a record of—

(i) the name and address of the seller;

- (ii) the serial number, description and location of vendor's mineral right, claim or non-exclusive prospecting licence;
  - (iii) the mass and description of the reserved mineral;
  - (iv) the amount paid, and date of payment, to the seller; and
  - (v) the date of delivery of the reserved mineral to him;
- (b) is the seller of the reserved mineral, he shall keep a record of—
- (i) the name and address of the purchaser;
  - (ii) the mass and description of the reserved mineral;
  - (iii) the amount paid, and the date of payment, to him; and
  - (iv) the date of delivery of the reserved mineral to the purchaser;
- (c) exports a reserved mineral, he shall keep a record of—
- (i) the serial number of the parcel;
  - (ii) the date of certification by the Department of Geological Survey under regulation 8 (2);
  - (iii) the number and date of export permit; and
  - (iv) the estimated value in the Malawi Kwacha.

(3) Every licensee shall, within fourteen days after the end of the month in which he purchased, sold or exported a reserved mineral, submit to the Commissioner a copy of the record kept in respect of that reserved mineral pursuant to this regulation.

(4) The Commissioner or any public officer acting in the course of his official duties in connexion with a reserved minerals licence may, at any reasonable time, enter upon the premises of the licensee for the purpose of inspecting any records kept pursuant to this regulation.

#### 5. Duration and termination of licence

(1) Subject to subregulation (2), a reserved minerals licence shall remain in force for a period of one year from the date of issue and may be renewed from time to time.

(2) If the Commissioner is satisfied that the licensee—

- (a) has failed to pay the prescribed licence fee;
- (b) has failed to comply with—
  - (i) any requirement of the Act or these Regulations;
  - (ii) any condition of the licence; or

(iii) any directions given to him by the Commissioner in accordance with the requirements of the Act or of these Regulations,

the Commissioner may, by giving the licensee thirty days written notice, terminate the licence.

#### 6. Consequence of termination of licence

(1) The licensee under a reserved minerals licence which has been terminated pursuant to regulation 5 (2) shall—

(a) surrender to the Commissioner any reserved mineral bought or held under that licence and still in his possession;

(b) if any reserved mineral bought or held by him under that licence is no longer in his possession, give full account of the manner in which he disposed of it.

(2) The Commissioner shall hold, dispose of or otherwise deal with any reserved mineral surrendered to him pursuant to paragraph (a) of subregulation (1) in accordance with such directions as the Minister may give.

#### 7. Licensee's right of appeal

(1) A licensee who is aggrieved by the decision of the Commissioner to terminate the licence may, within fourteen days after receipt by him of the written notice of termination or within such longer period as the Minister may allow, appeal in writing to the Minister against such decision, stating the subject matter and grounds of the appeal.

(2) Upon receipt of the appeal pursuant to subregulation (1), the Minister shall consider the appeal and may allow or dismiss it or make such other ruling thereon as he considers appropriate and his decision thereon shall be final and shall not be subject to review by any court.

(3) For the purpose of considering an appeal under this regulation, the Minister may call upon the licensee, the Commissioner or any other person to adduce such further or other evidence on the matter as he considers necessary to enable him determine the appeal.

#### 8. Exportation of reserved minerals

(1) No person shall export a reserved mineral, unless—

(a) he is a holder of a valid export permit issued under subregulation (3); and

(b) the reserved mineral is packed in a sealed parcel addressed to a named consignee and marked with a stamp of the Department of Geological Survey approved by the Minister, certifying the mass and description of the reserved mineral.

(2) A person intending to apply for an export permit to export a reserved mineral shall, before making the application, send the reserved mineral to the Department of Geological Survey, P.O. Box 27, Zomba, or to such other address of that Department as the Chief Geologist may specify in respect of any district or number of districts. Upon receipt of the reserved mineral, the Department of Geological Survey shall certify its mass and description and shall pack it in a sealed

parcel and clearly mark on the parcel the name and address of the consignee of the reserved mineral and its mass and description so certified; but so, however, that where a parcel contains several reserved minerals the mass and description of each shall be marked on the parcel.

(3) On application made in the form set out in Part I of the Second Schedule by a holder of a reserved mineral licence, the Commissioner may issue to that licensee an export permit in the form set out in Part II of that Schedule. Second Schedule, Parts I and II

(4) An export permit issued under subregulation (3) shall—

- (a) authorize the person to whom it is issued to export the reserved mineral or minerals described, and to the consignee named, therein;
- (b) be valid for the period specified therein;
- (c) not be transferrable;
- (d) be issued upon payment of the prescribed fee;
- (e) be subject to such conditions as the Commissioner may specify therein.

(5) No Claim shall lie against the Government, the Minister, the Commissioner or an officer of the Department of Geological Survey for loss of, or any damage to, a reserved mineral caused in the handling of that reserved mineral by that Department pursuant to subregulation (2).

FIRST SCHEDULE (regs. 2 and 3)

Part I—Form of application for a reserved minerals licence

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

(regulation 2)

NOTE: This application must be made in duplicate and submitted to the Commissioner of Mines and Minerals, Private Bag 350, Capital City, Lilongwe 3.

I/We (name in full) ..... of (address)  
.....

.....

hereby apply for a reserved minerals licence under which I/We intend to buy, hold and sell the following reserved mineral/minerals—

1. ....
2. ....

3. ....

4. ....

Date: .....

Signed: .....

Name: .....

(in block letters)

Official designation:.....

(if any)

Part II—Form of a reserved minerals licence

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

(regulation 3)

LICENCE No. ....

..... (name of licensee, in full) of  
(Address)..... is hereby licensed to buy,  
hold and sell the following reserved minerals—

(1) .....

(2) .....

(3) .....

(4) .....

This licence, unless renewed, is valid until the .....  
..... day of ....., 19..... and is subject to the  
general condition that the licensee shall comply with the requirements of the Act and of the  
Regulations and is further subject to the special conditions specified below.

Date: of issue: .....

Signed: .....

Commissioner of Mines and Minerals

(Official Stamp)

FEE PAID: K.....

SPECIAL CONDITIONS



- (1) .....
- (2) .....
- (3) .....
- (4) .....

RENEWALS

Renewed for a further period of up to—

Official Stamp of the renewing Officer

- 1. ...., 19.....
- 2. ...., 19.....
- 3. ...., 19.....

SECOND SCHEDULE (reg. 8)

Part I—Form of an application for a permit to export a reserved mineral

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

APPLICATION FOR AN EXPORT PERMIT

(regulation 8)

NOTE: This application must be made in duplicate and submitted to the Commissioner of Mines and Minerals, Private Bag 350, Capital City, Lilongwe 3.

I/We (name in full) ..... of (address) .....  
 ....., being the holder of a valid reserved minerals licence number ....., hereby apply for an export permit under which I/we intend to export—

(a) the following reserved mineral/minerals—

Description	Mass
1. ....	.....

2. ....

3. ....

4. ....

(b) to the following consignee—

Full name      Address

.....

.....

.....

.....

(c) at an estimated value of ..... Kwacha; and

(d) in a parcel sealed by the Department of Geological Survey under serial number

.....

Date: .....

Signed: .....

Name: .....

(in block letters)

Official designation: .....

(if any)

Part II—Form of Export Permit

MINES AND MINERALS ACT

(CAP. 61:01)

MINES AND MINERALS (RESERVED MINERALS LICENCE) REGULATIONS

(regulation 8)

EXPORT PERMIT No.....

..... (name of permit holder) of  
(address) ..... is hereby authorized to export  
the following reserved mineral/minerals—

Description	Mass
1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....

to the following consignee—

Full Name	Address
.....	.....
.....	.....

under a parcel sealed by the Department of Geological Survey under Serial No. ....

This export permit is valid for a period of ..... months from the date of issue and is subject to the general condition that the holder shall comply with the requirements of the Act and of the Regulations and is further subject to the special conditions, if any, specified below.

Date: of issue: ..... Signed: .....

Commissioner of Mines and Minerals

FEE PAID: K.....

(Official Stamp)

**SPECIAL CONDITIONS**

1. ....
2. ....
3. ....
4. ....

**MINES AND MINERALS (ROYALTY) REGULATIONS**

under s. 128

G.N. 34/1981

1. Citation

These Regulations may be cited as the Mines and Minerals (Royalty) Regulations.

2. Application of Mining Regulations

The Mining Regulations revoked by section 130 (2) of the Act shall continue to apply with respect of royalty payable on minerals obtained before the commencement; but without prejudice to the exercise of any power, or the recovery of any such royalty, under Part VI of the Act. Cap. 61:01, sub. leg. p. 36a

3. Demand and methods of calculation, etc.

(1) Royalty is payable on the demand of the Commissioner.

(2) When it is desired to export minerals, the Commissioner may make an estimate of the amount of the royalty to be paid, which amount shall be paid, or security given for its payment, before export.

(3) Within six months of the export, or such extended time as the Commissioner may allow, a sales account in respect of the minerals exported shall be produced to the Commissioner and any adjustment made which may be necessary to effect payment of the royalty actually payable.

4. Returns

The holder of a claim or a mining licence shall furnish to the Commissioner returns in such form, at such intervals, and containing such information with respect to the determination of royalty, as the Commissioner may approve, specify or require.

5. Schedule

Subject to section 86 (2) (a) of the Act and regulation 2, the holder of a claim or of a non-exclusive prospecting licence or of a Mineral Right shall pay royalty in respect of minerals obtained by him by virtue thereof in accordance with the Schedule.

SCHEDULE (reg. 5)

ROYALTY

1. Interpretation

(1) In this Schedule—

“disposal of ” in relation to a mineral, means the sale, barter, export, deposit as a pledge or security, donation as a gift, or other disposition, with or without consideration, of the mineral, and includes the loss of the mineral by theft or otherwise after the mineral has been obtained;

“gross value”, in relation to a mineral, means—

(a) the actual gross sum realized by the sale thereof, less such deduction as the Commissioner may allow in respect of expenditure on the transportation of the mineral prior to sale or other disposal where it is shown to the satisfaction of the Commissioner that the expenditure was borne or would have been borne by the person for assessed royalty in respect of the mineral; or

(b) where subparagraph (2) applies, the sum determined by the Commissioner pursuant to that subparagraph;

“precious metals” has the meaning assigned thereto by section 98 of the Act;

“semi-precious stones” means agates and such other stones as may be prescribed as being semi-precious stones for the purposes of the Act.

(2) Where—

(a) any mineral is not sold or is disposed of otherwise than by way of sale; or

(b) in the opinion of the Commissioner any mineral is disposed of for a consideration less than its true value,

the Commissioner may determine the sum for which, in his opinion, the mineral could be, or could have been, disposed of and that sum is the gross value of the mineral.

## 2. Rates of royalty

Royalty is payable in respect of—

(a) building and industrial minerals at the rate of—

(i) seven per cent of the gross value of the minerals where the minerals are exported in an unmanufactured state; or

(ii) five per cent of the gross value of the minerals in any other case;

(b) precious stones at the rate of—

(i) ten per cent of the gross value of the minerals where the precious stones are exported as rough uncut stones; or

(ii) five per cent of the gross value of the minerals in any other case;

(c) semi-precious stones at the rate of—

(i) ten per cent of the gross value of the minerals where the semi-precious stones are exported as rough uncut stones; or

(ii) five per cent of the gross value of the minerals in any other case;

(d) radioactive minerals at the rate of five per cent of the gross value of the mineral;

(e) precious metals at the rate of five per cent of the gross value of the minerals; or

(f) any other minerals at the rate of—

(i) five per cent of the gross value of the minerals where the minerals are exported in an unmanufactured state; or

(ii) five per cent of the gross value of the minerals in any other case.

## MINING (SAFETY) REGULATIONS

### ARRANGEMENT OF REGULATIONS

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## MINING (SAFETY) REGULATIONS

under s. 128

G.N. 99/1982

### PART I

#### PRELIMINARY

1. Citation and application

These Regulations may be cited as the Mining (Safety) Regulations, and shall apply to all mining and prospecting operations including quarrying and opencast working.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“bank” means the top, and the area immediately surrounding the top, of a shaft or winze;

“conveyance” means a truck, cage, skip, bucket or kibble;

“haulage way” means any inclined rail-track, not being an inclined shaft, on which conveyances are raised or lowered while attached to a rope which is attached to or surrounds a drum;

“inspector” means an officer appointed under section 5 of the Act;

“kep” means a device in a shaft or at bank on which conveyances used in a shaft rest;

“manager” means the person responsible for the management of operations;

“operations” means mining and prospecting operations including quarrying and opencast working;

“tramming” means the movement on rails of conveyances for which the motive power is secured only to the conveyance.

(2) For the purposes of the definition “haulage way”, “inclined shaft” means an inclined rail-track, whether underground or partly underground, rising overall more than .25 metre vertically in .30 metre horizontally on which conveyances are raised or lowered while attached to a rope which is attached to or surrounds a drum.

### 3. Regulations to be kept available for reference

(1) A copy of these Regulations shall be kept available for easy reference on all land where operations are being carried out.

(2) An abstract of these Regulations shall be kept posted in such a place that all persons employed in operations shall have access to and the opportunity to read them.

### 4. Power of manager to give written directions

(1) A manager may give written directions for the conduct and guidance of persons employed in operations.

(2) Such directions shall not come into force until approved in writing by the Commissioner.

(3) Such directions shall remain in force until cancelled by the Commissioner or by the manager with the written consent of the Commissioner.

(4) A copy of such directions shall be kept posted in such a place that all employees shall have access to and the opportunity to read them.

(5) Any person employed in operations who contravenes any such directions applicable to him is guilty of an offence.

### 5. Notice to be given on starting and stopping work

Notice of the proposed starting, re-starting or cessation of operations shall be sent to the Commissioner by the manager concerned in the form set out in the Schedule.

## PART II

## HEALTH, SAFETY AND ACCIDENTS

### 6. Duty of manager to take measures to prevent danger

It is the duty of the manager to ensure that all necessary measures are taken for the prevention of danger to life or property whether or not the measures are specified in these Regulations.

### 7. Duty of all persons in authority to prevent danger

A manager or foreman or person in any similar supervisory capacity shall not, by his instruction, default or negligence, cause or permit to exist any state of affairs which is reasonably calculated to endanger the safety of persons or property.

### 8. Negligence of employees

No person employed in operations—

(a) shall fail to take all necessary and proper precautions to ensure the safety of persons and property;

(b) shall act in such an unskilful or unworkmanlike manner as to be likely to endanger persons or property;

(c) shall, without authority, remove, alter or render unserviceable any structure, apparatus or machine, which is intended to provide for health or safety.

### 9. Action on observing danger

Any person employed in operations who observes anything which he considers might be dangerous to life or property shall—

(a) take immediate measures to prevent the entry of persons into the danger area;

(b) take all measures necessary to obviate the danger if it is safe to do so and if it is his normal duty to do so; and

(c) inform a person in authority over him of the danger, if he has not taken all measures necessary to obviate it.

### 10. Measures against falling

(1) No material or object shall be placed or permitted to remain in any place from which it might fall, or in any place in which it might be accidentally pushed and thereby caused to fall, constituting a danger to persons or property.

(2) Where persons may be expected to stand, walk or work near the edge of any excavation or structure, there shall be maintained fencing, barricades, walls, or similar structures, adequate to prevent persons from falling over such edge.

(3) Every person working in a place from which he might slip or fall a vertical distance of more than 2 metres shall be provided with and shall wear a safety belt in good condition and constructed from sound and suitable material; and such safety belt shall be securely attached to a rope, of adequate strength, which shall be either fastened to a strong anchorage or firmly held and controlled by a person other than the wearer of the safety belt.

11. Fencing of unused excavations

Fencing, barricades, walls and similar structures shall be provided and maintained to prevent entry into every unused excavation.

12. Overhead cover

Overhead cover of adequate strength shall be provided and maintained for the protection of persons who otherwise might be exposed to danger from falling objects.

13. Safety helmets

Every person underground and every person employed in operations who may be exposed to danger from falling objects shall be provided with and shall wear a safety helmet of a pattern that has been approved by an inspector.

14. Safety footwear

Every person underground and every person employed in operations who moves rock manually shall be provided with and shall wear safety footwear of a pattern that has been approved by an inspector.

15. Leg-guards and goggles

Every person employed in operations who breaks rock by hammering shall be provided with and shall wear leg-guards and goggles, each being of a pattern that has been approved by an inspector.

16. General dust precautions

Where, in connexion with any process, there is produced dust of a kind and quantity as to be likely to be injurious to persons, the manager shall ensure—

(a) that the entry of the dust into the air, and its accumulation in any place where it might be harmful, is minimized by means of adequate measures taken as near as possible to the point of origin of the dust; and

(b) that any of the dust which enters the air is trapped, removed, or so dispersed as to render it harmless.

17. Dust from rock drills

Every percussion rock drill used in underground workings—

(a) shall be supplied with water at a pressure of not less than 2.20 kilograms per square centimetre and in such quantity and manner that all dust made by drilling is wetted; and

(b) shall be fitted with front-head air release ports.

18. Safeguards against radio-activity

The Commissioner, for the purpose of safeguarding (to such extent as he thinks necessary) the health of persons who might be exposed to radio-activity, may issue written instructions, and such instructions shall be obeyed.

19. First aid equipment

(1) Wherever persons are employed in operations there shall be provided and maintained, in a readily accessible place, a first aid box or cupboard equipped to the standard prescribed in regulations 2 to 4 inclusive of, and the Schedule to, the Factories (First Aid) Regulations. Cap. 55:07 sub. leg. p. 63

(2) Nothing except appliances or requisites for first aid shall be kept in a first aid box or cupboard.

(3) There shall also be provided and maintained such additional equipment as an inspector may in writing direct; for the purposes of this subregulation "equipment" includes ambulances, and sling-stretchers suitable for raising persons from excavations.

(4) Every first aid box or cupboard, and all additional equipment provided in pursuance of subregulation (3), shall be placed under the charge of responsible persons of whom at least one shall be readily available during every working hour.

20. Reporting accidents

(1) If any accident occurs during operations which results in—

(a) loss of life, or grievous harm as defined in section 4 of the Penal Code, to any person; or Cap. 7:01

(b) serious damage to the property of any person or of the Government,

the manager shall without delay report the accident by telephone or telegram to the Commissioner or to an inspector and shall also send, to the same official, full details of the accident in writing as soon as reasonably practicable.

(2) After an accident such as described in subregulation (1) (a) has occurred, the scene of the accident shall be left undisturbed until the Commissioner or an inspector has completed an investigation of the accident; but nothing in this subregulation shall be construed so as to require any delay in the carrying out of rescue work, or work necessary for the safety of persons or property, or in the resumption of operations after 72 hours have elapsed since the time of the accident.

(3) Nothing in this regulation shall relieve any person of any duty to report the accident, or to take any other action, which he may have under any other written law.

### PART III

#### SURFACE AND UNDERGROUND OPERATIONS IN GENERAL

##### 21. Attendant required for excavating machines

Every dragline, face shovel, front-end loader, grab, or similar appliance loading into a vehicle, shall have an attendant who shall control the movements of such appliance and vehicle and shall prevent persons from entering an area where they might be exposed to danger from such movements.

##### 22. No person to remain during loading of vehicle if thereby endangered

No person shall remain in a vehicle while it is being loaded by an appliance mentioned in regulation 21 if he is endangered by so remaining.

##### 23. Operation of vehicles

A vehicle transporting persons, goods or materials—

(a) shall be in good repair and efficient working order;

(b) shall be driven in a skilful, careful and workmanlike manner; and

(c) shall not be loaded in such a manner or to such an extent as to interfere with its safe operation or its capability of being safely driven.

##### 24. Safeguards to prevent vehicles from overrunning

Where a vehicle is used for tipping material into any bin, pit or excavation or over the edge of any embankment or earthwork, there shall be provided adequate physical means of preventing the vehicle from overrunning the edge of such bin, pit, excavation, embankment or earthwork.

##### 25. Safeguards for poisonous or injurious water

Water containing poisonous or injurious substances shall be retained in an area or receptacle which shall be fenced or closed in such a manner that neither persons nor animals can have easy access to it, and adequate notices shall be displayed warning against the use of such water.

##### 26. Structures controlling water to be adequate

All artificial watercourses, drains, dams and spillways shall be of a size and strength that is adequate for their purpose.

### PART IV

#### SURFACE OPERATIONS

##### 27. Undercutting by hand forbidden

No face cut by hand in an opencast working or quarry shall be undercut.

28. Faces to be examined

The manager of an opencast working or quarry shall ensure that all faces are frequently and adequately thoroughly examined for cracks and subsidences by a person competent to assess the likelihood of a fall or slip and the danger likely to arise from any such fall or slip.

29. Inspector may give orders for safety of faces

(1) An inspector may give such orders concerning the faces of opencast workings or quarries as he considers to be necessary for the safety of persons or property, and such orders shall be obeyed.

(2) Without prejudice to the generality of subregulation (1) such orders may relate to—

- (a) the steepness of slopes;
- (b) the construction of benches;
- (c) the horizontal width of benches;
- (d) the vertical interval between benches; and
- (e) the drainage of water on or near faces or benches.

PART V

UNDERGROUND OPERATIONS

30. Support of excavations

All parts of an underground working in which work is in progress or which can be used for travelling shall be adequately supported so that ground or rock therein cannot fall.

31. Safety pillars

An inspector may give orders concerning the locality and dimensions of pillars to be left in underground workings for the safety of underground workings or for the safety of persons or structures whether above ground or underground, and such orders shall be obeyed.

32. Persons not to be in unsafe places

No person shall pass through or be required to pass through an unsafe place, and no person shall remain or be required to remain in an unsafe place unless he is working to make that place safe.

33. Healthy atmosphere to be ensured

All necessary measures shall be taken to ensure that all persons underground are in an atmosphere which does not contain gas or dust in quantities that are dangerous to health, and which in circulation, temperature and relative humidity creates conditions in which work can be performed without distress.

34. Egress to be possible without hoisting or hauling, etc.

In any underground part of a mine in which work is being carried on there shall be provided suitable and adequate means by which persons working there can reach the surface by a route which does not necessitate the use of mechanical or manual hoisting or hauling; and an inspector may order that there shall be a second such route from any underground part of a mine if in his opinion a second route is necessary for safety, and such order shall be obeyed.

35. Precautions regarding approach to abandoned workings or to water

Whenever there is reason to believe that workings may be near to abandoned workings or to an accumulation of water, then boreholes not less than 3 metres long shall be drilled ahead of the newer workings and boreholes of the maximum depth which space allows or 3 metres deep, whichever is the less, shall be drilled above, below and to each side of the newer workings.

36. Illumination

(1) Every machine while working at pumping, hauling or hoisting shall be brightly illuminated.

(2) The leading truck of a train, and any solitary truck, when in motion, shall carry a light in front.

(3) Every person in any underground part of a mine which has no fixed illumination shall be provided with a light designed to last for not less than the period for which he is expected to remain underground.

37. Clearance or refuges in tunnels

Where persons walk in tunnels in which tramming takes place there shall be either—

(a) clearance of not less than .50 metre between each side of the tunnel and the widest conveyance used therein; or

(b) refuges provided at intervals of not more than 30 metres, each of which being large enough to allow 3 persons to stand clear of any passing conveyance.

38. Travelling-ways in shafts, etc., to be partitioned

In all haulage-ways, shafts and winzes in which persons may be expected to walk or climb while conveyances are in motion in them, there shall be a travelling-way which shall be completely separated, from the part in which conveyances move, by a partition strong enough to protect persons in the travelling-way from falling objects.

39. Construction and erection of ladders

All ladders shall—

(a) be at all times sufficiently strong to be safe for use;

(b) be securely fastened in position save as provided in regulation 42;



- (c) be erected so that they do not overhang persons using them;
- (d) rise less than 1.75 metres vertically in a horizontal distance of .30 metre if they exceed 9 metres in length;
- (e) be so placed that the free tread of feet on the rungs is not obstructed; and
- (f) have rungs not more than .25 metre apart, centre to centre.

40. Ladders to project above top of platforms, etc.

Ladders, if placed against the top of any platform required by regulation 41 or the top of any shaft or winze, shall project not less than 1 metre above such top except where strong handgrips are fastened above such top for not less than 1 metre and at vertical intervals of not more than .25 metre.

41. Platforms in ladderways

All ladderways—

(a) rising more than .80 metre vertically in .30 metre horizontally shall have platforms at vertical intervals of not more than 9 metres and the manhole in every such platform shall be covered by any ladder resting on the platform;

(b) rising more than .20 metre vertically in .30 metre horizontally and less than .80 metre in .30 metre horizontally shall have platforms at verticals of not more than 18 metres.

42. Ladders during sinking or deepening to be provided

In all shafts and winzes that are being sunk or deepened—

(a) chain ladders shall be provided to extend from the bottom timbers to the bottom of the shaft or winze and such chain ladders shall not be more than 9 metres long; and

(b) fixed ladders shall be provided from the bottom timbers upwards.

43. Platform to protect persons at bottom of shaft or winze

While work is in progress at the bottom of a shaft or winze, no work shall be performed above the bottom and no conveyance shall be hoisted or lowered in the shaft or winze unless all persons employed at the bottom are protected from falling objects by a platform of adequate strength which extends over the entire area of the shaft or winze and any openings in the platform are kept shut when not in use.

## PART VI

### HAULING AND HOISTING

44. Derailment devices on haulage ways

Haulage ways and conveyances on them shall be equipped with such devices as an inspector directs or approves to effect the derailment of any runaway conveyance.

45. Power operated haulages and hoists to be examined

No haulage or hoist powered by a prime mover shall be brought into operation until after it has been examined by an inspector and he has stated in writing that it is satisfactory and may be brought into operation.

46. Mechanical defects and accidents to be reported

All mechanical failures, malfunctions and accidents occurring to or in connexion with any haulage or hoist shall be reported immediately to an inspector.

47. Device at brow of haulage way to prevent accidental descent

At the brow of every haulage way there shall be a device approved by an inspector which can be used and shall be used in such a manner that conveyances cannot move onto the incline until required to do so.

48. Operator of drum to have clear view of brow

The drum in connexion with all hauling and lowering apparatus used with a haulage way shall be so placed that the operator of the drum has a clear view of the brow of the haulage way.

49. Drum of haulage apparatus, etc., to be equipped with brake

The drum in connexion with all hauling and lowering apparatus shall be equipped with an effective brake capable of holding without slipping when no prime mover is connected to the drum twice the normal maximum load.

50. Signalling apparatus for haulage ways

(1) Every haulage way longer than 15 metres in which the operator of the hauling or lowering apparatus does not have a clear view of the other end of the haulage way, and every haulage way longer than 60 metres, shall have a device for communicating definite signals between stopping places and the hauling or lowering apparatus.

(2) The signals referred to in subregulation (1) shall conform with regulations 56 (1) and 57 and shall be displayed in the manner prescribed in regulation 58.

51. Construction and use of hand-operated windlasses

In regard to every hand-operated windlass—

- (a) the handles shall be so made that no part of them can revolve in the drum;
- (b) the supports of the drum shall be so made that they are rigid;
- (c) the drum shall be of sufficient height above the top of the shaft or pit to allow any article hoisted by the rope to swing clear of the top;
- (d) the drum shall be equipped with an efficient brake capable of holding without slipping twice the normal maximum load;

(e) the rope shall be securely fastened to the drum and there shall be at least four turns of the rope round the drum when the free end of the rope is at the bottom of the shaft or pit; and

(f) the windlass shall not be used for hoisting or lowering for a vertical distance greater than 30 metres.

#### 52. Construction of winding engines

Every winding engine which is powered by a prime mover and which is used in connexion with a shaft or winze shall be—

(a) fitted on each drum with an efficient brake capable of holding without slipping when the prime mover is not connected to the drum twice the normal maximum load;

(b) so constructed that the rope cannot slip off the drum; and

(c) fitted with a means of showing the position of every conveyance if hoisting is done from more than one place.

#### 53. Requirements regarding ropes for hoisting

(1) Every rope used for hoisting in a shaft or winze shall—:

(a) be capable at every part of its length of supporting at least six times the normal maximum load;

(b) be passed round its drum at least four times when any conveyance hoisted by it is at its lowest point of travel;

(c) be examined thoroughly at monthly or more frequent intervals by a competent person who shall be appointed by the manager and who shall enter in a book kept solely for the purpose the following particulars—

(i) identification of the rope which was examined;

(ii) the date of the examination;

(iii) details of any defects observed; and

(iv) his signature at the end of the entry.

(2) The rope used for hoisting in a shaft or winze shall be made of wire if the portion in use is longer than 30 metres.

(3) Every rope made of wire and used for hoisting in a shaft or winze—

(i) shall be adequately lubricated at monthly or more frequent intervals; and

(ii) shall be re-capped at least once every six months.

#### 54. Construction of cages

(1) All cages used for raising or lowering persons shall—

- (a) be completely covered by a roof and be closed in on both sides;
- (b) be fitted with gates or bars at both ends, adequate to prevent any person falling out;
- (c) have prominently exhibited inside, a notice stating the maximum number of persons permitted to travel therein;
- (d) be equipped with such guide-shoes, safety-catches, and detaching devices, as an inspector directs.

(2) No person shall enter a cage if by so doing he would make the number of persons about to travel therein exceed the maximum permitted number.

#### 55. Equipment of shafts

All shafts and winzes in which winding takes place over a length greater than 30 metres shall—

- (a) be equipped with a winding engine powered by a prime mover;
- (b) be equipped, with an effective device for transmitting signals between the driver of the winding engine, each station in the shaft, the bank, and the bottom if sinking or deepening is in progress;
- (c) if vertical, be equipped with effective guides for any conveyance being wound;
- (d) if used for winding persons—
  - (i) be equipped with gates at bank and at all levels; and
  - (ii) be equipped with keps at bank.

#### 56. Code of winding signals

(1) The code of signals to be used in connexion with winding shall be—

#### Knocks or rings Meaning

- 1 Raise, when conveyance is at rest
- 1 Stop, when conveyance is in motion
- 2 Lower
- 3 Persons are about to travel
- 5 Blasting signal
- 7 Accident signal

(2) Upon hearing the blasting signal, the engine driver shall forthwith raise the conveyance about 3 metres and then lower it to its previous position.

57. Additional signals

The manager may authorize signals in addition to, but not inconsistent with, the code prescribed in regulation 56 (1).

58. Signal code to be displayed

At every place where the signals prescribed in regulation 56 (1) can be made or received, the code of signals including any additional signals authorized pursuant to regulation 57 shall be displayed in characters sufficiently large to be read without difficulty from a distance of 3 metres by a person with normal sight.

59. Appointment of drivers of winding engines, etc.

(1) The manager shall appoint as a winding engine driver only a person—

(a) having no physical infirmity likely to interfere with the efficient performance of his duties; and

(b) who has proved to the satisfaction of the manager that he possesses the skill and knowledge necessary to perform his duties efficiently.

(2) Notwithstanding subregulation (1), the manager may in writing appoint a learner winding engine driver not having the skill and knowledge referred to in paragraph (b) thereof if, and only if, the manager ensures that the winding engine is operated by the learner only when under the close supervision of a winding engine driver appointed in accordance with that subregulation.

(3) Subject to subregulation (2), no winding engine shall be operated except by a person who has been appointed in writing by the manager in accordance with subregulation (1).

60. Winding engine to be operated only after signal

A winding engine shall not be operated except after receipt of a signal prescribed in regulation 56 (1) or 57.

61. Winding engine not to be operated if fault known or suspected

No winding engine shall be operated while there is any known or suspected defect in it or in any appliance moved by it or in any appliance controlling such movement, except for such operation as is necessary for the repair or investigation of a known or suspected defect.

62. Drum not to be unclutched before testing brake

The drum of a winding engine shall not be unclutched unless the brake has been tested immediately beforehand by applying power to the drum in the direction of the load after the brake

has been applied to the drum and it has been proved that the brake is capable of holding the load being carried by that drum.

63. Lowering on brakes prohibited

Power alone shall be employed in lowering a conveyance; lowering on brakes only is prohibited.

64. Material projecting above conveyance to be secured

All material which projects above the top of a conveyance while being raised or lowered in a shaft or winze shall be fastened to the winding rope or to the conveyance in such a manner that it cannot come into contact with any other plant or equipment.

65. Clearance under winding sheave

The distance between bank and the lowest part of any winding sheave shall be not less than 8 metres or twice the maximum circumference of the drum of the relative winding engine plus the height of the tallest conveyance used plus the capping of the rope, whichever is the less.

PART VII

MISCELLANEOUS

66. Offences and penalties

(1) Any person who contravenes any provision of these Regulations shall be guilty of an offence and liable to a fine of K300 and to imprisonment for a term of three months.

(2) Any person who knowingly disobeys an instruction of the Commissioner issued under regulation 18 or an order given by an inspector given under regulation 19 (3), 29 (1), 31 or 34, being an instruction or order applicable to such person and with which it is considered by the Court that he ought in the circumstances to have complied, shall be guilty of an offence.

(3) Any person convicted of an offence under regulation 4 (5) or under subregulation (2) of this regulation is liable to a fine of K200 and to imprisonment for two months.

SCHEDULE reg.

FORM

MINING (SAFETY) REGULATIONS

NOTICE OF PROPOSED STARTING, RE-STARTING OR CESSATION OF OPERATIONS

1. Type of Operation:

Prospecting

Mining

Opencast working

Quarrying

(Delete where not applicable)

2. Conducted at (District and locality): .....

3. Under the Authority of:

Mining Licence No.

Exclusive Prospecting Licence No.

Non-exclusive Prospecting Licence No.

Claim No.

Government Quarrying with Certificate of Registration as a factory No.

(Delete where not applicable)

4. Worked by (name and address of holder of Authority in 3 above):

.....  
.....

5. Will Start operations on:

Re-start

Case

(Delete where not applicable)

6. Number of persons employed:

7. Explosives used: YES/NO

(Delete where not applicable)

8. Type of machinery used and total power:

Signature of Manager:.....

Date .....

## PETROLEUM (EXPLORATION AND PRODUCTION)

### ARRANGEMENT OF SECTIONS

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## Petroleum (Registration and Transfer of Licences) Regulations

2 of 1983

G.N. 36/1984

An Act to make provision with respect to searching for and producing petroleum, and to provide for matters connected therewith and incidental thereto

[30TH MARCH 1983]

[Ch6102s1]1. Short title

(1) This Act may be cited as the Petroleum (Exploration and Production) Act.

[Ch6102s2]2. Vesting of petroleum, etc.

(1) The entire property in, and control over, petroleum in land in Malawi is vested in the Life President on behalf of the people of Malawi; but without prejudice to the exercise of any right under or pursuant to this Act.

(2) Subject to section 68, no person shall carry on in Malawi exploration or production operations, except under, and in accordance with, a licence.

(3) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of fifty thousand Kwacha.

[Ch6102s3]3. Interpretation

(1) In this Act, unless the context otherwise requires—

“authorized officer” means a person designated as such under section 6 (2);

“block” means a block constituted as provided in the Regulations and includes part of a block so constituted;

“body corporate” means a company or a corporation;

“Commissioner” means the Commissioner for Petroleum Exploration and Production appointed pursuant to section 5;

“company” means a corporate body incorporated under the Companies Act; Cap. 46:03

“conditions” includes terms, limitations and stipulations;

“corporation” means a corporate body incorporated in or outside Malawi, whether by Act or otherwise, but does not include a company;

“discovery block”, in relation to an exploration area, has the meaning assigned by section 25 (5);

“drilling” means the perforation of the earth’s surface, otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or preventing the hole from becoming filled by extraneous materials (including water) and the fitting of wellheads, coring and logging, and any operations incidental to the foregoing;

“explore” means intentionally to search for petroleum and includes the evaluation of any discovery of petroleum;

“exploration area” means the area constituted by a block that is or by the blocks that are subject to a petroleum exploration licence;

“exploration operations” means operations carried on in the course of exploring for petroleum;

“good oilfield practices” means all those things that are generally accepted as good, safe and efficient in the carrying on of exploration for petroleum or, as the case may be, operations for the production of petroleum;

“holder”, in relation to a licence, means the person to whom the licence is granted and includes every person to whom the licence is lawfully assigned;

“in default” means in breach of any provision of this Act or of any condition of a licence, or of any provision of a relevant agreement of a kind referred to in section 10;

“land” includes land beneath water;

“lawful occupier” in relation to customary land, includes such persons, or such class of persons, as may be prescribed;

“licence” means a petroleum exploration licence or a petroleum production licence, or both, as the context requires;

“licensee” means the holder of a licence;

“monument” has the meaning assigned by the Monuments Act; Cap. 29:01

“natural gas” means gas obtained from a well and consisting primarily of hydrocarbons;

“petroleum” means—

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(c) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal or shale;

“petroleum exploration licence” means a licence granted under section 16;

“petroleum production licence” means a licence granted under section 28;

“petroleum reservoir” means a naturally occurring discrete accumulation of petroleum;

“private land” has the meaning assigned by the Land Act; Cap. 57:01

“production area” means the area constituted by a block that is or by the blocks that are subject to a petroleum production licence;

“production operations” means operations carried on for or in connexion with the production of petroleum;

“public land” has the meaning assigned by the Land Act; Cap. 57:01

“the Regulations” means regulations made under section 78;

“relic” has the meaning assigned by the Monuments Act; Cap. 29:01

“this Act” includes the Regulations;

“well” means a hole, made by drilling in connexion with exploration or production operations, but does not include a seismic shot hole.

(2) In this Act, a reference to a year of the term of a licence is a reference to a period of one year commencing on the date from and including which the licence has effect and ending on any anniversary of that date.

(3) In this Act, a reference to the conditions of a licence is a reference to the conditions of the licence as modified from time to time.

#### [Ch6102s4]4. Service of documents

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(a) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;

(b) in the case of the Minister or the Commissioner, in the manner prescribed;

(c) in the case of a body corporate—

(i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;

(ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or

(iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.

(2) For the purposes of subsection (1) (c), the principal office of a body corporate incorporated outside Malawi is its principal office within Malawi.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

## PART II

### ADMINISTRATION

#### [Ch6102s5]5. Commissioner for Petroleum Exploration and Production

The Minister may appoint a person to be the Commissioner for petroleum Exploration and Production, and such other persons to be officers as he may consider necessary for the administration of this Act.

#### [Ch6102s6]6. Performance of Commissioner's functions, etc.

(1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.

(2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act.

#### [Ch6102s7]7. Information not to be disclosed

(1) Subject to subsection (2), information furnished, and information in a report submitted, pursuant to the Regulations by a licensee shall not, for as long as the licence has effect, be disclosed, except with the consent of the licensee.

(2) Nothing in subsection (1) operates to prevent the disclosure of information when the disclosure is made—



- (a) for or in connexion with the administration of this Act;
- (b) for the purpose of any legal proceedings; or
- (c) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

[Ch6102s8]8. Public officers holding certain shares to notify Minister

(1) In this section, “public officer” means a public officer engaged in the administration of this Act.

(2) Where a public officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a licence, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.

(3) For the purposes of this section, the holding by the wife or husband (not herself or himself being a public officer) of a public officer of any shares of the kind referred to in subsection (1) is deemed to be a holding by the public officer of the shares.

(4) This section applies with respect to shares—

- (a) acquired by the holder whether before or after the appointment to public office;
- (b) held whether before or after the commencement of this Act.

[Ch6102s9]9. Indemnity of public officers

A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

### PART III

#### LICENCES

##### Division 1—General

[Ch6102s10]10. Agreements with respect to the grant of licences

(1) With the consent of the Life President, the Minister, on behalf of the Republic of Malawi, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—

- (a) the grant to that person, or to any person (including any body corporate to be formed) identified in the agreement, of a licence on the conditions (if any) specified in the agreement;
- (b) conditions or the conditions to be included in the licence as granted or renewed; or

(c) any matter incidental to or connected with the foregoing.

(2) There may be included in an agreement under subsection (1) provision with respect to a contract of insurance or other form of security required to be kept in force under section 61.

#### [Ch6102s11]11. Applications

(1) An application under this Act—

(a) shall be made in accordance with the Regulations;

(b) shall be made in or to the effect of a form approved by the Minister;

(c) shall be made to the Minister or, if it is so provided in the Regulations, to the Commissioner; and

(d) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.

(2) An application shall be accompanied by the fee (if any) prescribed in respect of the application.

(3) The Minister shall, by written notice served on an applicant for the grant of a licence, require the applicant to do either or both of the following, namely—

(a) publish details of his application at a time or times, and in a manner, specified in the notice;

(b) give details of his application to the persons, and in a manner, specified in the notice.

(4) The Minister shall cause an applicant for the grant or renewal of a licence to be notified in writing of his decision on the application giving, where he is prepared to grant or renew the licence, details of the conditions on which it will be granted or renewed—

(a) and if the applicant notifies the Minister, in writing, within sixty days (or such further period as the Minister may allow) of being so notified, that he accepts those conditions, the licence shall be issued on those conditions;

(b) but if the applicant fails so to notify the Minister, the application lapses.

#### [Ch6102s12]12. Power of Minister to obtain information concerning applications, etc.

(1) The Minister may, by written notice served on the applicant for the grant of a licence, require the applicant to furnish him, within such reasonable time as is specified in the notice—

(a) with such further information relevant to the application as may be described in the notice; and

(b) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in

the direction of the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual or individuals resident outside Malawi.

(2) To enable him to dispose of an application for the grant of a licence, the Minister—

(a) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and

(b) may, by written notice served on the applicant for the grant of the licence, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

[Ch6102s13]13. Restriction on persons to whom licence may be granted

No licence—

(a) shall be granted to an individual unless he is a citizen of Malawi or has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a licence is made;

(b) being a petroleum exploration licence, shall be granted to a body corporate unless the body corporate is—

(i) a company;

(ii) a corporation incorporated in Malawi; or

(iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or

(c) being a petroleum production licence, shall be granted to a body corporate unless the body corporate is—

(i) a company; or

(ii) a corporation incorporated in Malawi.

[Ch6102s14]14. Form of licence

A licence shall be in accordance with such form as the Minister approves.

[Ch6102s15]15. Restriction on exercise of rights by holder of licence

When the doing of any act is prohibited or regulated by a written law (other than this Act), nothing in this Act shall be construed,—

(a) where the doing of the act is so prohibited, as authorizing a licensee to do the act; or

(b) where the doing of the act is so regulated, as authorizing a licensee to do the act—

(i) otherwise than in accordance with the written law and any authority referred to in subparagraph (ii); and

(ii) without first obtaining any authority (howsoever described) required under the written law for the doing of the act.

#### Division 2—Petroleum Exploration Licence

##### [Ch6102s16]16. Disposal of application for petroleum exploration licence

(1) Subject to the provisions of this Act, on application in writing duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a petroleum exploration licence in respect of any block or blocks.

(2) A petroleum exploration licence shall not be granted in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted.

##### [Ch6102s17]17. Content of petroleum exploration licence

(1) A petroleum exploration licence—

(a) shall—

(i) state the date of the grant of the licence;

(ii) identify the block or blocks to which the licence relates; and

(iii) state the conditions on which the licence is granted; and

(b) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (3) or otherwise.

(2) There may be included in a petroleum exploration licence provision with respect to the exercise by the Republic, or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any venture for the production of petroleum which may be carried on in any block or blocks to which the licence relates when granted.

(3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on exploration operations, he may specify in a petroleum exploration licence a period (not exceeding one year) as the preparation period.

##### [Ch6102s18]18. Rights conferred by petroleum exploration licence

A petroleum exploration licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, the exclusive right to explore for petroleum, and to carry on such operations and execute such works as are necessary for that purpose, in the exploration area.

##### [Ch6102s19]19. Application for renewal of petroleum licence

Subject to this Act, a licensee may apply for the renewal of a petroleum exploration licence in accordance with the Regulations.

[Ch6102s20]20. Grant or refusal of renewal of petroleum exploration licence

(1) Subject to subsection (2), on application duly made pursuant to section 19 for the renewal of a petroleum exploration licence, the Minister shall grant a renewal of the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act.

(2) Subject to subsection (3), the Minister shall refuse to grant a renewal of a petroleum exploration licence if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

(3) The Minister shall not refuse to grant the renewal of a petroleum exploration licence on application being duly made under section 19 unless—

- (a) he has given to the applicant written notice of his intention to do so—
  - (i) giving in the notice particulars of the ground for the intended refusal; and
  - (ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and
- (b) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

[Ch6102s21]21. Term of petroleum exploration licence

(1) A petroleum exploration licence, unless sooner determined, shall, by virtue of this subsection continue in force—

- (a) for any preparation period specified in the licence pursuant to section 17 (3);
- (b) for the period stipulated in the licence, not exceeding four years, next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;
- (c) for the renewal period, not exceeding three years, following the date upon which any renewal of the licence is granted pursuant to section 20; and
- (d) for any period added pursuant to section 42 (3) to the term of the licence.

(2) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of—

- (a) a renewal of the licence; or
- (b) a petroleum production licence,relates, until—

- (c) the application is finally dealt with—
  - (i) by the renewal of or refusal to renew the licence; or
  - (ii) as the case may be, by the grant of or refusal to grant the petroleum production licence; or
- (d) the application lapses.

(3) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any discovery block or blocks in the exploration area until a notice is given pursuant to section 25 (1), or until the lapse of the period of thirty days referred to in section 25 (1), whichever first occurs.

(4) Where a notice given pursuant to section 25 (1) states that a discovery is, in the opinion of the licensee, of potential commercial interest and the petroleum exploration licence relating to the discovery would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of the discovery block or blocks in the exploration area—

- (a) for the period specified in section 25 (2); and
- (b) for any extension of that period allowed by the Minister pursuant to section 25 (3).

#### [Ch6102s22]22. Duties of licensee

(1) Subject to subsections (3) and (4), a licensee shall in, or in relation to, the exploration area, meet the requirements, with respect to work and expenditure,—

- (a) stipulated in the licence; and
- (b) of each programme submitted pursuant to subsection (2).

(2) A licensee shall, not later than one month before the anniversary in any year of the grant of a petroleum exploration licence, submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the term of the licence immediately following the anniversary concerned.

(3) The Minister may, on application made to him in writing by a licensee, by instrument in writing limit, reduce, vary or suspend any obligation arising pursuant to subsection (1), either conditionally or unconditionally.

(4) A licensee may, for good cause, amend the details of any programme of work and expenditure which he is required under subsection (1) to carry out, but—

- (a) the licensee shall forthwith give notice in writing to the Minister of any such amendment, giving in the notice details of and the reason for the amendment; and
- (b) no such amendment shall have effect so as to reduce the minimum requirements of the overall programme of work and expenditure to be carried out or made in the term of the licence.

(5) Where a licensee fails to carry out any part of the work programme stipulated in his petroleum exploration licence, or in a work programme submitted pursuant to subsection (2), then without prejudice to any other right which may be invoked in respect of that failure the relevant provisions of the licence (if any) apply for the purpose of determining the liquidated damages payable to the Republic.

(6) The requirement in subsection (2) with respect to an adequate programme with respect to work and expenditure is deemed to have been met in any case where the programme submitted pursuant to that subsection satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10.

[Ch6102s23]23. Relinquishment of part of exploration area

The First Schedule applies with respect to the relinquishment of any part of an exploration area.

Division 3—Discovery of Petroleum

[Ch6102s24]24. Discovery of petroleum to be notified

(1) Where any significant discovery of petroleum is made in an exploration area, the licensee—

(a) shall forthwith inform the Minister of the discovery;

(b) shall, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery;

(c) shall promptly run tests in respect of the discovery and thereafter forthwith submit to the Minister evaluated test results in respect of the discovery; and

(d) shall, subject to subsection (3), take promptly all steps that are reasonable, in the circumstances relating to the discovery, to ascertain the quantity of the petroleum—

(i) in the petroleum reservoir to which the discovery related; or

(ii) if part only of that reservoir is within the exploration area, in that part.

(2) Where petroleum is discovered in an exploration area, the Minister may, from time to time, by notice in writing served on the licensee, direct the licensee—

(a) to furnish to him, within the period specified in the notice, particulars in writing of—

(i) the chemical composition and physical properties of the petroleum;

(ii) the stratigraphical position and depth of the discovery; and

(iii) any other matters relating to the discovery that are specified by the Minister in the notice; and

(b) to do, within the period specified in the notice, such things as the Minister thinks necessary, and specifies in the notice, to ascertain the chemical composition and physical properties of the petroleum.

(3) The Minister may by instrument in writing exempt, wholly or partly, from the requirement of subsection (1) (d), the licensee, either unconditionally or subject to such conditions as are specified in the instrument of exemption.

[Ch6102s25]25. Discovery of petroleum of potential commercial interest

(1) Where petroleum is discovered in an exploration area and the licensee has, pursuant to section 24 (1) (c), submitted to the Minister evaluated test results in respect of the discovery the licensee shall, within thirty days of the date of submission of such evaluated results, serve on the Minister a notice in writing stating that the discovery is or, as the case may be, is not, in the opinion of the licensee, of potential commercial interest.

(2) Where a notice served under subsection (1) states that the discovery is, in the opinion of the licensee, of potential commercial interest the licensee may, unless the licence is sooner determined, within a period of two years after the date on which such notice is served, apply under section 27 (1) for the grant of a petroleum production licence with respect to the discovery block or blocks in the exploration area.

(3) If the licensee fails within the period specified in subsection (2), or within such further period as the Minister allows, to apply for a petroleum production licence with respect to the discovery block or blocks in the exploration area, the Minister may, if the petroleum exploration licence is then in force in respect of that discovery block or blocks, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect.

(4) Where a notice served under subsection (1) states that the discovery is not, in the opinion of the licensee, of potential commercial interest—

(a) the Minister may, subject to subsection (6), if the petroleum exploration licence is then in force in respect of the discovery block or blocks in the exploration area, within a period of twelve months from the date on which such notice is so served, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect; and

(b) during that period of twelve months, and any subsequent period if the Minister does not pursuant to paragraph (a) direct that the licence shall cease to have effect in respect of that block or those blocks, section 24 (2) shall not apply in respect of the discovery.

(5) For the purposes of this section, “discovery block”, in relation to an exploration area, means a block in the exploration area comprising the geological feature, as outlined by the relevant geological or geophysical data, in which the discovery of petroleum is located.



(6) The Minister shall not give a direction under subsection (4) (a) unless he forms the opinion, as a result of evidence available to him, that the discovery is of potential commercial interest.

#### [Ch6102s26]26. Investigations

(1) Where the licensee, pursuant to section 25 (1), has served a notice stating that a discovery of petroleum is, in the opinion of the licensee, of potential commercial interest the Minister may, by written notice served on the licensee, direct that the licensee carry out, within a period of not less than two years specified in the notice, such prescribed investigations and studies as the Minister thinks appropriate for the purpose of assessing the feasibility of the construction, establishment and operation of an industry for the production of petroleum in the discovery block or blocks concerned.

(2) The licensee shall furnish to the Minister, within the period specified in the notice under subsection (1), such reports, analyses and data resulting from the investigations and studies carried out under this section as the Minister, by written notice served on the licensee, may require.

#### Division 4—Petroleum Production Licence

#### [Ch6102s27]27. Application for petroleum production licence

(1) A licensee whose petroleum exploration licence is in force may, within the period specified in section 25 (2) or within such further period as the Minister may allow under section 25 (3), apply pursuant to this subsection for the grant of a petroleum production licence with respect to any discovery blocks in the exploration area, or with respect to any part thereof, which the licensee satisfies the Minister contain a petroleum reservoir or part of a petroleum reservoir.

(2) A person may apply pursuant to this subsection for the grant of a petroleum production licence in respect of a block or blocks, or part thereof, which he satisfies the Minister contains or, as the case may be, contain a petroleum reservoir or part of a petroleum reservoir, notwithstanding that he does not hold a petroleum exploration licence in respect of the block or blocks or does not hold any petroleum exploration licence.

#### [Ch6102s28]28. Disposal of application for petroleum production licence

(1) Subject to section 29,—

(a) on application duly made pursuant to section 27 (1) the Minister shall grant the petroleum production licence applied for, on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act; and

(b) on application duly made pursuant to section 27 (2) the Minister may grant on such conditions as he may determine, or refuse to grant, the petroleum production licence applied for.

(2) For the purpose of determining the conditions to be included in a licence to be granted pursuant to subsection (1) (a), the Minister shall give effect to any relevant agreement of a kind referred to in section 10.

[Ch6102s29]29. Restriction on grant of petroleum production licence

(1) A petroleum production licence shall not be granted to an applicant—

(a) unless—

(i) the proposals of the applicant take proper account of environmental and safety factors;

(ii) the proposals of the applicant would ensure the most efficient, beneficial and timely use of the petroleum resources concerned;

(iii) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective production operations;

(iv) the applicant would be able and willing to comply with the conditions on which a licence would be granted;

(v) the applicant's proposals for the employment and training of citizens of Malawi are satisfactory; and

(vi) any relevant option given pursuant to section 17 (2) has been properly exercised and given effect to, or arrangements satisfactory to the Minister have been made for that purpose;

(b) if the applicant is in default, unless the Minister considers that special circumstances exist which justify the grant of the licence notwithstanding the default.

(2) The Minister shall not refuse an application for the grant of a petroleum production licence on application being duly made pursuant to section 27 (1) unless—

(a) he has given to the applicant written notice of his intention to do so—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(b) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

(3) A petroleum production licence shall not be granted to an applicant pursuant to section 25 (2) in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted to a person other than the applicant.

[Ch6102s30]30. Content of petroleum production licence

(1) A petroleum production licence—

(a) shall—

- (i) state the date of the grant of the licence;
- (ii) identify the block or blocks to which the licence relates;
- (iii) state the conditions on which the licence is granted; and
- (iv) give effect to subsection (3);

(b) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (4) or otherwise.

(2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on production operations he may specify in a petroleum production licence such period as he thinks fit as the preparation period.

(3) There shall be included in a petroleum production licence provision with respect to the duty, and the extent thereof, of the licensee to supply petroleum or petroleum products to meet the requirements of Malawi.

(4) There may be included in a petroleum production licence conditions with respect to the refining, disposal or sale of petroleum which may be recovered in the production area.

#### [Ch6102s31]31. Rights conferred by petroleum production licence

A petroleum production licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, exclusive rights—

- (a) to carry on exploration and production operations in the production area;
- (b) to sell or otherwise dispose of petroleum recovered; and
- (c) to carry on such operations and execute such works in the production area as are necessary for or in connexion with any matter referred to in paragraphs (a) and (b).

#### [Ch6102s32]32. Application for renewal of petroleum production licence

Subject to the Regulations, a licensee may apply for the renewal of a petroleum production licence in accordance with the Regulations.

#### [Ch6102s33]33. Grant or refusal of renewal of petroleum production licence

(1) Subject to subsection (2), on application duly made pursuant to section 32 for the renewal of a petroleum production licence, the Minister may grant a renewal of the licence on such conditions as he deems fit or refuse to grant a renewal.

(2) The Minister shall refuse to grant a renewal of a petroleum production licence if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

#### [Ch6102s34]34. Term of petroleum production licence

(1) A petroleum production licence, unless sooner determined, shall, by virtue of this subsection, continue in force—

- (a) for any preparation period specified in the licence pursuant to section 30 (2);
- (b) for the period of twenty-five years next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;
- (c) for any period for which the licence is renewed pursuant to section 33 (1); and
- (d) for any period added pursuant to section 42 (3) to the term of the licence.

(2) Where a petroleum production licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of a renewal of the licence relates until—

- (a) the application is finally dealt with by the grant of or refusal to grant the renewal; or
- (b) the application lapses.

#### Division 5—Miscellaneous

##### [Ch6102s35]35. Directions

(1) The Minister may, by notice in writing served on a licensee, give to the licensee a direction, consistent with good oilfield practices, as to any matter with respect to which regulations may be made under section 78.

(2) A licensee who fails or neglects to comply with a direction given under subsection (1) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

(3) In proceedings on a prosecution for an offence under subsection (1), it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the direction.

##### [Ch6102s36]36. Compliance with directions

Where a licensee fails or neglects to comply with a direction given to him under and in accordance with section 35 the Minister may cause to be done all or any of the things required by the direction to be done, and the costs and expenses incurred in doing so are a debt due to the Republic and may be recovered in a court in Malawi.

##### [Ch6102s37]37. Unit development

(1) In this section, “unit development”, in relation to a petroleum reservoir, means the co-ordination of operations for the recovery of petroleum being carried on or to be carried on in a production area in which there is part of the reservoir, with other operations for the recovery of petroleum being carried on or to be carried on in any other area in which there is part of the same reservoir.

(2) A holder of a petroleum production licence may, from time to time, enter into an agreement in writing with the Republic or a licensee for or in relation to the unit development of a petroleum reservoir.

(3) The Minister may, of his own motion, or on application made to him in writing by a holder of a petroleum production licence in whose production area there is a part of a petroleum reservoir, for the purpose of securing the more effective recovery of petroleum from that petroleum reservoir, direct in writing any holder of a licence whose production area includes part of that petroleum reservoir to enter into an agreement in writing with the person or persons (including the Republic), and within the period specified by the Minister in the direction for or in relation to the unit development of that petroleum reservoir, and to lodge the agreement with the Minister forthwith for approval.

(4) Where—

(a) a holder of a licence who is directed under subsection (3) to enter into an agreement for or in relation to the unit development of a petroleum reservoir does not enter into such agreement within the specified period; or

(b) a holder of a licence enters into such an agreement but the agreement is not lodged with the Minister in accordance with subsection (3),

the Minister may, by notice in writing served on the holder, direct him to submit to the Minister, within the period specified in the notice, a scheme for or in relation to the unit development of the petroleum reservoir, and the holder shall do so.

[Ch6102s38]38. Directions as to recovery of petroleum

(1) Where Petroleum is not being recovered in a production area and the Minister is satisfied that there is recoverable petroleum in that area, he may, by notice in writing served on the holder of the petroleum production licence, direct the holder to take all necessary and practicable steps to recover that petroleum.

(2) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (1), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the Minister thinks necessary for or in relation to the recovery of petroleum in the production area.

(3) Where petroleum is being recovered in a production area, the Minister may, by notice in writing served on the holder of the petroleum production licence, direct the holder to take all necessary and practicable steps to increase (to an extent not exceeding the capacity of existing production facilities) or reduce the rate at which the petroleum is being recovered to such rate as the Minister specifies in the notice.

(4) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (3), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the

Minister thinks necessary for or in relation to the increase or reduction of the rate at which petroleum is being recovered in the production area.

(5) Nothing in this section, or in any direction given under this section, shall be construed as requiring the holder of a petroleum production licence to do anything which is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.

[Ch6102s39]39. Penalty for late payments

(1) Where the liability of a person under this Act or a licence to pay an amount is not discharged at or before the time when the amount is payable, there is payable by that person an additional amount calculated at the rate of one-third of one per cent per day, upon so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons that in his opinion are sufficient, remit the whole or part of an amount payable under this section.

[Ch6102s40]40. Information to be furnished, etc.

(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available data relating to exploration or production operations or petroleum obtained or the value thereof he may, by notice in writing, require that person—

(a) to furnish to him that information or data within the period and in the manner specified in the notice;

(b) to attend before him or a person identified in the notice, at such time and place as is specified in the notice, and there to answer questions relating to those operations or petroleum obtained or the value thereof; or

(c) to furnish to a person identified in the notice, at such time and place as is specified in the notice, data in his custody or power relating to those operations or petroleum obtained or the value thereof.

(2) A person is not excused from furnishing information or data or answering a question when required to do so under this section on the ground that the information or data so furnished, or the answer to the question, might tend to incriminate him or make him liable to any penalty, but the information or data so furnished or his answer to the question shall not be admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where any data is furnished, pursuant to a requirement under subsection (1) (c), the person to whom it is furnished may make copies or take extracts from the data.

(4) Any person who—

(a) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he is capable of complying with it;

(b) in purported compliance with a requirement referred to in subsection (1) (a), knowingly or recklessly furnishes information or data that is false or misleading in a material particular; or

(c) when attending before the Minister or any other person under a requirement referred to in subsection (1) (b) or furnishing any data to any person under a requirement referred to in subsection (1) (c), knowingly or recklessly makes a statement or produces any data that is false or misleading in a material particular,

is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

(5) In this section, “data” includes books, documents, tapes, diagrams, profiles and charts.

#### Division 6—Cancellation and Force Majeure

##### [Ch6102s41]41. Cancellation

(1) Subject to this section and section 42, where a licensee is in default the Minister may, by notice in writing served on the licensee, cancel his licence.

(2) The Minister shall not, under subsection (1), cancel a licence on the ground of any default unless—

(a) the Minister has, by notice in writing served on the licensee, given not less than thirty days notice of the Minister’s intention so to cancel the licence on that ground;

(b) the Minister has, in the notice, specified a date before which the licensee may, in writing, submit any matter which he wishes the Minister to consider; and

(c) the Minister has taken into account—

(i) any action taken by the licensee to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Minister by the licensee pursuant to paragraph (b).

(3) The Minister shall not, under subsection (1), cancel a licence on the ground that the licensee has failed to pay any amount payable by him under this Act or his licence if, before the date specified in a notice referred to in subsection (2) (b), the licensee pays the amount concerned, together with any amount which may be payable pursuant to section 39.

(4) The Minister may, by notice in writing served on a licensee, cancel the licence—

(a) if the licensee (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(b) if, in the case of a licensee that is a body corporate, an order is made or a resolution is passed winding up the affairs of the body corporate, unless the winding up is for the purpose of amalgamation and the Minister has consented to the amalgamation, or is for the purpose of reconstruction and the Minister has been given written notice of the reconstruction.

(5) Where two or more persons constitute a licensee the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the licensee, of an event entitling the Minister under that subsection to cancel the licence, if the Minister is satisfied that any other person or persons constituting the licensee is or are willing and would be able to carry out the duties and obligations of the licensee.

(6) The Minister shall, on the written application of a licensee made not earlier than five years after the licence has effect, cancel a petroleum production licence either wholly or in relation to any block or blocks on such conditions, if any, as the Minister determines and specifies in the instrument of cancellation.

(7) On the cancellation of a licence, the rights of the licensee thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former licensee may be commenced or continued against him.

[Ch6102s42]42. Force majeure

(1) Any failure on the part of a licensee to fulfil any of the conditions of his licence or to meet any requirement of this Act or a relevant agreement of a kind referred to in section 10 shall be deemed not to be a breach of the licence, this Act or the agreement, in so far as the failure results from an act of war, hostility, insurrection, or an exceptional, inevitable and irresistible natural phenomenon, or from any other cause prescribed in the licence or relevant agreement as constituting force majeure.

(2) Where a licensee fails to fulfil any of the conditions of his licence because of the occurrence of circumstances of a kind referred to in subsection (1), he shall forthwith notify the Minister giving particulars of the failure and its cause.

(3) Where a licensee is prevented from exercising any of his rights under his licence for any period because of the occurrence of circumstances of a kind referred to in subsection (1), then that period, as agreed by the Minister, shall be added to the term of his licence; but the Minister may refuse to agree to the addition of any period to the term of a licence if in his opinion the licensee could, by taking any reasonable steps which were open to him, have exercised those rights during that period, notwithstanding any such occurrence.

(4) This section does not apply with respect to any requirement to meet an obligation under a licence or this Act to make any payment of royalty, annual charges, rent or fees.

PART IV

FINANCIAL

[Ch6102s43]43. Royalty on petroleum recovered under licence



(1) Subject to this Act, the holder of a petroleum production licence shall, in accordance with his licence and this Act, pay royalty in respect of petroleum recovered by him in the production area.

(2) Where provision is made in a petroleum production licence for the payment of royalty in kind, the word “pay” and cognate expressions in section 42 (4) and this Part shall be construed accordingly.

[Ch6102s44]44. Prohibition on disposal of petroleum

If the holder of a petroleum production licence fails to pay any royalty payable by him on or before the due date, or any extension thereof allowed by the Minister, the Minister may, by order served on the holder of the licence, prohibit the removal of, or any dealings in or with, any petroleum from the production area concerned, or from any other production area held by that holder, or from both, until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Minister for the payment of the royalty; and the holder shall comply with the order.

[Ch6102s45]45. Remission of royalty, etc.

The Minister may, on written application made to him by a licensee and after consultation with the Minister responsible for finance,—

- (a) remit, in whole or part, any royalty payable; or
- (b) defer payment of any royalty,

on such conditions (if any) as he may determine and specifies in the instrument of exemption.

[Ch6102s46]46. Security for compliance and recovery of royalty

(1) The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a licence complies with this Act and his licence, or either, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

(2) Subject to subsection (4), royalty payable pursuant to section 43 is a debt due to the Republic and may be recovered in a court.

(3) A certificate of the Minister certifying that a specified amount of royalty is payable by a person specified in the certificate shall, in any proceedings instituted against that person for the recovery of any royalty, be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(4) This section does not apply in any case where the royalty concerned is payable in kind.

## PART V

### PROTECTION OF THE ENVIRONMENT AND WORK PRACTICES

#### Division 1—General

[Ch6102s47]47. Protection of natural resources to be taken into account

(1) In deciding whether or not to grant a licence and on the conditions to be included in a licence the Minister shall take into account the need to conserve and protect the natural resources in or on the land over which the licence is sought and in or on adjoining and neighbouring lands.

(2) The Minister may, pursuant to section 12 (2), require environmental impact studies to be carried out.

[Ch6102s48]48. Work practices for holder of licence

(1) The holder of a licence shall—

(a) carry out exploration and production operations in the exploration or production area in a proper, safe and workmanlike manner and in accordance with good oilfield practices; and

(b) take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in those operations in and about the exploration or production area.

(2) In particular, and without limiting the generality of subsection (1), the holder of a licence shall—

(a) control the flow and prevent the waste or escape in the exploration or production area of petroleum, gas (not being petroleum), or water;

(b) prevent the escape in the exploration or production area of any mixture of water or drilling fluid and petroleum or any other matter;

(c) prevent damage to petroleum bearing strata in any area in respect of which the licence is not in force;

(d) keep separate in the manner prescribed—

(i) each petroleum reservoir discovered in the exploration or production area; and

(ii) such of the sources of water (if any) discovered in the exploration or production area as the Commissioner, by notice in writing served on the holder, directs;

(e) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or production area except when required by, and in accordance with, good oilfield practices;

(f) prevent the pollution of any aquifer, estuary, harbour, lake, reservoir, river, spring, stream, water-well, and all other areas of water by the escape of petroleum, drilling fluid, chemical additive, gas (not being petroleum), or any waste product or effluent; and

(g) furnish to the Commissioner, prior to the drilling of any well, a detailed report on the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed, in the drilling of the well.

(3) Where the consent in writing of the Commissioner has been obtained, nothing in this section operates to prevent the holder of a licence from flaring natural gas in accordance with the terms of the instrument of consent.

(4) Nothing in this section operates to prevent the holder of a licence from flaring natural gas where, in an emergency, flaring is required to safeguard the health and safety of persons in the exploration or production area or to prevent damage to the property of any person in the exploration or production area.

(5) The holder of a licence shall furnish to the Commissioner reasonable notice of his intention to abandon any well, and the closure or plugging of any well shall be carried out only with the prior consent in writing of the Commissioner and in the manner approved by the Commissioner.

(6) A holder of a licence who contravenes a requirement of this section is guilty of an offence and liable on conviction to a fine of fifty thousand Kwacha.

(7) In proceedings on a prosecution for an offence under this section, it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the requirement of this section.

#### [Ch6102s49]49. Maintenance, etc., of property

(1) A holder of a licence shall—

(a) maintain in good condition and repair all structures, equipment and other property in the area subject to the licence and used in connexion with the operations in which he is engaged;

(b) remove from that area all structures, equipment and other property that are not either used or to be used in connexion with those operations; and

(c) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structure, equipment or other property of the possible hazards resulting therefrom.

(2) Subsection (1) does not apply in relation to any structure, equipment or other property that was not brought into the area subject to a licence by or with the authority of the holder of the licence.

(3) A holder of a licence who contravenes subsection (1) (a), (b) or (c) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

#### [Ch6102s50]50. Drilling near boundaries

(1) A holder of a licence shall not drill a well any part of which is less than one thousand metres from a boundary of the area subject to the licence except with the consent in writing of the Commissioner and in accordance with such conditions, if any, as are specified in the instrument of consent.

(2) Where a holder of a licence does not comply with subsection (1), the Commissioner may, by notice in writing served on the holder, direct him to do one or more of the following within the period specified in the notice, namely—

- (a) plug the well;
- (b) close off the well;
- (c) comply with such directions relating to the drilling or maintenance of the well as are specified in the notice.

(3) A person who fails or neglects to comply with a direction given under subsection (2) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

[Ch6102s51]51. Removal of property, etc., by holder of licence

(1) Where a licence has been cancelled or has expired, or has ceased by relinquishment to include any area, the Minister may, by notice in writing served on the person who is or was the holder of the licence, direct that person, within the period specified in the notice—

(a) to remove or cause to be removed from any area that was, but is no longer, subject to the licence all property brought into that area by any person engaged or concerned in the operations authorized by the licence, or to make arrangements that are satisfactory to the Minister with respect to that property;

(b) to plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations; and

(c) to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area.

(2) Nothing in this section, or in any direction given under this section by the Minister, shall be construed as requiring any person who is or was the holder of a licence to do anything which is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.

(3) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice concerned is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

[Ch6102s52]52. Removal disposal and sale of property

(1) Where a direction under section 51 has not been complied with, the Minister may—

(a) do or cause to be done all or any of the things required by the direction to be done;

(b) remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the area that was, but is no longer, subject to the licence;

(c) dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (b); and

(d) if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction, or otherwise as he thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that he believes to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—

(a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;

(b) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under section 51 to be done by the person; and

(c) all or any part of any fees or amounts due and payable under this Act by the person.

[Ch6102s53]53. Costs and expenses of removal, disposal and sale of property

(1) The costs and expenses incurred by the Minister under section 52,—

(a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic;

(b) if incurred in relation to the doing of anything required by a direction under section 51 to be done by a person who is or was the holder of a licence, are a debt due by that person to the Republic,

and to the extent to which they are not recovered under section 52 (2) are recoverable in a court as a debt due to the Republic.

(2) Subject to subsection (1), no action lies in respect of the removal, disposal or sale of property under section 52.

Division 2—Civil Liability for Pollution

[Ch6102s54]54. Definition

In this Division, in addition to the definition in section 3, “production operations” includes the sinking of a well in the course of exploring for petroleum.

[Ch6102s55]55. Liability for petroleum pollution

(1) Where any petroleum is discharged as a result of any occurrence taking place during production operations, the licensee carrying on those operations is liable, except as otherwise provided by this Act,—

(a) to reimburse any person (including the Republic) that suffers damage caused directly by contamination following the discharge;

(b) for the cost of any measures reasonably taken after the discharge for the purpose of preventing or reducing any such damage;

(c) to reimburse any person (including the Republic) that suffers damage caused directly by any measures so taken.

(2) For the purposes of this Act, where more than one discharge results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one discharge, but any measures taken subsequent to the first of them are deemed to have been taken after the discharge.

(3) In this section, “damage” includes loss, and includes damage suffered as a result of injury to soil or water in their physical aspects, together with natural vegetation associated therewith, and injury to or destruction—

(a) of fish (as defined in section 3 of the Fisheries Act) in any water; Cap. 66:05

(b) of aquatic or terrestrial mammals; and

(c) of reptiles and avifauna.

(4) The extent of the liability incurred under this section in respect of any discharge of petroleum may be limited (whether as to amount or otherwise) by the Regulations.

[Ch6102s56]56. Exemption from liability under section 55

(1) A licensee does not incur any liability under section 55 in respect of any discharge of petroleum if he proves that the discharge—

(a) resulted from an act of war, hostility, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(b) was due wholly to anything done or left undone by another person, not being a servant or agent of the licensee, with intent to do damage.

(2) If a licensee proves that damage caused by contamination resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the licensee shall be exonerated wholly or partly from his liability to that person.

[Ch6102s57]57. Other liability not affected

Section 55 is without prejudice to any liability which arises apart from that section.

[Ch6102s58]58. Limitation

No action to enforce a claim in respect of a liability incurred under section 55 shall be entertained by a court unless the action is commenced not later than two years after the occurrence or, as the case may be, the first of the occurrences resulting in the discharge giving rise to the liability.

[Ch6102s59]59. Liability for cost of preventive measures where section 55 does not apply

Where—

(a) after a discharge of petroleum during production operations measures are taken for the purpose of preventing or reducing damage which may be caused by contamination resulting from the discharge; and

(b) any person incurs, or might but for the measures taken have incurred, a liability, otherwise than under section 55, for any such damage,

then, notwithstanding that subsection 1 (b) of that section does not apply, he is liable for the cost of the measures whether or not the person taking them does so for the protection of his interest or in the performance of a duty.

[Ch6102s60]60. Saving of recourse action

Nothing in this Act prejudices any claim, or the enforcement of any claim, which a person incurring any liability under this Act may have against another person in respect of that liability.

[Ch6102s61]61. Compulsory insurance against liability for pollution

(1) No licensee shall carry on production operations unless there is in force in respect of any liability that the licensee may incur under section 55 as a result of those operations a contract of insurance or other security satisfactory to the Minister, in an amount determined by the Minister.

(2) A licensee who does not comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha for each day during which the offence continues.

[Ch6102s62]62. Rights of third parties against insurers

(1) Where it is alleged that a licensee has incurred any liability under section 55 as a result of any discharge of petroleum occurring while there is in force in respect of that liability such a contract of insurance or other security as is referred to in section 61, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in subsection (2) referred to as “the insurer”).

(2) In any proceedings brought against the insurer by virtue of this section it is a defence (in addition to any defence affecting the licensee’s liability) to prove that the discharge or escape was due to the wilful misconduct of the licensee himself.

## PART VI

### RESTRICTIONS AND SURFACE RIGHTS

[Ch6102s63]63. Restriction on exercise of rights in relation to certain land

(1) The holder of a licence shall not exercise any of his rights under the licence or under this Act—

(a) except with the written consent of the President in respect of—

- (i) any land set apart for any prescribed public purpose;
- (ii) any land dedicated as a place of burial or which is a place of religious significance; or
- (iii) any monument or relic which is protected under section 7 of the Monuments Act; Cap. 29:01

(b) except with the written consent of the lawful occupier thereof in respect of—

(i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;

(ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise bona fide prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);

(iii) any land from which, during the year immediately preceding, agricultural crops have been reaped; or

(iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip, tank, dam, or other body of water, not being public water as defined in the Water Resources Act, Cap. 72:03

but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;

(c) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;

(d) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township;

(e) in respect of any land comprising a street or road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof; Cap. 69:02

(f) in respect of any controlled area under section 22 of the Water Resources Act, except with the written consent of the Minister responsible for water resources; or Cap. 72:03

(g) in respect of a mining area (as defined in section 2 of the Mines and Minerals Act), except with the written consent of the holder of the mining licence concerned. Cap. 61:01



(2) Any dispute as to whether or not subsection (1) (b) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.

(3) Any consent under subsection (1) (a), (c), (d), (e) and (f) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

[Ch6102s64]64. Right to graze stock, etc.

(1) The lawful occupier of any land in an exploration area or a production area retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with exploration or production operations in any such area.

(2) The lawful occupier of land in a production area shall not erect any building or structure in the area without the consent of the holder of the petroleum production licence; but if the Minister considers that the consent is being unreasonably withheld he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.

(3) The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier of the land subject to the licence or on which rights under the licence are exercised, consistent with the reasonable and proper conduct of operations pursuant to the licence.

(4) Without limiting the generality of subsection (3), a person carrying on operations under a licence shall not, except where that person gives to the Minister prior notice in writing of the expected nature and duration of the interference, take action which in any way will interfere with—

- (a) fishing; or
- (b) navigation,

being lawfully carried on.

[Ch6102s65]65. Compensation for disturbance of rights, etc.

Where, in the course of exploration or production operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the holder of the licence, by virtue of which the operations are carried on, is liable to pay to any lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

[Ch6102s66]66. Notice of intention to commence exploration or production operations

Subject to such exceptions as may be prescribed, the holder of a licence, before commencing exploration or production operations in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

PART VII

## GENERAL

### [Ch6102s67]67. Control of company not to be given without consent of Minister

(1) A company which is the holder of a licence shall not, without the prior consent in writing of the Minister—

(a) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(b) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,

if the effect of doing so would be to give to the particular person or, in the case mentioned in paragraph (b), the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section—

(a) a person is deemed to have control of a company—

(i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of issued equity shares in the company;

(b) “equity shares”, in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;

(c) “preference shares” means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights;

(d) the reference in paragraph (a) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

### [Ch6102s68]68. Scientific investigation

(1) In this section, “reconnaissance operations” means the search for petroleum by geophysical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith.

(2) Subject to subsection (3), the Minister may, by instrument in writing, consent to the carrying on by any person of reconnaissance operations and such other operations as may be specified in the instrument in the course of a scientific investigation with respect to the geology or petroleum resources of Malawi.

(3) The Minister shall not issue an instrument under subsection (2) to a person unless the person, if required by the Minister—

- (a) discloses to the Minister the sources of the finance for the scientific investigation;
- (b) accepts as a condition of consent that the results of the investigation will be made freely available to the Government.

(4) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.

(5) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance and other operations specified in the instrument—

- (a) in the area; and
- (b) subject to the conditions (if any),

specified in the instrument, in the course of scientific investigation.

(6) A person so authorized shall not, pursuant to subsection (5), enter on any land or place referred to in section 63 without obtaining the consent required under that section in relation to the land or place.

(7) Section 15 applies in relation to a person to whom an instrument of consent is issued under subsection (2) as it applies in relation to a licence.

#### [Ch6102s69]69. Discovery of mineral to be notified

(1) When a significant discovery of any mineral (as defined in section 4 of the Mines and Minerals Act) is made in an exploration area or a production area, the licensee shall, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery. Cap. 61:01

(2) A licensee who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

#### [Ch6102s70]70. Powers of Commissioner and authorized officers

(1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times, may—

(a) enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with exploration or production operations;

(b) inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (a);

(c) take or remove, for the purpose of analysis or testing or for use in evidence in connexion with proceedings for an offence against this Act, samples of minerals or other substances from any area where any of the operations referred to in paragraph (a) are being carried on;

(d) inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);

(e) with respect to the health and safety of persons employed by a licensee in or in connexion with any of the operations referred to in paragraph (a) issue directions to and impose restrictions on the licensee, or any persons so employed, by instrument in writing;

(f) order, by instrument in writing,—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (a); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed;

(g) make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed, or orders made, under this Act, are being complied with.

(2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable, hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

(4) On appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, analysed, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or authorized officer's powers under this section.

(7) Any person who—

(a) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or

(b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this Act,

is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

#### [Ch6102s71]71. Removal of petroleum

(1) Petroleum shall not be removed from any land from which it has been recovered, or disposed of, in any manner, except—

(a) subject to subsection (2), by a licensee for the purpose of sampling or analysis;

(b) by a licensee in accordance with the terms of the licence concerned; or

(c) as otherwise permitted by this Act.

(2) A licensee shall not, pursuant to subsection (1) (a), remove from any land samples of petroleum without the written consent of the Commissioner.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or

(b) in the case of a body corporate, to a fine of five thousand Kwacha.

#### [Ch6102s72]72. Acquisition of land

Where the President considers that any land is required to secure the development or utilization of the petroleum resources of Malawi he may direct that the land be acquired under the Land Acquisition Act. Cap. 58:04

[Ch6102s73]73. Identity of person exercising certain rights to be established

A person exercising any right under a petroleum exploration licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of a licence; and if he fails to do so he may be treated as a trespasser.

[Ch6102s74]74. Obstruction of licensee

Any person who, without reasonable excuse, obstructs or hinders a licensee from doing any act which that holder is authorized to do by this Act is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

[Ch6102s75]75. Offence committed by body corporate

When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

[Ch6102s76]76. Miscellaneous offences

Any person who—

(a) in, or in connexion with, any application under this Act, or in response to any invitation or requirement of the Minister or the Commissioner under this Act, knowingly or recklessly gives information which is false or misleading in a material particular;

(b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(c) places or deposits, or is accessory to the placing or depositing of, any petroleum or substance in any place with the intention of misleading any other person as to the possibility of a petroleum reservoir existing in that place;

(d) tampers with samples of minerals, rock or petroleum taken in the course of exploration or production operations by adding to or taking from any such sample any substance, or by in any way modifying the physical or chemical properties of any such sample, with the intention of misleading any person as to the existence, extent or content of a petroleum reservoir, is guilty of an offence and liable on conviction—

(e) in the case of an individual, to imprisonment for a term of two years; or

(f) in the case of a body corporate, to a fine of twenty thousand Kwacha.

[Ch6102s77]77. Licensee to indemnify Republic

A licensee shall, at all times, keep the Republic indemnified against all actions, claims and demands that may be brought or made against the Republic by reason of anything done by the licensee, or the servants or agents of the licensee, in the exercise or purported exercise of the rights of the licensee under this Act or his licence.

## PART VIII

### REGULATIONS

#### [Ch6102s78]78. Regulations

(1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed or for giving effect to this Act, including in particular provision for or with respect to—

(a) exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;

(b) the recovery of petroleum and the carrying on of operations, and the execution of works, for that purpose;

(c) conserving, and preventing the waste of, the natural resources, whether petroleum or otherwise;

(d) the form and content of, and conditions with respect to, applications for licences or renewal of licences;

(e) the construction, erection, maintenance, operation or use of installations or equipment;

(f) the control of the flow and the prevention of the escape of petroleum or water, and the prevention of the escape of water or drilling fluid or a mixture of water or drilling fluid or any of the matter;

(g) the prevention of pollution and measures to be taken for the purpose of preventing or reducing damage from pollution;

(h) the removal of structures, equipment and other property brought into Malawi in connexion with exploration for, or the recovery or conveyance of, petroleum that are not used or intended to be used in connexion with that exploration, recovery or conveyance;

(i) the maintenance of pressure in, or the repressurizing of, a petroleum reservoir and the recycling of petroleum;

(j) the secondary or tertiary recovery of petroleum from a petroleum reservoir and the methods to be used in such recovery;

(k) the underground disposal of petroleum, water and other substances produced in association with exploration for or the production of petroleum;

(l) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;

(m) the methods to be used for the measurement of petroleum, water and other substances from a well;

(n) safety standards and the health, safety and welfare of persons employed in or in connexion with exploration for, or the production or conveyance of, petroleum;

(o) taking, preserving and furnishing to the Minister cores, cuttings and samples from wells and samples of petroleum and water;

(p) the registration of instruments and the effect of the registration of, or failure to register, instruments;

(q) the transfer of licences or interests in licences;

(r) the taking of logs or directional surveys or making other down-hole investigations;

(s) annual charges;

(t) fees;

(u) the amount of any royalty to be paid and the manner of payment of any royalty.

(2) The power under this section to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and

(b) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of cases for different purposes of this Act; or

(ii) any such provision either unconditionally or subject to any specified condition.

(3) Regulations made under this section may, notwithstanding section 21 (e) of the General Interpretation Act, make provision for such penalty not exceeding two thousand Kwacha or such term of imprisonment not exceeding six months, or both such fine and imprisonment, as the Minister thinks fit to impose for offences thereunder. Cap. 1:01

## PART IX

### MISCELLANEOUS

[Ch6102s79]79. Minister to act subject to the directions of the Life President

The Minister, in the exercise of his functions under this Act, shall act subject to the general or special directions of the Life President.



## SCHEDULE s. 23

### RELINQUISHMENT

#### 1. Relinquishment

(1) A licensee may, at any time when a petroleum exploration licence is in force and by giving to the Minister not less than six months previous notice in writing of the intention to do so, relinquish any block or blocks in the exploration area identified in the notice.

(2) Any relinquishment pursuant to subparagraph (1) is without prejudice to any obligation incurred by the licensee in respect of the area relinquished prior to the date of the relinquishment.

(3) An area relinquished pursuant to subparagraph (1) shall, unless the Minister otherwise determines, be such as to ensure that the remaining exploration area constitutes a single area or not more than three discrete areas.

(4) Where, pursuant to this paragraph, any area is relinquished then the exploration licence concerned ceases to have effect with respect to that area.

#### 2. Relinquishment on grant of petroleum production licence

Any part of an exploration area over which a petroleum production licence is granted to the licensee shall cease to be part of the exploration area.

#### 3. Relinquishment for purposes of renewal of petroleum exploration licence

(1) Subject to any relevant agreement of a kind referred to in section 10, the number of blocks in respect of which an application for a renewal of a petroleum exploration licence may be made shall not exceed the number which is one-half in total of the number of blocks in respect of which the licence was issued or first renewed, as the case may be.

(2) For the purpose of determining the number of blocks in respect of which a petroleum exploration licence was granted or first renewed, there shall not be taken into account any block excluded from the exploration area pursuant to section 25 (3) or (4) and any discovery block subsisting in the exploration area at the date on which the application for the renewal is made.

### SUBSIDIARY LEGISLATION

#### PETROLEUM (APPLICATIONS) REGULATIONS

under s. 78

G.N. 48/1984

31/2009

#### 1. Citation

These regulations may be cited as the Petroleum (Applications) Regulations.

#### 2. Application for grant of petroleum exploration licence

(1) An application for the grant of a petroleum exploration licence— G.N. 31/2009

(a) shall give in respect of the person or, if there is more than one person, of each person, making the application—

(i) in the case of an individual, his full name and nationality;

(ii) in the case of body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(b) shall identify the block or blocks in respect of which it is made;

(c) shall, subject to subregulation (2), be in respect of not more than one block; G.N. 31/2009

(d) shall give or be accompanied by a statement giving particulars of work and minimum expenditure proposed to be carried out or expended in respect of the block or blocks over which the licence is sought, and an estimate of any significant effect which the proposed exploration operations would be likely to have on the environment and on any monument or relic in any such block;

(e) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malawi; and

(f) may set out any other matter which the applicant wishes the Minister to consider.

(2) The Minister may consider an application in respect of more than one block but not more than two blocks where he is satisfied that special circumstances exist for doing so. G.N. 31/2009

(3) Where an application relates to more than one block, the blocks identified in an application for the grant of a petroleum exploration licence—

(a) shall be so situated as to form a single area; and

(b) shall be such that each block in the area has a side in common with at least one other block in the area.

3. Application for renewal of petroleum exploration licence

(1) An application for the renewal of a petroleum exploration licence—

(a) shall, subject to subregulation (2), be made not later than ninety days before the day on which the licence is due to expire;

(b) shall be accompanied by—

(i) particulars of the work carried out in, and the amount expended in respect of, the exploration area during the term of the licence up to and including a date that is not earlier than fourteen days immediately preceding the date of the application or, where the application is

for a second renewal of the licence, up to and including a date that is not earlier than fourteen days immediately preceding the date of the application; and

(ii) adequate proposals of the applicant for work and minimum expenditure in respect of the block or blocks specified in the application and, in particular, details of the programme to be performed in the first year of the renewal period being applied for;

(c) shall be made not more than twice; and

(d) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may accept an application for the renewal of a petroleum exploration licence later than ninety days before, but not in any case after, the date of expiry of the licence.

(3) The requirement in subregulation (1) (b) (ii) with respect to adequate proposals is deemed to have been met in any case where the proposals pursuant to subregulation (1) (b) (ii) accompanying an application satisfy the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10 of the Act.

#### 4. Application for grant of petroleum production licence

(1) Subject to subregulation (2), an application for the grant of a petroleum production licence—

(a) shall give in respect of the person or, if there is more than one person, or each person, making the application—

(i) in the case of an individual, his full name and nationality;

(ii) in the case of a body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(b) shall give full information as to the applicant's financial status, technical competence and experience;

(c) shall state the number of the applicant's petroleum exploration licence (if any);

(d) shall state the period for which the licence is sought;

(e) shall identify the composition of the petroleum which it is intended to produce;

(f) shall give a comprehensive report of the petroleum deposit, which report shall include a description of the petroleum reservoir or deposit, the form of the petroleum and an estimate of the petroleum and an estimate of the petroleum reserves;

(g) shall give details, illustrated by an approval plan, of the area in respect of which the application is made;

(h) shall give a technological report on production and processing possibilities and state the applicant's intention in relation thereto;

(i) shall contain a proposed programme of production and processing operations which shall include—

(i) the date by which the applicant intends to produce petroleum for use or sale;

(ii) the capacity of production and scale of operations;

(iii) the estimated overall recovery of petroleum and by-products;

(iv) the nature of the petroleum and by-products;

(v) the marketing arrangements made for the sale of the petroleum and by-products;

(vi) proposals for the prevention of pollution, the treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of lands disturbed by petroleum production and for the minimization of the effect of such extraction on adjoining or neighbouring lands; and

(vii) a statement of any significant effect which the carrying out of petroleum production would be likely to have on the environment and on any monument or relic in the area over which the licence is sought and proposals for controlling or eliminating that effect;

(j) shall give a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;

(k) shall contain proposals with respect to the employment and training of citizens of Malawi;

(l) shall give a report of the goods and services required for the production and processing operations which can be obtained within Malawi and the applicant's intention in relation thereto;

(m) shall give details of expected infrastructure requirements; and

(n) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may, by instrument in writing, dispense with or modify any of the requirements of subregulation (1) in relation to an application where he considers it appropriate to do so on the ground that the requirement has already been met by the applicant or that the information to which the requirement relates is already available to the Minister.

## 5. Application for renewal of petroleum production licence

(1) An application for the renewal of a petroleum production licence— G.N. 31/2009

(a) shall, subject to subregulation (2), be made not later than twelve months before the day on which the licence is due to expire;

(b) shall be accompanied by—

(i) particulars of the work carried out, the petroleum recovered and the amounts expended and received in respect of the production area up to and including a date that is not earlier than one month immediately preceding the date of the application; and

(ii) adequate proposals of the applicant for work and minimum expenditure in respect of the production area during the renewal period being applied for; and

(c) may set out any other matter that the applicant wishes the Minister to consider.

(2) The Minister may accept an application for the renewal of a petroleum production licence later than twelve months before, but not in any case after, the date of expiry of the licence.

#### PETROLEUM (CONSTITUTION OF BLOCKS) REGULATIONS

under s. 78

G.N. 40/1984

33/2009

#### 1. Citation

These regulations may be cited as the Petroleum (Constitution of Blocks) Regulations.

#### 2. Reference map showing blocks

(1) The Minister shall cause to be prepared a reference map showing the geographical area of Malawi, divided into blocks as provided in this Regulation. G.N. 33/2009

(2) For the purpose of the preparation of the reference map pursuant to subregulation (1), the following considerations have been made for the division of the country into blocks—

(a) the geology and occurrence of Malawi's major sedimentary basins;

(b) the structural geology of the sedimentary basins;

(c) the existing seismic data;

(d) the country's major deltaic environments; and

(e) possible threshold sediment volumes that may be necessary for an economic deposit discovery.

(3) Each block on the reference map prepared pursuant to subregulation (1) shall, on the map, be given a number or a letter, as shown in the Schedule to these Regulations, for the purpose of identification.

SCHEDULE reg. 2, G.N. 33/2009

REFERENCE COORDINATES FOR OIL AND GAS EXPLORATION BLOCKS

BLOCK 1

A	543000 8762000
B	621000 8762000
C	622000 8861000
D	612000 8861000
E	612000 8877000
F	602000 8877000
G	602000 8894000
H	593000 8894000
I	593000 8926000
J	603000 8926000

From J follow border between Malawi and Tanzania to A in anticlock-wise direction.

BLOCK 2

A	689000 8762000
B	621000 8762000
C	622000 8861000
D	612000 8861000
E	612000 8877000
F	602000 8877000
G	602000 8894000
H	593000 8894000
I	593000 8926000

J 603000 8926000

From J follow border between Malawi and Tanzania to A in clock-wise direction.

### BLOCK 3

A 689000 8762000

B 621000 8762000

C 621000 8703000

D 607000 8703000

E 607000 8619000

F 622000 8619000

G 622000 8573000

H 635000 8573000

I 665000 8573000

From I follow border between Malawi and Mozambique to A in anticlock-wise direction.

### BLOCK 4

A 702000 8509000

From A follow border between Malawi and Mozambique to B in a clock-wise direction.

B 753000 8451000

C 753000 8400000

D 716000 8400000

E 661000 8400000

F 661000 8480000

G 635000 8480000

H 635000 8573000

I 665000 8573000

From I follow border between Malawi and Mozambique to A in a clock-wise direction.

#### BLOCK 5

A 760000 8218000

From A follow border between Malawi and Mozambique to B in anticlock-wise direction.

B 753000 8451000

C 753000 8399000

D 716000 8400000

E 716000 8259000

F 716000 8218000

#### BLOCK 6

A 760000 8218000

From A follow border between Malawi and Mozambique to D in a clock-wise direction.

D 640000 8259000

E 716000 8259000

F 716000 8218000

### 3. Reference map to be deposited

(1) The reference map prepared pursuant to regulation 2 (1) shall be deposited at such office as may, from time to time, be appointed by the Minister by notice published in the Gazette.

(2) The Minister may, from time to time, certify a map to be a true copy of the reference map prepared pursuant to regulation 2 (1) and any such copy shall be received in all proceedings as evidence of the contents of the reference map so prepared.



#### 4. Interpretation of references in licences

Any reference in a petroleum exploration licence or in a petroleum production licence to an identified block shall be interpreted as a reference to the block so identified on the reference map prepared pursuant to regulation 2 (1).

### PETROLEUM (GENERAL PROVISIONS) REGULATIONS

under s. 78

G.N. 39/1984

32/2009

#### 1. Citation

These regulations may be cited as the Petroleum (General Provisions) Regulations.

#### 2. Investigations

The investigations and studies for the purposes of section 26 of the Act are— G.N. 32/2009

(a) technical and economic feasibility studies relating to the recovery, processing and transportation of petroleum from the discovery block or blocks in the exploration area;

(b) studies of proposed sites for facilities that would be required by the industry referred to in subsection (1) of that section;

(c) studies of port or berthing facilities, and roads, pipelines or other transportation facilities;

(d) investigations into—

(i) suitable water facilities and reticulation systems for industrial and town purposes;

(ii) the location and design of a suitable airstrip and associated landing and terminal facilities, if so required for that industry; and

(iii) the generation and transmission of electricity as so required for that industry;

(e) investigations into the development, if so required, of a suitable town for the industry referred to in subsection (1) of that section including the design of housing facilities and associated civic, cultural and social facilities;

(f) investigations of any other works, services or facilities that may be so required for that industry in relation to the discovery block or blocks in the exploration area;

(g) studies of future labour requirements for the industry; and

(h) impact studies into the possible effects of that industry on the environment. G.N. 32/2009

3. Survey of wells, etc.

(1) The Commissioner may, at any time, by notice in writing served on a holder of a licence, direct the holder—

(a) to carry out a survey of the position of any well, structure or equipment specified in the notice; and

(b) to furnish promptly to the Commissioner a report in writing of the survey.

(2) Where the Commissioner is not satisfied with a report of a survey furnished to him under subregulation (1) by the holder of a licence, he may, by notice in writing served on the holder direct the holder to furnish promptly information in writing in connexion with the survey.

#### PETROLEUM (PRESCRIBED FEES AND ANNUAL CHARGES) REGULATIONS

under s. 78

G.N. 53/1984

30/2009

1. Citation

These Regulations may be cited as the Petroleum (Prescribed Fees and Annual Charges) Regulations.

2. Fees

The fees prescribed in the First Schedule are payable in respect of the matters referred to in that Schedule.

3. Charges

(1) The annual charges prescribed in the Second and Third Schedules are payable in respect of the matters referred to in those Schedules, unless the Minister otherwise directs. G.N. 30/2009

(2) Any annual charge payable pursuant to these Regulations is payable on the grant of the licence concerned and thereafter annually on the anniversary of the grant until the termination of the licence.

FIRST SCHEDULE reg. 2, G.N. 30/2009

#### Fees

Application for grant of petroleum exploration licence K250,000

Application for grant of petroleum production licence	K500,000
Application for renewal of petroleum exploration licence	K500,000
Assignment of petroleum exploration licence	K150,000
Assignment of petroleum production licence	K510,500

SECOND SCHEDULE reg. 3, G.N. 30/2009

1. The annual charge in respect of a petroleum exploration licence shall be—

- (a) five hundred Kwacha (K500) per square kilometre of the area subject to the licence;
- (b) seven hundred and fifty Kwacha (K750) per square kilometre of the area subject to the licence after first renewal; and
- (c) one thousand Kwacha (K1,000) per square kilometre of the area subject to the licence after second renewal.

2. The annual charge in respect of a petroleum production licence shall be—

- (a) two thousand five hundred Kwacha (K2,500) per square kilometre of the area subject to the licence; and
- (b) three thousand Kwacha (K3,000) per square kilometre of the area subject to the licence for any subsequent renewals.

THIRD SCHEDULE reg. 3, G.N. 30/2009

- (a) training fees shall be at seven million Kwacha (K7,000,000) for Exploration Licence per annum per block;
- (b) training fees for a Production Licence shall be at twenty-one million Kwacha (K21,000,000) per annum per block
- (c) social contribution shall be at a minimum of seven million Kwacha (K7,000,000) per annum per block for exploration; and
- (d) social contribution shall be at twenty-one million Kwacha (K21,000,000) per annum per block for production.

PETROLEUM (RECORDS, REPORTS AND ACCOUNTS) REGULATIONS

under s. 78

G.N. 42/1984

1. Citation

These regulations may be cited as the Petroleum (Records, Reports and Accounts) Regulations.

## 2. Records, etc.

(1) Subject to these regulations, the holder of a licence shall keep at an address in Malawi notified to the Minister accurate records containing full particulars of the following matters, namely—

- (a) the drilling, operation, deepening, plugging or abandonment of wells;
- (b) the strata and subsoil through which wells are drilled;
- (c) the casing inserted in wells and any alteration to such casing;
- (d) any petroleum, water and other economic minerals or dangerous substances encountered; and
- (e) the areas in which any geological or geophysical work has been carried out.

(2) The holder of a licence shall keep at the address referred to in subregulation (1) accurate geological maps and plans, geophysical records, and interpretations thereof, relating to the areas subject to the licence.

(3) The holder of a licence shall give to the Minister in such form as the Minister directs—

- (a) at half-yearly intervals commencing six months after the grant of the licence—
  - (i) a summary of all geological and geophysical work carried out;
  - (ii) a summary of all drilling activity and results obtained; and
  - (iii) a list of maps, or reports and of other geological and geophysical data prepared for the holder,

in or in respect of the period concerned;

- (b) within sixty days after the end of each year of the term of the licence—
  - (i) a record describing the results of all exploration and production operations carried out by the holder in the year concerned; and
  - (ii) estimates (if available) of economically recoverable reserves of crude oil and natural gas at the end of the year concerned; and

(c) summaries of exploration wells drilled, including lithological groups, letter classification boundaries and hydrocarbon zones, within six months of the completion of drilling or, in the case of information that cannot reasonably be obtained in that period, as soon as possible after the completion of drilling.

## 3. Duties on termination of licence

Subject to these regulations, when a licence is determined or cancelled or expires, the person who was the holder of the licence immediately before the determination, cancellation or expiration of the licence shall forthwith deliver to the Minister—

(a) all records which the former holder maintained pursuant to these regulations with respect to the licence;

(b) all plans or maps of the area that was subject to the licence and which were prepared by or on the instructions of the former holder;

(c) all tapes, diagrams, profiles and charts which were so prepared; and

(d) such other documents as the Minister may, by notice given to the former holder, require the former holder to so deliver.

#### 4. Accounts

Subject to these regulations, the holder of a licence shall keep at an address in Malawi notified to the Minister, accurate accounts containing full particulars of the following matters, namely—

(a) the gross quantity of any crude oil and natural gas won and saved from the area subject to the licence;

(b) the grades and gravity of any crude oil produced and the composition of natural gas produced;

(c) any quantities of—

(i) crude oil;

(ii) natural gas;

(iii) each refined petroleum product, including liquefied petroleum gases; and

(iv) sulphur, in any form, or any other minerals in any form or any other gases, liquids or solids,

disposed of by way of sale or otherwise, the consideration received the quantity disposed of, and the name of the person to whom any such quantity was disposed;

(d) the quantity of petroleum injected into the formation of—

(i) crude oil;

(ii) natural gas;

(iii) each refined petroleum product, including liquefied petroleum gases; and

(iv) other liquids or gases;

(e) the quantity consumed for drilling and other production operations (other than quantities reported under paragraph (d)) and consumed in pumping to field storage and refineries in Malawi of—

- (i) crude oil;
- (ii) natural gas; and
- (iii) each refined petroleum product, including liquefied petroleum gases;

(f) the quantity of crude oil refined by or on its behalf in Malawi;

(g) the quantity of natural gas treated in Malawi by him or on his behalf for the removal of liquids and liquefied petroleum gases, and the quantity of—

- (i) butane;
- (ii) propane; and
- (iii) any other liquid or gases or any solids,

obtained from it;

(h) the quantity of natural gas flared.

#### 5. Modification of duties under the Regulations

The Minister may, on written application made to him by the holder or former holder of a licence, by instrument in writing, dispense with or modify any of the requirements of these regulations, in their application to that holder or former holder, to the extent and on the conditions (if any) stated in the instrument.

### PETROLEUM (REGISTRATION AND TRANSFER OF LICENCES) REGULATIONS

under s. 78

G.N. 41/1984

#### 1. Citation

These regulations may be cited as the Petroleum (Registration and Transfer of Licences) Regulations.

#### 2. Record to be kept

The Commissioner shall cause to be kept a record, in such form as the Commissioner determines, in which shall be entered—

- (a) the name and address of each person to whom a licence is granted; and
- (b) any dealings with or affecting a licence.

#### 3. Interest in licence to be created by instrument in writing

(1) A legal or equitable interest in, or affecting, a licence, is not capable of being created, transferred, assigned, affected or dealt with, whether directly or indirectly, except by instrument in writing.

(2) The creation of a legal or equitable interest in, or affecting, a licence, does not affect the liability of the licensee for any breach of the conditions of the licence or of any of the provisions of the Act.

4. Transfer, etc. of licence to be approved by Minister

(1) Unless the Minister in writing approves—

(a) the transfer of a licence; or

(b) an instrument by which a legal or equitable interest in, or affecting, a licence is created, assigned or dealt with, whether directly or indirectly,

the transfer or the instrument (in so far as it operates as provided in paragraph (b)), is of no force.

(2) A person seeking the approval of the Minister under subregulation (1), shall make application to him in the prescribed form.

(3) Subject to subregulations (4) and (5), on application made under subregulation (2), the Minister may give or refuse to give his approval, or give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall give his approval to the transfer of a petroleum exploration licence where the transferee—

(a) is a person controlling, controlled by or under common control with the transferor; and

(b) is not a person disqualified under any provision of the Act from holding a petroleum exploration licence.

(5) Where the Minister gives his approval under subregulation (4), he shall cause the name of the transferee to be recorded as the holder of the licence, and any legal proceedings which may be or have been commenced against the transferor may be commenced or, as the case may be, continued notwithstanding the transfer.

(6) For the purposes of subregulation (1) (a), the reference to “the transfer of a licence” includes the transfer of a licence by operation of law.

5. Minister may require additional information

The Minister may require any person making application under regulation 4 to furnish to him in writing such additional information as he may reasonably require to enable him to dispose of the application, and the applicant shall comply with the requirement.

6. Evidentiary provision

(1) The Commissioner may give a certificate with respect to any matter referred to in subregulation (2).

(2) A certificate of the Commissioner—

(a) that a licence was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;

(b) that any block, identified in the certificate, is, or was on a date specified in the certificate, subject to a licence;

(c) that a condition specified in the certificate is a condition on which any consent or approval, so specified, was given;

(d) that any condition specified in the certificate is, or was on a date so specified, a condition of a licence;

(e) that a person named in the certificate is, or was on a date specified in the certificate, the holder of a licence,

shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

[Chap6301]CHAPTER 63:01

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11 of 1997

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An Act to provide for participatory forestry, forest management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international cooperation in forestry and for matters incidental thereto or connected therewith

[22ND DECEMBER 1997]

#### PART I

##### PRELIMINARY

[Ch6301s1]1. Short title

This Act may be cited as the Forestry Act.

[Ch6301s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Minister” means the Minister for the time being responsible for forestry matters;

“Board” means the Forest Management Board establishment under section 15;

“customary land” has the meaning assigned thereto in the Land Act; Cap. 57:01

“forest” means an area of land proclaimed to be a forest under this Act or unproclaimed land with trees on it;

“forest management agreement” means an agreement made under section 31;

“forest plantation agreement” means an agreement made under section 36 for establishment and management of forest plantations;

“forest produce” includes trees, timber, firewood, branch wood, poles, bamboos, chips, sawdust, plants, grass, reeds, peat, thatch, bedding, creepers, leaves, moss, fruits, seed, galls, slabs, roots, bark, rubber, gum, resin, sap, flowers, fungi, honey, wax, earth, water, soil, stones, vertebrates, invertebrates, wild animals, hides, horns, bones, ivory, meat and such other produce as the Minister may, by notice published in the Gazette, declare to be forest produce;

“Fund” means the Forest Development and Management Fund established under section 55;

“highway authority” has the meaning assigned thereto in the Public Roads Act; Cap. 69:01

“licensing officer” means, in relation to any licence under this Act, an officer not below the rank of Principal Forestry Officer who may be authorized to issue licences;

“livestock” includes cattle, horses, mules, donkeys, pigs, sheep and goats;

“management authority” in relation to a village forest area, means a person designated as the management authority pursuant to the agreement establishing the village forest area;

“National Forest Plan” means a plan prepared under section 5;

“officer” means the Director of Forestry and any officer appointed pursuant to section 4;

“private land” has the meaning assigned thereto in the Land Act; Cap. 57:01

“protected forest area” means an area declared as such under section 26;

“public land” has the meaning assigned thereto in the Land Act; Cap. 57:01

“river” includes all natural or artificial water courses in which water ordinarily flows or remains either throughout the year or during particular seasons;

“timber” means any tree or part of a tree which has fallen or has been felled and any part of a tree which has been cut and all wood whether sawn, split, hewn, processed or otherwise fashioned;

“tree” means a woody perennial plant having a single well defined stem and a more or less defined crown and includes palm, shrubs, bush, climber, seedling, sapling and reshoots of all ages and of all kinds and any part thereof;

“village forest area” means an area of customary land established as such by an agreement under section 30;

“village natural resources management committee” means a committee elected by stakeholders of the village forest areas.

[Ch6301s3]3. Purposes of this Act

The purposes of this Act are—

- (a) to identify and manage areas of permanent forest cover as protection or production forest in order to maintain environmental stability; to prevent resource degradation and to increase social and economic benefits;
- (b) to augment, protect and manage trees and forest on customary land in order to meet basic fuelwood and forest produce needs of local communities and for the conservation of soil and water;
- (c) to promote community involvement in the conservation of trees and forests in forest reserves and protected forest areas in accordance with the provisions of this Act;
- (d) to empower village natural resources management committees to source financial and technical assistance from the private sector, Non-Governmental Organizations and other organizations;
- (e) to promote sustainable utilization of timber, fuelwood and other forest produce;
- (f) to promote optimal land use practices through agroforestry in smallholder farming systems;
- (g) to upgrade the capability of forestry institutions in the implementation of their resource management responsibilities and in development of human resources in forestry;
- (h) to control trafficking in wood and other forestry produce including exportation and importation;
- (i) to protect fragile areas such as steep slopes, river banks, water catchment and to conserve and enhance biodiversity;
- (j) to provide guidelines in planning and implementation of forestry research and forestry education;
- (k) to establish a forestry administration; and
- (l) to promote bilateral, regional and international cooperation in forest augmentation and conservation.

PART II

ADMINISTRATION

[Ch6301s4]4. Director of Forestry and other officers

There shall be appointed in the public service an officer to be designated as the Director of Forestry and other officers subordinate to him, who shall be responsible for the administration of this Act subject to any general and specific directions of the Minister.

[Ch6301s5]5. Duties of the Director of Forestry

The Director of Forestry shall be responsible for—

- (a) planning, promoting, conducting and assisting in the activities required to maintain, restore and develop the forest cover necessary for soil and water conservation, maintenance of biological diversity and the supply of forest produce;
- (b) conducting and maintaining inventories of the forest resources and preparing both national forestry plans and forestry management plans;
- (c) conducting and co-ordinating research into the growth, management, protection and sustainable utilization of forest resources;
- (d) promoting participatory forestry;
- (e) facilitating the formation of village natural resources management committees and the establishment of rules of village forest areas;
- (f) undertaking training programmes for subordinate, technical and professional staff in the Department of Forestry to the highest levels possible;
- (g) promoting proper harvesting systems, transportation, marketing and sustainable utilization of forest produce;
- (h) encouraging and promoting proper co-ordination of forestry related activities carried out by other organizations;
- (i) promoting forest recreation and tourism in forest areas;
- (j) exercising the control and the management of forest reserves and protected forest areas in accordance with the provisions of this Act;
- (k) promoting the empowerment of local communities in the augmentation, control and management of customary land trees and forests in accordance with the provisions of this Act;
- (l) carrying out silvicultural operations or other forest work including operations to prevent pests and diseases, construction of buildings, water works, and roads, erection of power lines, telephone lines and radio masts and any other activities that enhance forest development in any part of a forest reserve or forest plantation;
- (m) preparing and updating National Forestry Plans in accordance with the National Forestry Policy;
- (n) co-ordinating forestry development and implementing the Forestry Programme of Action in the Southern Africa Development Community region.

[Ch6301s6]6. Inspection by an officer

Pursuant to the provisions of this Act, and officer may—



(a) demand the production by any person of a licence or other authority for any activity committed by such persons for which such licence or other authority is required by or under this Act;

(b) without a warrant—

(i) stop and inspect any carrier or vehicle which the officer reasonably suspects is carrying any forest produce which has been obtained in contravention of this Act or for which a transportation document is required under this Act;

(ii) enter any premises in a forest reserve, any land or premises in which any activity licensed under this Act is conducted, or any village forest area or protected forest area and inspect such premises or land;

(iii) enter upon any land building, tent, carriages, motor vehicle, trailer, aircraft, boat or locomotive for ensuring that the provisions of this Act are being complied with, or for the purpose of detecting any offence against this Act; and

(iv) enter any land or premises and inspect silvicultural, forest harvesting and forest produce processing activities and wherever necessary provide advice on proper methods for carrying out such activities.

#### [Ch6301s7]7. Barriers across roads

Any officer may, after consultation with the highway authority, temporarily place a barrier approved by the highway authority across any road in a manner consistent with such road safety standards and specifications as the highway authority shall specify for the purpose of examining or searching any motor vehicle or questioning any person in connexion with the provisions of this Act.

#### [Ch6301s8]8. Search

Wherever an officer has reason to believe that any person to have committed an offence under this Act, the officer may search the person or property of such person or property in such person's possession or control.

#### [Ch6301s9]9. Seizure of forest produce and article

(1) Any officer or police officer may seize and detain—

(a) any forest produce which the officer or police officer reasonably suspects has been obtained or removed in contravention of this Act;

(b) any article which the officer or police officer reasonably suspects has been used in committing an offence under this Act.

(2) Any officer or police officer who seizes and detains any forest produce or article under subsection (1) shall issue a seizure certificate.

(3) Any village natural resources management committee may seize and detain any forest produce or article which the village natural resources management committee reasonably suspects

has been obtained or removed from the village forest area in contravention of rules made by such village natural resources management committee.

[Ch6301s10]10. Custody of seized forest produce and article

Any forest produce or article seized under section 9 shall be kept safely in the custody of an officer or the village natural resources management committee.

[Ch6301s11]11. Disposal of seized forest produce and article

(1) Any forest produce or article in the custody of an officer or the village natural resources management committee under section 10 shall be retained until the case in connexion with which the forest produce or article was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

(a) where any person has been tried and found guilty or where a person fails to claim the seized forest produce or article after being acquitted, the forest produce or article shall be disposed of at the discretion of the Director of Forestry;

(b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;

(c) where any seized forest produce or article is perishable, the Director of Forestry may order the forest produce or article to be sold or disposed of as he sees fit.

(2) Any forest produce or article in the custody of a village natural resources management committee in accordance of section 9 (3) shall be retained until the offence in connexion with which it was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

(a) where any person has been tried and found guilty or where a person fails to claim after being acquitted the forest produce or article shall be disposed of at the discretion of the village natural resources management committee according to its rules;

(b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;

(c) where any seized forest produce or article is perishable, the village natural resources management committee may order the forest produce or article to be sold or disposed of in accordance with its rules.

[Ch6301s12]12. Money from the sale of forest produce or articles to be paid into the Fund

Wherever the disposal of government seized forest produce or articles is by sale, all monies realized shall be payable into the Fund established under section 55.

[Ch6301s13]13. Arrest of a person for committing offence

(1) Where any person is found committing or is reasonably suspected of having or of being about to commit an offence under this Act, any officer may, without warrant, arrest such person.

(2) Any person arrested pursuant to subsection (1) shall be charged with an appropriate offence before a court of law.

[Ch6301s14]14. Prosecution by officers

The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Forestry to undertake and prosecute criminal proceedings in respect of any offence committed under this Act.

PART III

FORESTRY MANAGEMENT BOARD

[Ch6301s15]15. Establishment of the Board

There is hereby established a Board to be known as the Forestry Management Board.

[Ch6301s16]16. Composition of the Board

(1) The Board shall consist of—

(a) the following ex officio members—

- (i) the Secretary for Natural Resources or his designated representative;
- (ii) the Secretary for Agriculture and Livestock Development or his designated representative;
- (iii) the Secretary for Lands and Valuation or his designated representative;
- (iv) the Secretary for Local Government and Rural Development or his designated representative;
- (v) the Principal Secretary responsible for District Administration in the Office of the President and Cabinet or his designated representative;
- (vi) the Secretary for Energy and Mining or his designated representative;
- (vii) the Secretary for Works and Supplies or his designated representative;
- (viii) the Secretary for Research and Environmental Affairs or his designated representative;
- (ix) the General Manager of National Herbarium and Botanic Gardens or his designated representative;

(x) the General Manager of the Electricity Supply Commission of Malawi or his designated representative;

(xi) the Director of Forestry;

(xii) the Director of National Parks and Wildlife;

(xiii) the Director of Fisheries;

(b) and the following members who shall be appointed by the Minister—

(i) one member representing the University of Malawi;

(ii) not less than three and not more than five members representing the general public; and

(iii) a representative of the Timber Association of Malawi.

(2) The Minister shall appoint one of the members to be Chairman of the Board.

(3) A member of the Board appointed under subsection (1) (b), (i), (ii) and (iii) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for re-appointment.

(4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the Gazette.

(5) The office of the Director of Forestry shall provide the Secretariat of the Board.

(6) The office of a member appointed pursuant to subsection (1) (b), (i), (ii) and (iii) shall become vacant—

(a) upon his death;

(b) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(c) upon the expiry of one month's notice in writing of his intention to resign his office given by the member to the Minister; and

(d) if he is convicted of an offence under the Act.

#### [Ch6301s17]17. Functions of the Board

The functions of the Board shall be to advise the Minister on all matters relating to tree and forest management in Malawi, including in particular but not limited to—

(a) advising on the declaration and revocation of areas which for the purpose of protecting forest species, biotic communities, sites of special interest or aesthetic values, the Board considers should be declared forest reserves or protected forest areas;

(b) advising on the import, export and re-export of tree species specimen into and out of Malawi;

(c) initiating, overseeing and approving environmental impact assessments in forest reserves, protected forest areas and fragile sites.

#### [Ch6301s18]18. Meetings of the Board

(1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

(2) The Board shall further meet at any time at the request, in writing, of any three of its members.

(3) The Board may, at the discretion of the Chairman, invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of the meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) One third of the members of the Board shall constitute a quorum.

(6) At all meetings of the Board the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(7) The Chairman of the Board shall report to the Board at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

#### [Ch6301s19]19. Members of the Board not deemed public officers

A member of the Board, who is not a public officer shall not, by virtue only of his membership to the Board, be deemed to be an officer in the public service.

#### [Ch6301s20]20. Allowances

Members of the Board shall be paid an honorarium determined by the Minister and shall be paid reasonable travelling expenses and subsistence allowance while engaged upon the business of the Board at the rate prescribed by the Minister.

### PART IV

#### FOREST RESERVES AND PROTECTED FOREST AREAS

#### [Ch6301s21]21. Purposes of this Part

The purpose of this Part is to provide for the declaration, conservation and management of forest reserves, protected forest areas and the biodiversity.

[Ch6301s22]22. Declaration of forest reserves

The Minister may, after consultation with the Minister responsible for land matters, by order published in the Gazette, declare any public land not already reserved for another public purpose to be a forest reserve.

[Ch6301s23]23. Acquisition of land for forest reserve

Any area of land proposed for a forest reserve and which is not public land shall first be acquired in accordance with the provisions of the Land Act and the Land Acquisition Act. Cap. 57:01, Cap. 58:04

[Ch6301s24]24. Management of forest reserves

In assuring the protection and management of forest reserves, the Director of Forestry shall prepare management plans as stipulated in section 5.

[Ch6301s25]25. Co-management of forest reserves

The Director of Forestry may enter into agreement with local communities for implementation of the management plans that is mutually acceptable to both parties.

[Ch6301s26]26. Declaration of protected forest areas

(1) Where the Minister finds that the protection of soil and water resources, outstanding flora and fauna requires that any area of land be maintained or established as a forest, the Minister may, by order published in the Gazette, after consultations with the Minister responsible for land matters, the Minister responsible for agriculture, the Minister responsible for Irrigation and Water Development, the owner or occupier and, in case of customary land, the traditional authority, declare such land to be a protected forest area.

(2) Where the Minister considers that land which requires protection as a forest reserve or protected forest area, is liable to serious degradation if not immediately protected, the Minister may declare such land to be a protected forest area for such period not exceeding one year as may be necessary to complete the consultations required by section 22 or subsection (1).

[Ch6301s27]27. Management of protected forest areas

A declaration made under section 26 shall state the measures required for protection of the areas, the assistance to be provided by the Department of Forestry towards accomplishing such measures and the obligations of the owner, occupier or traditional authority to maintain and protect the forest resources of the area.

[Ch6301s28]28. Revocation of declaration

(1) The Director of Forestry may recommend to the Minister to revoke or modify, by notice published in the Gazette, a declaration of a forest reserve or protected forest area with respect to any land, and the Minister shall first require a comprehensive environmental impact assessment.

(2) The Minister may, by notice published in the Gazette, amend such order the purpose of which is to delineate or exercise land from a forest reserve or protected forest area subject to advice from the Board.

(3) Any environmental impact assessment made pursuant to the provisions of subsection (1), shall investigate the ecological consequences of proposed resolution of modification and the report of the assessment shall be submitted to the Minister together with the advice of the Director of Forestry within ninety days of completion of the assessment being made.

(4) The Minister shall not decide upon a proposal related to revocation or modification of a forest reserve or protected forest area until the Minister is in receipt of the report referred to in subsection (3).

## PART V

### CUSTOMARY LAND FOREST

#### [Ch6301s29]29. Purpose of this Part

The purpose of this Part is to provide for promotion of participatory forestry on customary land through protection, control and management of trees and forests by the people on customary land, the demarcation and management of village forest areas, ownership of indigenous forest trees, establishment of three nurseries and regulation of forest produce.

#### [Ch6301s30]30. Demarcation of village forest areas

Notwithstanding anything contained in this Act, any village headman may, with the advice of the Director of Forestry, demarcate on unallocated customary land a village forest area which shall be protected and managed in the prescribed manner for the benefit of that village community.

#### [Ch6301s31]31. Forest management agreement

(1) For the proper management of village forest areas, the Director of Forestry may enter into a forest management agreement with a management authority providing for—

- (a) the specifications of the nature of the forestry and other practices to be followed;
- (b) the assistance to be provided by the Department of Forestry and provision for use and disposition of the produce and revenue therefrom.
- (c) allocation of land to individuals or families for afforestation and revocation of such allocation if applicable provisions of the agreement are not adhered to by the occupier of the land so allocated;
- (d) formation of village natural resources management committees for the purposes of managing and utilizing village forest areas.

(2) Subject to the performance of unfulfilled obligations under a forest management agreement to the right of third parties, a forest management agreement may be terminated by either party.

(3) In the event of any dispute arising under a forest management agreement, the matter shall be referred to the Minister:

Provided that any party aggrieved with the Minister's decision may apply to the High Court for review of the Minister's decision.

(4) Any area designated as a village forest area but without the forest management agreement shall be managed in accordance with section 30.

(5) Any educational, religious or interested institutions in consultation with a village headman may demarcate, establish and manage a forest area or woodlot on customary land with the advice of the Director of Forestry subject to the provisions of subsections (1), (2) and (3).

[Ch6301s32]32. Minister may make rules

(1) The Minister may make rules which shall apply to all customary land outside forest reserves and protected forest areas.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the protection of water catchment and fragile areas, rehabilitation of degraded areas and any other activity which would be conducive to good land husbandry;

(b) facilitate the establishment and management of forest by village natural resources management committees for the benefit of local communities;

(c) encourage District Councils, non-governmental organizations and the private sector to contribute towards the provision of forestry extension services, as well as the establishment and management of plantations in accordance with guidelines provided by the Department of Forestry;

(d) provide for the establishment and maintenance of nurseries to provide seedlings for tree planting programmes;

(e) authorize the payment, of grants or bonuses out of public funds for the encouragement of forestry;

(f) provide for the declaration of endangered or essential tree species and their management;

(g) prescribe a mechanism for sharing costs and benefits between the Department of Forestry and village natural resources management committees in regard to forest produce confiscated from customary land forests.

[Ch6301s33]33. Approval of by-laws

Any rules made by village natural resources management committees shall be approved by the Minister.

[Ch6301s34]34. Right to naturally growing trees



(1) Any person who or community which protects a tree or forest, whether planted or naturally growing in any land which that person or community is entitled to use, shall acquire and retain the ownership of the tree and forest with the right to sustainable harvest and disposal of the produce.

(2) Any tree or forest owner under subsection (1) may seek the advice of the Director of Forestry on the management and utilization of his tree or forest.

## PART VI

### AFFORESTATION

#### [Ch6301s35]35. Purpose of this Part

The purpose of this Part is to provide for the promotion of tree growing in forest reserves, public land, customary land and private land by the Government, non-governmental organizations and the community.

#### [Ch6301s36]36. Forest plantation agreement

Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to enter into a forest plantation agreement with any non-governmental organization or community who may wish to plant trees in forest reserves, public land, customary land and private land, and such agreement shall—

- (a) provide for the obligation to grow and manage tree species as specified in the agreement and in accordance with the plantations management plan which shall be approved by the Director of Forestry;
- (b) convey the right to harvest the forest plantation in accordance with the terms of the agreement;
- (c) provide for advice and assistance from the Department of Forestry in growing and managing the plantations;
- (d) specify obligations of each of the parties to the agreement.

#### [Ch6301s37]37. Right to planted forest produce

Any person who plants any tree species on any land which that person is entitled to use for that purpose shall acquire and retain the right to harvest the resulting produce and to dispose of it freely.

## PART VII

### FOREST PROTECTION

#### [Ch6301s38]38. Purpose of this Part

The purpose of this Part is to provide for the protection of trees, forest and forest produce against fires, pests and diseases.

[Ch6301s39]39. Prohibition against fires

(1) No person shall light or cause to be lit a fire in any forest reserve or protected forest area except in places designated for that purpose or as otherwise authorized by an officer.

(2) An officer may order the closure of any place designated for the lighting of fires in a forest reserve or protected forest area and no person shall during such closure permit a fire to be lit in such place.

(3) No person shall light or cause to be lit a fire in any village forest area except with the authorization of the management authority subject to the provisions and conditions of the forest management agreement.

(4) Any person who lights a fire in or near a forest reserve, protected forest area or village forest area shall take all necessary precautions to prevent the fires escaping from control and shall be liable for any damage to the forest reserve, protected forest area or village forest area caused by any failure to take such precautions.

[Ch6301s40]40. Declaration of fire protection area

The Director of Forestry may, by notice published in the Gazette, declare any forest area to be a fire protection area and the notice shall regulate the lighting of fires in such area.

[Ch6301s41]41. Assistance in fire fighting

Any officer may require any person to assist in averting or extinguishing any fire threatening a forest reserve, protected forest area or village forest area.

[Ch6301s42]42. Forest pest and disease control

Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to—

(a) order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;

(b) control movement of timber and other forest produce through issue of permits as the pest and disease situation may demand;

(c) issue silvicultural notes and technical orders for purposes of controlling pests and diseases;

(d) suspend further planting of tree species which are susceptible to pests and diseases;

(e) provide for control of vermin causing excessive damage beyond economic threshold in forest reserves;

(f) provide for effective phytosanitation for all forest produce and all parts of the tree in accordance with the Plant Protection Act and to regulate importation of tree seed and other wood and forestry produce for purposes of pest and disease control. Cap. 64:01

[Ch6301s43]43. Prohibition of possession or use of weapons, traps, explosives, poisons or hunting animals

(1) Any person who conveys into, or possesses or uses within any forest reserve or protected forest area any weapon, trap, explosive, poison or hunting animal shall be guilty of an offence.

(2) This section shall not apply to any officer acting in the performance of his duties.

[Ch6301s44]44. Prohibition of deposition of litter and waste

Unless under a licence, no person shall deposit litter or noxious waste in forest reserves, protected forest areas and village forest areas.

## PART VIII

### UTILIZATION OF FOREST PRODUCE IN FOREST RESERVES AND CUSTOMARY LAND

[Ch6301s45]45. Purpose of this Part

The purpose of this Part is to provide for licensing and sustainable use of forest land and utilization of forest produce on customary land, public land, forest reserves and protected forest areas.

[Ch6301s46]46. Acts under licence

Unless under a licence, no person shall—

(a) cut, take, fell, destroy, uproot, collect and remove forest produce from a forest reserve, customary land, public land and protected forest area;

(b) cultivate crops, graze livestock, clear land, dig or break up land for any road or for any purpose whatsoever on such area of the forest reserve and protected forest area that may be specified in the licence;

(c) prospect for and extract minerals in a forest reserve and protected forest area;

(d) squat, reside, erect any building, livestock enclosures or any structure in a forest reserve and protected forest area;

(e) perform such other acts as may be specified in the licence in the forest reserve and protected forest area.

[Ch6301s47]47. Permit for exportation, importation and re-exportation of forest produce

The Director of Forestry may issue to any person a permit in the prescribed form to export or import or re-export certain types of forest produce.

[Ch6301s48]48. Restrictions on, exports, import and re-exports of forest produce

The Minister may, in consultation with the Minister responsible for trade, make regulations imposing restrictions on imports and exports and re-exports of certain type of forest produce.

[Ch6301s49]49. Waiver of fees, etc.

The Director of Forestry may, subject to the general or special directions of the Minister, direct in writing that any fees or royalties payable under this Act shall be waived in whole or in part for a specified period.

[Ch6301s50]50. Forest produce from customary land

(1) A resident of any village may collect forest produce from customary land other than village forest areas for domestic use.

(2) Any disposal of forest produce in a village forest area shall be in accordance with the provisions of the applicable forest management agreement.

(3) Where the wood arising from any activity on customary land is in excess of community domestic needs, the excess wood shall be disposed of by the village natural resources management committee for the benefit of that community.

[Ch6301s51]51. Suspension of a licence

The Director of Forestry may, at any time that it appears to him that there has occurred or is about to occur a violation of any provision of this Act or of any condition of a licence, order the suspension of any or all operations under any licence until the licensee has taken necessary measures to remedy or prevent the violation.

[Ch6301s52]52. Grounds on which a licence may be refused

The Director of Forestry may refuse to issue a licence if—

- (a) the applicant fails to comply with any prescribed conditions;
- (b) any licence formerly held by the applicant under this Act has been revoked by the Director of Forestry within the previous twelve months;
- (c) the applicant has been convicted of an offence under this Act within the previous twenty-four months;
- (d) he is satisfied on reasonable ground that the applicant is not a fit or proper person to hold such licence; or
- (e) he is satisfied that the interest of forest management shall be better served by a temporary freeze in issuing of licence of that class.

[Ch6301s53]53. Cancellation of a licence

(1) The Director of Forestry may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 52 to refuse to issue a licence to that person.

(2) The Director of Forestry shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

[Ch6301s54]54. Appeal to the Minister against refusal, suspension or cancellation of a licence

(1) An applicant who has been refused a licence under section 52 may, within thirty days, appeal to the Minister in writing.

(2) Any licensee whose licence is cancelled under section 53 may, within thirty days, appeal to the Minister in writing.

(3) The Minister may, on proper cause being shown, allow an appeal out of the time prescribed.

(4) The Minister shall be free to hear the views of the Director of Forestry in determining an appeal under this section and may uphold, vary or quash the decision of the Director of Forestry.

(5) Any person aggrieved by the decision of the Minister may apply to the High Court for a review of the Minister's decision.

## PART IX

### FOREST DEVELOPMENT AND MANAGEMENT FUND

[Ch6301s55]55. Establishment of the Fund

(1) There is hereby established a Fund to be known as the Forest Development and Management Fund (in this Act referred to as the "Fund").

(2) the Fund shall consist of—

- (a) such sums as shall be appropriated by Parliament for the purpose of the Fund;
- (b) advances made to the Fund under section 57;
- (c) such sums as may be received for the purposes of the Fund by way of voluntary contributions;
- (d) levies from a metre cube of wood felled or extracted by the Forestry Department;
- (e) payments made into the Fund under section 12; and
- (f) such sums or other assets may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

[Ch6301s56]56. The Fund to vest in the Minister

The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act. Cap. 37:01

[Ch6301s57]57. Advances to the Fund

If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency

or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

[Ch6301s58]58. Objects of the Funds

The objects for which the Fund is established shall be the conservation, augmentation and management of forest resources and forest lands in Malawi.

[Ch6301s59]59. Application of the Fund

Without derogation from the generality of section 57, the Fund may be applied to—

- (a) the inculcation of the twin concepts of multiple purpose management and sustainability in forestry into local communities;
- (b) the provision of an enabling environment for the participation of the local communities in forest management and conservation;
- (c) maintenance of equipment and records;
- (d) the cost of any scheme which the Minister considers to be in the interest of the management of forest reserves;
- (e) meeting any expenses arising from the establishment and maintenance of the fund; and
- (f) any purpose which the Minister considers to be in the interest of the objects of the Fund.

[Ch6301s60]60. Books and other records of accounts, audit and reports of the Fund

(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act. Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all powers conferred upon him by the Finance and Audit Act. Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

[Ch6301s61]61. Holdings of the Fund

(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

[Ch6301s62]62. Financial year

The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year.

PART X

OFFENCES AND PENALTIES

[Ch6301s63]63. Purpose of this Part

The purpose of this Part is to define offences against this Act and to provide for penalties.

[Ch6301s64]64. Offences relating to forest reserves and protected forest areas

Any person who, without authority under this Act—

(a) fells, cuts, takes, destroys, removes, collects, uproots any indigenous tree or forest property in a forest reserve or protected area;

(b) connives with or causes another person to fell, cut, take, destroy, remove, collect, uproot any indigenous tree or forest property in a forest reserve or protected area;

(c) squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area;

(d) clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected areas,

shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

[Ch6301s65]65. Offences relating to fires

(1) Any person who lights or causes to be lit a fire in a forest reserve, protected forest area or village forest area in contravention of section 39 shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(2) Any person who permits a fire to burn out of control in, or to spread to a forest reserve or village forest area shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

(3) Any person who, without reasonable cause, refuses to assist in averting or extinguishing a fire when required to do so under section 41, shall be guilty of an offence and liable upon conviction to a fine of K2,000 and to imprisonment for a term of one year.

[Ch6301s66]66. Offences relating to wildlife

Subject to the provisions of this Act, any person who—

- (a) pursues, kills, hunts, molests, captures or injures any animal, bird, fish, or reptile;
- (b) collects eggs or spawns from a forest reserve, a protected forest area or a village forest area,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

[Ch6301s67]67. Offences relating to forest pests and diseases

Any person who knowingly contravenes the provisions of section 43 of this Act shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

[Ch6301s68]68. Offences relating to possession or trafficking of forest produce

(1) Any person who—

- (a) knowingly received forest produce illegally; or
- (b) is found in possession of forest produce without a permit;
- (c) trafficks in forest produce without a licence, shall be guilty of an offence.

(2) Any person who is convicted of an offence under subsection (1) shall be liable to a fine upon conviction of K20,000 and to imprisonment of ten years.

[Ch6301s69]69. Offences relating to obstruction of officers

Any person who—

- (a) obstructs or hinders any officer in the performance of his functions under this Act;
- (b) wilfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act;
- (c) refuses to furnish to any officer on request, particulars or information which the officer is entitled to obtain under this Act, shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

[Ch6301s70]70. Offences relating to official documents or stamps

Any person who, without lawful authority—

- (a) counterfeits or alters any licence, permit or pass required under this Act;
- (b) alters or defaces any prescribed document issued under this Act;
- (c) makes upon or affixes to any forest produce a mark used in connexion with forest produce by the Department of Forestry,



shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

[Ch6301s71]71. Offences relating to possession or use of weapons, traps, explosives and poisons for hunting animals

(1) Any person who contravenes the provisions of section 43 shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

(2) This section shall not apply to any officer acting in the performance of his duties.

[Ch6301s72]72. Offences relating to deposition of litter and waste

Any person who contravenes the provisions of section 44 shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

[Ch6301s73]73. Offences relating to import, export and re-export of forest produce

Any person who imports, exports or re-exports or attempts to import, export or re-export any forest produce—

(a) through any place other than a custom's post or port; or

(b) without producing to a customs officer a valid licence to import or export or re-export the forest produce as the case may be,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of not less than five years.

[Ch6301s74]74. Additional orders upon conviction

(1) Upon conviction of any person of an offence under this Act, the court may in addition to any other penalty provided by this Act, order—

(a) that any forest produce which has been used in the commission of the offence shall be forfeited to the Government;

(b) that where any forest produce has been damaged, injured or removed in the commission of the offence, the person convicted shall pay compensation equivalent to the value of the forest produce so damaged, injured or removed;

(c) that the person convicted shall pay ten times the amount of any royalties and other fees which, had the act constituting the offence been authorized, would have been payable in respect thereof;

(d) the demolition and removal of any building, enclosure, hut, kraal, structure or anything erected, standing or being in the area in contravention of this Act;

(e) the destruction, uprooting or removal of any crop standing or being in the area in contravention of this Act;

(f) the seizure of any carrier or vehicle which has been used in committing the offence.

(2) Where an order is made under subsection (1) in respect of forest produce from a village forest area, the forest produce and article ordered to be forfeited and the amount ordered to be paid shall be forfeited and paid to the management authority in respect of that area.

[Ch6301s75]75. Authority to compound offences

(1) The Director of Forestry may authorize any officer not below the rank of Principal Forestry Officer where the Director of Forestry is satisfied that an offence against this Act has been committed, and such person consents in writing to compounding under this section, to compound such offences by charging a sum of money not exceeding one and half the maximum fine prescribed for the offence and no further court proceedings shall be instituted.

(2) Where any article has been seized in connexion with the offence compounded under this section, the officer compounding the offence shall dispose of the article according to section 11.

(3) Any offence in respect of which a prosecution is actually pending shall not be compounded under this section other than with the consent of the court before which the prosecution is pending.

(4) Any money received and any article confiscated under subsection (1) or (2) in respect of forest produce from a village forest area shall be paid to the management authority in respect of that area.

## PART XI

### INTERNATIONAL COOPERATION IN FORESTRY

[Ch6301s76]76. Purpose of the Part

The purpose of this Part is to provide for the promotion of the management of cross-border forests and forests resources and implementation of agreed national obligations arising from bilateral, regional and international environmental and other related Conventions to which Malawi is a party.

[Ch6301s77]77. Cross-border management

For the proper management of cross-border forests and forest resources, the Director of Forestry may jointly produce management plans which shall lead to the realization of common forestry goals in cross-border areas.

[Ch6301s78]78. Regional fora

Implementation of common plans may be reviewed in regional fora such as Joint Permanent Commissions of Cooperation, the Southern Africa Development Community and others.

[Ch6301s79]79. Cross-border trade in forest produce

To assure sustainable utilization and marketing forest resources across borders, the Director of Forestry shall institute mechanisms for the verification of the legality of the forest produce being imported or exported.

[Ch6301s80]80. Implementation of agreements

The Minister may, by an order published in the Gazette, specify the measures for the proper implementation of relevant provisions of any convention on forestry to which Malawi is a party.

PART XII

MISCELLANEOUS

[Ch6301s81]81. Charcoal licensing

(1) No person shall make or sell charcoal from indigenous timber or tree except pursuant to a licence issued under this section.

(2) Upon application in the prescribed form, a licensing officer may, where the officer finds that the making of charcoal shall utilize plantation timber or indigenous timber or trees consistently with the applicable forest management plan or forest management agreement or forest plantation agreement, issue a licence to make charcoal in such quantity and from such timber or trees as may be specified in the licence.

[Ch6301s82]82. Permit for wood using and wood processing industries

No person shall engage in commercial processing of any wood or forest produce without a permit from the Director of Forestry and such commercial wood processing industries shall include—

(a) tobacco curing, brick and tile making, wood carving, lime making, bamboo baskets making and chair making; and

(b) wood processing industries, including sawmilling, veneer and plywood, blackboard, fibre and particle board, pulp and paper and any other industries.

[Ch6301s83]83. Utilization of and trafficking in indigenous timber from private land

(1) No indigenous wood shall be moved from any private land to any place outside the private land without a permit issued by the Director of Forestry. Any revenue realized from the removal of the indigenous wood from leasehold land shall all accrue to the village natural resources management committee in the area.

(2) No indigenous endangered tree species shall be cut down without the written permission of the Director of Forestry.

(3) Indigenous wood may be used on a sustainable basis for any purpose within the demised area without the written permission of the Director of Forestry.

[Ch6301s84]84. General indemnity

The Director of Forestry or any other officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise in good faith of the powers vested in him under this Act.

[Ch6301s85]85. Disposal of forest produce from private land

On application by a lessee in accordance with the Land Act, the Director of Forestry may grant permission for forest produce to be removed from, and used outside, the demised premises on payment of all prescribed royalties to the village natural resources management committee in the area. Cap. 57:01

## PART XIII

### REGULATIONS

[Ch6301s86]86. Regulations

The Minister may make regulations for carrying this Act into effect and, without prejudice to the generality of the foregoing, such regulations may—

- (a) prescribe the form and contents of any application, licence or agreement;
- (b) prescribe the conditions of any category of licence or agreement;
- (c) prescribe the rates and manner of payment of royalties, application fees and other fees;
- (d) regulate or prohibit access to any part of a forest reserve;
- (e) regulate forest utilization practices;
- (f) require the recording and reporting of information regarding sustainable utilization of forest and forest produce and approving the form, contents and manner of making records and reports, as submitted by the Director of Forestry;
- (g) prescribe the methods and requirements of scaling and making forest produce;
- (h) prescribe the marks to be used by officers in connexion with forest produce;
- (i) provide for the registration of forest property marks and regulating their use;
- (j) prescribe standards for the grading of wood and wood products, and requiring that any wood or wood product be graded according to such standards;
- (k) regulate the transportation, processing, sale of forest produce, including competitive bidding, and requiring permits, licences and documentation of such activities; and
- (l) prescribe anything required to be prescribed under this Act.

## PART XIV

### REPEAL AND SAVINGS

[Ch6301s87]87. Repeal and savings

(1) The Forest Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act— Cap. 63:01

(a) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

SUBSIDIARY LEGISLATION

FORESTRY RULES

G.N. 28/2001

49/2003

8/2006

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Forestry Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“council” has the meaning assigned thereto in the Local Government Act; Cap. 22:01

“firewood” means all straight parts of a tree which do not exceed two metres in length and includes all crooked and unsound parts of any size;

“log” means all sound, straight parts of a tree which are more than two metres long and more than twenty centimetres mean diameter;

“pole” means all sound, straight parts of a tree which are more than two metres long but not more than twenty centimetres mean diameter;

“protected trees” means the trees specified in the First Schedule;

“public road” has the meaning assigned thereto in the Public Roads Act; Cap. 69:02

“stacked cubic metre” means a stack of firewood one metre in length, in width and in height.

## PART II

### PROHIBITION AND OFFENCES AND FIRE PROTECTION IN FOREST RESERVES

#### 3. Acts prohibited without a licence

No person shall, without a licence in that behalf issued under these Rules, do or cause to be done in a forest reserve any of the following acts—

(a) fell, cut, take, work, burn, injure or remove any tree or forest produce;

(b) squat, reside, erect any building, hut or cattle enclosure:

Provided that nothing in this paragraph shall require the issue of a licence in any case where a person resides in a forest reserve under the terms of a lease granted by the Minister responsible for land;

(c) graze or pasture livestock or permit livestock to trespass;

(d) clear, cultivate or break up land for the construction of any road, for cultivation, or for any other purpose whatsoever;

(e) pursue, kill or capture animals or birds;

(f) alter or remove any beacon, boundary mark or fence;

(g) camp in any forest reserve, without observing the rules from time to time affecting such camping; and

(h) keep bees or collect honey or beeswax.

#### 4. Precautions by those contiguous with a reserve

The Director of Forestry may require the owner or occupier of any land contiguous to a forest reserve to take such reasonable precautions to prevent a fire spreading from such land into a forest reserve as the Director of Forestry may specify in writing from time to time.

#### 5. Director of Forestry shall have boundaries indicated

The Director of Forestry shall cause the boundaries of every forest reserve to be indicated in as clear a manner as he considers reasonable in all the circumstances.

## PART III

### VILLAGE FOREST AREAS

#### 6. Acts prohibited without Village Natural Resources Management Committee permission

No person shall, without the permission in writing of the Village Natural Resources Management Committee in whose name a village forest area has been registered—

- (a) squat or reside or erect any building, hut or cattle enclosure;
- (b) graze or pasture livestock or permit livestock to trespass;
- (c) clear, cultivate or break up land for cultivation or otherwise;
- (d) alter or remove any beacon, boundary mark or fence;
- (e) fell, cut, take, work, burn, injure or remove any tree or forest produce;
- (f) set fire to any grass or undergrowth; or
- (g) keep bees or collect honey or beeswax, in the village forest area.

7.

No person shall, for any purpose whatever, kindle any fire within a village forest area without taking all reasonable and proper precautions to prevent damage to any forest produce within such village forest area.

#### PART IV

#### LICENCES

#### 8. Special conditions on licences

(1) There may be endorsed on any licence issued under the Act special conditions.

(2) Special conditions referred to in subrule (1), may relate to one or more of the following—

(a) the provision by the licensee of a deposit, guarantee, surety, security, liquidated damages or sum of money to be drawn upon or confiscated for non-fulfilment or breach of the conditions of the licence;

(b) the information which may be required to be given to a forestry officer by the licensee, concerning his operations and concerning the transport, manufacture production, output, sale, use, export or import of the forest produce taken under his licence, the records to be kept by him and the returns to be submitted to a forestry officer;

(c) the liability of the licensee for damage to trees or other forest produce due to his negligence or to the negligence of his officers, agents or servants;

(d) the methods by which and the order in which operations of exploitation, fire protection and fire fighting should be carried out;

(e) the measuring or computing or recording of forest produce by methods other than those specified in these Rules; and

(f) the construction, layout and operation of tramway, waterways and roads for the extraction of forest produce, and the transport of such produce to depots or along specified routes or for any other purpose whatsoever.

9. Limits on licences

No licence shall grant exclusive rights.

10. Persons who may take under licence

No person shall take, purchase or be in possession of any forest produce to which a licence relates except with the authority of the licensee.

11. Produce derived from operations of licence

All forest produce derived from the operations of a licensee, except the produce which the licensee is authorized to take under the terms of his licence, shall remain the property of the Government.

12. Fees and Royalties

(1) The royalties to be paid in respect of forest produce taken, or for cutting and taking, under licences issued under these Rules shall be those set out in the Second Schedule:

Provided that the Director of Forestry may dispose of planted trees or forest produce derived from forest reserves or public land or from artificially established plantations.

(2) The fees to be paid in respect of licences for—

- (a) camping;
- (b) residing in rest houses, lodges, cottages or huts;
- (c) operating business;
- (d) import or export of forest produce;
- (e) scientific collection of forest produce;
- (f) the grazing of livestock; and
- (g) the keeping of bees,

shall be those set out in the Third Schedule.

13. Cutting of trees

(1) No licence to cut forest produce shall, in the absence of express provision to that effect, be deemed to authorize the cutting of a protected tree or a tree situate within—

- (a) a forest reserve;
- (b) a strip of land situated within or on either side of a watercourse;
- (c) protected hill slope; or
- (d) eight metres of a public road.



(2) A strip of land shall be deemed to be situated on either side of a watercourse if it is situated within a minimum width of one metre and a maximum of eight metres from the banks of the watercourse:

Provided that the width of the strip of land may be increased or decreased, subject to a maximum of eight metres, by the Minister issuing a notice to the occupier of the land.

## PART V

### FELLING CONDITIONS

#### 14. Height of cutting point

Unless otherwise stated in the licence, trees shall not be cut higher than forty-five centimeters from the ground.

#### 15. Manner of cutting

All felling, cutting, exploitation, conversion and other operations performed under licence shall be carried out in such manner as to cause the least possible waste of, or damage to, forest produce and stump.

#### 16. Disposal of waste

All branch wood, slash, and waste left in any forest reserve shall, within one month of the felling of the tree or trees from which such branch wood or waste was derived, be cut up and drawn clear for a distance of not less than five metres from all growing trees and fresh stumps.

## PART VI

### MEASUREMENT AND REMOVAL OF FOREST PRODUCE

#### 17. Volume of timber fires

Unless otherwise laid down in any licence—

(a) the volume of timber in a log shall be calculated by multiplying the length from end to end, by the mean cross-sectional area, as determined from the mean diameter measured under bark;

(b) the volume of a stand shall be calculated by multiplying the stand area by the stocking and the mean tree volume; and

(c) the diameter of a pole shall be the diameter measured at the butt end over bark.

#### 18. Stacking of firewood

All firewood cut under licence shall be assembled in stacked cubic metres before removal or conversion into charcoal, unless the forestry officer who issued the licence shall have endorsed on the licence permission to stack in any other manner.

#### 19. Removal of produce

No sawn timber, logs or poles shall, unless permission to the contrary be endorsed on the licence, be removed until such produce has been measured or checked by a forestry officer.

20. Time for removal of produce

All forest produce cut under licence shall, unless permission to the contrary be endorsed on the licence, be removed within three months of the date of the expiration of the licence.

21. Until fees paid, produce is Government property

Until fees have been paid forest produce licensed to be taken and removed shall remain the property of the Government and may not be charged, hypothecated, mortgaged, sold, ceded or assigned, nor may any lien be created thereon.

PART VII

OFFENCES AND PENALTIES

22. Offence and Penalty

Any person who contravenes any of the provisions of these Rules or any of the conditions of any licence granted to him under these Rules shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

FIRST SCHEDULE reg. 2

PROTECTED TREES

Botanical Name Vernacular Name

*Adina microcephala* Mwenya, Chonya, Mgweya, Mung'ona, Mwina, Mungwina, Mluona

*Azelia quanzensis* Mkongomwa, Msokosa, Mnangaliondo, Ipapa, Mpapa, Mpapadende

*Borassus aethiopum* Mvumo, Mdikwa, Makoma, Mulala

*Bridelia micrantha* Msopa, Chisopa, Mpasas, Mlewezi, Msongamino, Mwisya

*Burkea africana* Mkalati, Kalinguti, Kawidzi, Kawidzu, Nakapanga

*Colophospermum mopane* Tsanya, Sanya, Ntsano, Mopani, Mpani

*Cordyla africana* Mtondo

*Hyaene crinita* Mgwalangwa, Mkomkoma, Makoma, Mulala

*Khaya anthotheca* Mbawa, Muwawa, Bulamwiko

*Pterocarpus angolensis* Mlombwa, Mtumbati, Mbira, Nawazi

*Terminalia sericea* Naphini, Nyapini, Mpini, Nalinsi, Mkodoni, Mpululu, Njoyi

Widdringtonia cuppresodes Mkungudza

Dalbergia melanoxylon Phingo, Nanyula, Kasalusalu, Kasarusaru

Percopsis angolensis Muwanga

SECOND SCHEDULE reg. 13 (1), G.N. 28/2001, 49/2003, 8/2006

## ROYALTIES

### 1. INDIGENOUS TREES

#### FEES

#### Price per Tree

Class	Botanical Name	Vernacular Name	K	t
I	Khaya anthotheca	Mbawa, Muwawa, Bulamwiko	3,500	00
	Entandrophragma excelsum	Mukarikari, Mululu	3,500	00
	Adima microcephala	Mwenya, Chonyo, Mwina, Mungwira Mung'ona, Mgwenya, Mluona, Chonya, Mgona	3,500	00
	Chlorophora excelsa	Ngunda, Mvule	3,500	00
	Combretum imberbe	Msimbiti, Manangoli, Mnangali, Mkolong'onjo	3,500	00
	Trichilia emetica	Msikidzi, Msyunguti, Msikidza	3,500	00
	Colophospermum mopane	Tsanya, Sanya, Mopani, Mpani	3,500	00
	Dalbergia melanoxylon	Phingo, Kasalusalu Nanyula, Kasarusaru	3,500	00
	Pterocarpus angolensis	Mlombwa, Mtumbati Mtumbaii	3,500	00
	Pericopsis angolensis	Muwanga, Mubanga Mbanga, Mwanga	3,500	00
II	Ocotea usambarensis	Botoko	3,000	00
	Strombosia scheffleri	Mvivi	3,000	00
	Entandrophragma Caudatum	Nayalai, Napalali, Gundang'oma, Nagalawe	3,000	00
	Apodytes dimidiata	Mzaza, Katole, Mchima Msui, Mnyembedwe, Mtibulo	3,000	00
	Burttavya nyasica	Mbvule	3,000	00

	<i>Albizia gummifera</i>	Mtangatanga, Bua, Chikwani, Chikolola (Skapya), Mpumulo	3,000	00
	<i>Piptadenia b Buchananani</i>	Mkweranyani, Mkuwi, Mviho, Mcheujeu, Mtidi, Kangubwe, Mzunjere, Msingati	3,000	00
	<i>Afzelia quanzensis</i>	Mkongomwa, Msambafumu, Mpapadende, Mpapa, Ipapa	3,000	00
	<i>Newtonia b Buchananani</i>	Mkweranyani	3,000	00
	<i>Podocarpus species</i>	Nanjula, mwenye, Mkachi, Nkanguni, Mkute, Kawidzi	3,000	00
	<i>Burkea africana</i>	Mkalati	3,000	00
	<i>Bombax stolzii</i>	Mtonjeranga, Thonjemanga	3,000	00
	<i>Swartzia madagascarensis</i>	Chinyenye, Kampango	3,000	00
III	<i>Chrysophyllum species</i>	Mutu, Chifira, Mufu, Nyundo, Njale, Namazuwa, Mlombeya	2,000	00
	<i>Sterculia species</i>	Msetanyani, Njale Mgoza, Mpepe	2,000	00
	<i>Diospyros mesopiliiformis</i>	Msumwa, Mchenje, Mchenya, Nyelenje	2,000	00
	<i>Dialiopsis africana</i>	Mtalala, Mlimbauta, Masakala, Mtutumuko, Chiwangalanya	2,000	00
	<i>Faurea species</i>	Musese, Chinsense Chiere	2,000	00
	<i>Mitragyna rubrostipulata</i>	Mufwafwada	2,000	00
	<i>Cordyla africana</i>	Mtondo	2,000	00
	<i>Polyscias fulva</i>	Mpembati, Mukwajo Mwaja, Mwaza	2,000	00
	<i>Sclerocarya caffra</i>	Mtondowoko, Mfula, Mzere, Msewe, Musele, Msebe	2,000	00
	<i>Terminalia, sericea</i>	Naphmi, Mpululu, Njoyi, Nalinsi, Gonondo	2,000	00
	<i>Ficalhoa laurifolia</i>	Ndopa, Mlunganya, Muuse	2,000	00
	<i>Bridelia micrantha</i>	Mpasa, Msopa, Mlewezi, Mwisya, Msongamino	2,000	00
	<i>Hagenia anthelmintica</i>	Mkwerete, Mkwale	2,000	00
	<i>Parinari species</i>	Mvuula, Mukanjaula, Mukantara, Pempu	2,000	00
	<i>Acacia Polyacantha</i>	Mthethe, Chigongolo Mgobe	2,000	00

	Rauvolfia caffra	Mwimbi, Mvumbamvula, Nanyungu, Muimbi, Munyezani, Nyensani		
	2,000	00		
IV	Parkia filicoidea	Mkundi, Mgundi, Musyepwa	1,800	00
	Xymalos monospora	Mblaka, Mpelekeso, Mpekeso, Nakaswaga, Chikakalaka	1,800	00
	Fagara species	Pupwe, Nkurungu, Mlunguchulu	1,800	00
	Vitex doniana	Mpindimbi, Mfuru, Msimpsya, Mfulu, Mpyumbya, Mpsyimpsya	1,800	00
V	All other non-planted species		1,800	00
VI	Widdringtonia Cuppresoides	Mkungusa, Mkungudza, Mulanje	8,000	00
	Juniperus procera	Changalumwe	6,000	00

## 2. EXOTIC TREES

Per m3

Class	Botanical Name	Vernacular Name	K	t
	Cypress species	Mkungudza	2,000	00
	Eucalyptus	Bulugamu	1,000	00
	Gmelina arborea	Malayina	1,000	00
	Pinus species	Payini	1,100	00

## 3. POLES

Species Butt diameter Bark

(in centimetres) Per pole

Eucalyptus and other exotic species not specified elsewhere in this Schedule

less than 6	40	00
6 but less than 8	50	00

8 but less than 10	80	00
10 but less than 12	100	00
12 but less than 14	120	00
14 but less than 16	150	00
16 but less than 18	160	00
18 but less than 20	170	00
20 and over	by volume	

Indigenous species	less than 6	50	00
	6 but less than 8	80	00
	8 but less than 10	100	00
	10 but less than 12	120	00
	12 but less than 14	160	00
	14 but less than 16	170	00
	16 but less than 18	180	00
	18 but less than 20	190	00
	20 and over	by volume	

4. FUEL WOOD

Type Proposed Rate

(domestic use) Proposed Rate

(industrial use)

	K	t	K	t
Exotic fuelwood, cut and stacked by purchaser, per cubic metre (m3)	500	00	900	00
Indigenous fuelwood, cut and stacked by purchaser per cubic metre (m3)	700	00		
	1,200	00		
Exotic fuelwood, per headload	10	00	N.A.	

Indigenous fuelwood, per headload	20	00	N.A.
Exotic fuelwood, per bicycle load	70	00	N.A.
Indigenous fuelwood, per bicycle load	100	00	N.A.

## 5. BAMBOO

Butt diameter (in centimetres) Per Pole

	K	t	
Less than 5 centimetres	5	00	
5 but less than 10	10	00	
10 centimeters and above	20	00	

## 6. PALMS

Botanical Name Vernacular Name Per Pole

	K	t	
Phoenix reclinata	Kanjedza, Kanchinda, Kanjesa	1,500	00
Hyphanena Crinita	Mgwalangwa, Makoma	1,500	00
Borassus aethiopium			
Palm leaves	Mvumo, Makoma	1,500	00

## 7. PLANTS

Per plant

	K	t	
Wild Cycads and Succulents	5,000	00	

## 8. NON-WOOD FOREST PRODUCTS (NWFP)

Fruits, Vegetables, Mushrooms, Caterpillars, Insects, Tubes, Tubers, Thatch grassFree

## 9. OTHER FOREST PRODUCE

Royalties in respect of other forest produce may be determined by agreement between the Director of Forestry and the buyer.

## 10. DISCRETION

The Director of Forestry may sell produce in this Schedule by Competitive Bidding.

THIRD SCHEDULE reg. 13 (2), G.N. 28/2001, 49/2003, 8/2006

### 1. REST HOUSE OCCUPATION

Per person

per night

K t

Kazela Guest House—

- (a) executive room, self contained 1,500 00
- (b) executive room, self contained, double 2,000 00
- (c) ordinary room, sharing toilet and shower room—
  - (i) single 700 00
  - (ii) double 1,000 00

Kasito Lodge I—

- (a) per bed 800 00
- (b) exclusive use of room 3,200 00

Kasito Lodge II—

- (a) per bed 700 00
- (b) exclusive use of room 1,400 00

Mangochi Forestry Guesthouse, per bed 500 00



Chintheche Forestry Guesthouse, per room 500 00

Children under 5 years of age no fee

Children 5 to 12 years 50% of adult rate

## 2. CAMPING

Camping on rest house ground with access to refrigeration 750 00

Camping on rest house grounds without access to refrigeration 500 00

Camping at a permanent camp site in a forest reserve 500 00

Camping at any other place in a forest reserve 400 00

Hut occupation, other than a permanent Campsite 700 00

## 3. BUSINESS OPERATIONS

(a) Pit sawing— K t

(i) application fee 1,000 00

(ii) operational fee, per sawing season 7,500 00

(iii) residential fee, per 6 m2 hut, per season 800 00

(b) Mobile Sawmill—

(i) application fee 2,000 00

(ii) operational fee, per sawmill, per sawing season 12,000 00

(iii) yard/site fee 2,000 00

(iv) residential fee, per 6 m2 hut 1,000 00

(c) Permanent sawmill—

(i) application fee, per sawmill 20,000 00

(ii) operational fee, per sawmill, per annum 50,000 00

(iii) residential fee, per m2, per annum (any development structure) 100 00

(d) Construction of Lodges/Camps /Rest Houses/Huts—

(i) application fee 5,000 00

(ii) operational fee, per annum 12,000 00

(e) Beekeeping, application fee, per hive 200 00

- (f) Abstraction of water from a forest reserve—
  - (i) application fee 15,000 00
  - (ii) forest management fee to be negotiated
  - (iii) permanent structure fee, per m2 600 00
- (g) Abstraction of water from a forest reserve for generating hydro electric power—
  - (i) application fee 15,000 00
  - (ii) environmental levy, per annum to be negotiated
  - (iii) permanent structure fee, per m2 600 00
- (h) Water tank construction in a reserve—
  - (i) application fee 2,000 00
  - (ii) operational fee, per annum 5,000 00
- (i) Dam construction for commercial purposes—
  - (i) application fee 5,000 00
  - (ii) operational fee, per annum 20,000 00
- (j) Dam construction-local communities—
  - (i) application fee Free
  - (ii) operational fee, per annum Free
- (k) Grocery—
  - (i) application fee, per building 2,000 00
  - (ii) operational fee, per building, per annum 5,000 00
  - (iii) residential fee per m2, per annum 200 00
- (l) Maize Mill—
  - (i) application fee 1,000 00
  - (ii) operational fee, per annum Free
  - (iii) residential fee, per m2 200 00
- (m) Private School—
  - (i) application fee 2,000 00

- (ii) operational fee, per annum 7,000 00
- (iii) residential fee, per m2, per annum 200 00
- (n) Church/Mosque building—
  - (i) application fee 2,000 00
  - (ii) residential fee, per annum 500 00
- (o) Regular religious ceremonies in a forest reserve—
  - (i) application fee 1,000 00
  - (ii) residential fee per temporary structure, per annum 2,000 00
- (p) Installation of telecommunications equipment—
  - (i) application fee 5,000 00
  - (ii) operational fee, per annum 50,000 00
  - (iii) site/yard fee per m2 600 00
- (q) Installation of electricity grid—
  - (i) application fee 5,000 00
  - (ii) operational fee per km, per annum 1,000 00
- (r) Installation of telephone lines—
  - (i) application fee 5,000 00
  - (ii) operational fee, per km, per annum 1,000 00
  - (iii) residential fee per 6 m2 temporary hut, per annum 1,000 00
- (s) Tour operators in a forest reserve—
  - (i) application fee 1,500 00
  - (ii) operational fee, per annum 7,000 00
  - (iii) temporary structure fee, per m2 of the structure 100 00
- (t) Picnic/sightseeing/trekking—
  - (i) students and pupils (Malawian) Free
  - (ii) others, entry fee, per head 200 00
  - (iii) vehicle entry fee, per tonne 100 00

- (u) Hunting—
  - (i) application fee 500 00
  - (ii) operational fee, per day 2,000 00
- (v) Ranching—
  - (i) application fee, per animal, per 15 hectares 5,000 00
  - (ii) operational fee, per hectare, per annum 500 00
  - (iii) residential/structure fee, per m2 100 00
- (w) Grazing, adjacent communities, per head 50 00
- (x) Road construction in a forest reserve—
  - (i) application fee 10,000 00
  - (ii) environmental rehabilitation fee based on number of trees felled and/or damaged
- (y) Collection of forest biodiversity resources for scientific purposes—
  - (i) application fee 10,000 00
  - (ii) operational fee, per collection 4,000 00
- (z) Ornamental tree collection—
  - (i) application fee, per collection 1,000 00
  - (ii) operational fee, per annum 2,000 00
- (aa) Gemstone mining/quarry operation—
  - (i) application fee 5,000 00
  - (ii) operational fee, per annum 10,000 00
  - (iii) residential fee, per 6 m2 hut 1,000 00
- (bb) Arts and craft in forest reserve—
  - (i) application fee 500 00
  - (ii) operational fee, per annum 2,000 00
  - (iii) residential fee, per 6 m2 hut 1,000 00
- (cc) Curio making—
  - (i) application fee 1,000 00

- (ii) operational fee, per annum 2,000 00
- (dd) Fishing (sport)—
  - (i) application fee 500 00
  - (ii) operational fee, per annum 5,000 00
- (ee) Aquaculture (Fish Farming)—
  - (i) application fee 5,000 00
  - (ii) operational fee, per hectare, per annum 500 00
  - (iii) residential/structure fee, per m2 100 00

## FORESTRY (COMMUNITY PARTICIPATION) RULES

under s. 32

G.N. 29/2001

### PART I

#### PRELIMINARY

##### 1. Short title

These Rules may be cited as the Forestry (Community Participation) Rules.

##### 2. Interpretation

In these Rules, unless the context otherwise requires—

“community” includes village natural resources management committees, local authorities, by whatever name called, non-governmental organizations and the private sector.

### PART II

#### COMMUNITY PARTICIPATION

##### 3. Objectives of community participation

The objectives of community participation shall be—

- (a) to promote co-management of forest resources;
- (b) to sustainably manage forests on customary land;
- (c) to empower the community in the management of forest resources in forest reserves and forests on customary land;

- (d) to promote community tree-planting and management;
- (e) to promote the role of men, women and the youth in the management of forest resources;
- (f) to enhance sustainable management, conservation and utilization of forest resources; and
- (g) to share costs and benefits between the Department of Forestry and the community in regard to forest produce from customary land forests and forest reserves.

#### 4. Duties of community

(1) A community shall have the responsibility of conserving and managing the forest resources within its area of jurisdiction in collaboration with the Director of Forestry.

(2) Without derogating from the generality of the provisions of sub-rule (1), a community shall have power to—

- (a) develop a reciting system in collaboration with the Director of Forestry;
- (b) enforce any forestry regulations as mandated by the Director of Forestry;
- (c) seize any forest produce reasonably believed to have been obtained in contravention of the Act; and
- (d) to convey to the Board and the Director its recommendations on the conservation and management of forest resources.

#### 5. Committees of a community

A community may, for the proper management of its affairs, under these Rules, form such committees as the community may deem appropriate.

#### 6. Constitution of a community

A community shall adopt a constitution by which the operations of that community shall be governed.

#### 7. Management plan

A community shall, with the assistance of the Director of Forestry, prepare a management plan for purposes of ensuring sustainable forest management, conservation and utilization.

#### 8. Access to records

The Director of Forestry shall have access to all records kept by a community pursuant to these Rules.

#### 9. Consultations on Forestry plans, regulations, etc.

Except where it is unnecessary or impracticable to do so, regulations and any other subsidiary legislation related to the sustainable conservation, management and utilization of forestry resources shall not be made or amended unless the Director of Forestry has carried out consultations with the community.

#### 10. Meetings with the Director

A community may request meetings with the Director of Forestry to discuss management plans, regulations or any other subsidiary legislation or amendment thereto.

### FORESTRY (MULANJE CEDAR) (LICENSING) RULES

under s. 26

G.N. 25/2001

#### 1. Citation

These Rules may be cited as the Forestry (Mulanje Cedar) (Licensing) Rules.

#### 2. Application and interpretation

These Rules apply with respect to every licence issued under the Forest Rules for the cutting and taking of the wood of the tree known as Mulanje Cedar (*Widdringtonia cupressoides*) in and from Mulanje Mountain Forest Reserve.

#### 3. Issue of licences

Licences shall be issued by the Director of Forestry only.

#### 4. Validity of licences

Licences shall be valid for the period from 1st April to 31st October in the same year, both dates inclusive.

#### 5. Conditions to be included in licences

All licences shall be subject to conditions specified in the Schedule to these Rules.

#### 6. Restrictions on licences removal

Licences shall not authorize—

- (a) the felling of any other tree species;
- (b) the cutting or taking of healthy Mulanje Cedar trees;
- (c) the cutting or taking of any timber outside the area specified in the licence; and
- (d) the cutting or taking of any quantity of timber greater than the volume determined in accordance with rule 7 and in respect of which the licensee shall have paid the appropriate fee.

#### 7. Determination of volume

(1) After felling, the volume of every tree to be included in a licence shall be determined by a forestry officer who shall compute the volume of saw logs realized from the trees felled as selected by the licensee using the Mulanje Cedar tables.

(2) From the volume of a tree as determined in accordance with sub-rule (1), the forestry officer shall deduct such amount as he estimates to be the volume of any decayed wood and wood which cannot be sawn into planks.

8. Timber to be marked before removal

No timber shall be removed from the area specified in the licence until after such timber has been marked with the official stamp of the Department of Forestry.

SCHEDULE reg. 5

1. No more than two pitsaws nor more than four persons working in pairs may at any time be employed in cutting in the licensed area.

2. The licensee shall permit a forestry officer to mark all timber to which the licence relates before removal of such timber from the licensed area.

3. The licensee shall remove or cause to be removed from the Reserve, on or before 31st October in the year in which the licence is issued, all timber to which the licence relates and any timber not so removed shall become the property of the Government.

4. The licensee shall be required to adequately fill in or cause to be filled in all pits dug by him or on his behalf and remove all benches in the licensed area.

5. The licensee undertakes that neither he nor his employees shall reside in the Reserve except at such place within the licensed area as shall have been approved for the purpose by a forestry officer.

6. The licensee undertakes that neither her nor his employees shall light any fire in the Reserve except one fire to be attended to all times and to be used exclusively for domestic purposes at the place approved under condition 5.

7. The licensee accepts liability to compensate the Government for any damage, whether caused by fire or otherwise, occasioned by any negligent or unlawful act or omission on his part or on the part of any of his employees.

8. The licensee undertakes that he and his employees shall take all reasonable steps to avert and, if possible, extinguish any unattended fire, howsoever caused within, or in the proximity of, the licensed area, even if not called upon to assist for the purpose by a forestry officer under rule 7 of the Forest Rules.

9. The licensee shall provide such further information as the forestry officer may require.

FORESTRY (PROHIBITED FOREST AREAS) ORDER



under s. 26

G.N. 15/2001

1. Citation

This Order may be cited as the Forestry (Protected Forest Areas) Order.

2. Declaration of Protected Forest

The areas listed in the Schedule are declared to be protected forest areas.

SCHEDULE

PROTECTED FOREST AREAS

1. Kongwe Hills (Mangochi)

2. Michiru Hills (Blantyre — along Blantyre–Zalewa road)

[Chap6303]CHAPTER 63:03

FARMERS' STOP-ORDER

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title

2. Interpretation

3. Validity of stop-orders

4. Registration of stop-orders

5. Discretion of registration officer

6. Registration not to cure defect nor to confer validity

7. Correction of register

8. Priority of stop-orders

9. Security not to be extinguished by sale, etc., of land whereon crop growing

10. Bills of Sale Act not to apply

11. Regulations

12. No stamp duty payable
13. Penalties for offences in connexion with stop-orders
14. Government to be bound

37 of 1955

G.N.22/1963

1/1965

166/1967

An Act to Provide for the Registration of Farmers' Stop-Orders and for Matters Connected Therewith and Subsidiary Thereto

[3RD JANUARY 1956]

[Ch6303s1]1. Short title

This Act may be cited as the Farmers' Stop-Order Act.

[Ch6303s2]2. Interpretation

In this Act, unless the context otherwise requires—

“farmer” means any person who, as tenant or owner of an agricultural holding, cultivates the holding for profit;

“registered stop-order” means a stop-order registered under this Act;

“registration officer” means the officer appointed by the Minister under section 4;

“stop-order” means any written undertaking entered into by a farmer in which he—

(a) purports to give any person, as security for debt, any right in or over his growing or future crops, or the proceeds thereof; or

(b) authorizes any person to pay to a third party, in satisfaction of a debt owed by such farmer to such third party, the proceeds of his growing or future crops, or any part thereof.

[Ch6303s3]3. Validity of stop-orders

Any stop-order not registered in accordance with this Act shall be null and void. Any stop-order so registered shall have effect for such period as may be stated therein.

[Ch6303s4]4. Registration of stop-orders

(1) The Minister shall appoint a registration officer, who shall keep a register of stop-orders in which he shall, subject to section 5, register all stop-orders presented to him for registration.

(2) The registration officer shall record on every stop-order registered by him the fact that such stop-order has been registered, and shall sign and date the same. Such record, signature and date shall, for all purposes, be sufficient evidence of registration under this Act.

(3) Whenever a registered stop-order has been satisfied or cancelled, the person on whom it is drawn shall at the end of each calendar month send written notification of such satisfaction or cancellation to the registration officer. The registration officer shall thereupon note the same in the register.

(4) Any person presenting a stop-order for registration shall, at the time of presentation, submit three copies of the stop-order to the registration officer.

[Ch6303s5]5. Discretion of registration officer

The registration officer may in his discretion—

(a) refuse to register any stop-order in which any interlineation, blank, erasure, or alteration appears unless the person executing the stop-order affixes his signature or initials to such interlineation, blank, erasure, or alteration;

(b) take steps to satisfy himself as to the identity of the person presenting the stop-order for registration and as to his right to present the stop-order for registration; and

(c) refuse to register any stop-order executed after the commencement of this Act not presented for registration within thirty days of the date of execution thereof.

[Ch6303s6]6. Registration not to cure defect nor to confer validity

Registration shall not cure any defect in a stop-order nor confer upon it any effect of validity which it would not otherwise have had except in so far as provided by this Act.

[Ch6303s7]7. Correction of register

(1) If the registration officer has, at any time, reason to believe that a stop-order has been or is incorrectly registered, he may call for such evidence as he thinks fit as to the correctness or otherwise of the registration, and if satisfied that a stop-order has been or is incorrectly registered, he shall correct the register and if necessary amend any record on the stop-order and publish such notification of the correction as he shall deem fit.

(2) On the correction of the register or any record, the former register or record shall cease to have effect.

[Ch6303s8]8. Priority of stop-orders

Stop-orders, whether executed before or after the commencement of this Act, shall, as between themselves, be entitled to priority in order of registration:

Provided that stop-orders executed before such date shall, if registered within fifteen days after the commencement of this Act, be entitled to priority in the order in which executed.

[Ch6303s9]9. Security not to be extinguished by sale, etc., of land whereon crop growing

A registered stop-order shall not be extinguished or otherwise impaired by any sale, mortgage or encumbrance, subsequent to the date of registration, of or upon the land whereon the crop is growing or situate, nor by the death of or insolvency of the person who executed such stop-order, and such registered stop-order may be enforced notwithstanding that the crop may be, at the date of enforcement, in the possession of a person who has acquired such crop for value without actual notice of the existence of such registered stop-order.

[Ch6303s10]10. Bills of Sale Acts not to apply

The Bills of Sale Act shall not apply to any registered stop-order. Cap. 48:03

[Ch6303s11]11. Regulations

(1) The Minister may make Regulations for carrying this Act into effect.

(2) In particular and without prejudice to the generality of the foregoing power such Regulations may—

- (a) prescribe the procedure to be followed on registration;
- (b) prescribe the particulars to be entered in the register in respect of every stop-order;
- (c) prescribe indices to be kept by the registration officer;
- (d) permit searches to be made in the register, and prescribe the times at which such searches may be made;
- (e) prescribe the fees payable in respect of registration and searches: Provided that no such fees shall be payable by the Government or by any person acting on behalf of the Government;
- (f) require the registration officer to publish lists of stop-orders registered, in such manner and at such times as may be prescribed;
- (g) provide for the registration of any transfer of a stop-order from one payee to another;
- (h) provide for the issue of certified copies of stop-orders and the fees chargeable therefor; and
- (i) provide for the fees payable to persons on whom stop-orders are drawn and who report in accordance with section 4 (3).

[Ch6303s12]12. No stamp duty payable

Notwithstanding the Stamps Act, no stamp duty shall be payable on any registered stop-order. Cap. 43:01

[Ch6303s13]13. Penalties for offences in connexion with stop-orders

(1) Any person who executes a stop-order knowing, or having reasonable cause to believe, that the same will not be honoured, shall be liable to a fine of £200 and to imprisonment for three years. The burden of proving that he knew or had reasonable cause to believe that the stop-order would be honoured shall lie on the person charged with an offence under this section.

(2) Any farmer, who having executed a stop-order, sells or delivers the crop to which it relates without the written consent of the registered payee of such stop-order, or who by any other means deprives such payee of the crop or the proceeds thereof, or who directly or indirectly defeats, invalidates or impairs the security of such payee shall be liable to a fine not exceeding treble the amount of the loss sustained by such payee or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

[Ch6303s14]14. Government to be bound

This Act shall apply to and bind the Government.

#### SUBSIDIARY LEGISLATION

##### APPOINTMENT OF REGISTRATION OFFICER

under s. 4 (1)

G.N. 2/1956

The Registrar General has been appointed to be the registration officer for the purposes of the Act.

##### FARMERS' STOP-ORDER REGULATIONS

under s. 11

G.N. 1/1956

1/1965

28/1989

22/1997

26/2005

#### 1. Citation

These Regulations may be cited as the Farmers' Stop-Order Regulations.

#### 2. Procedure for registration

(1) Payees of stop-orders shall apply to the registration officer for registration of such orders either in person during the normal office hours or by registered post. The fee for registration of a stop-order shall be K500. G.N. 28/1989, 22/1997, 26/2005

(2) The registration officer, when registering a stop-order, shall endorse thereon the particulars set out in Form A in the Schedule.

3. Particulars to be entered in register

The names of farmers who have executed stop-orders which have been registered shall appear in alphabetical order in the register. The name of not more than one farmer shall appear on any one page of the register. Each page of the register shall be in Form B in the Schedule.

4. Searches

At any time after fifteen days from the commencement of the Act, any person desiring to search the register may apply either in person during the normal office hours or by registered post to the registration officer on Form C in the Schedule, giving full particulars of the name and address of the farmer in respect of whom he desires the search to be made. On payment of a fee of K500 the registration officer shall supply to the applicant a certificate of official search showing all entries in the register in respect of unsatisfied stop-orders executed by such farmer. Such certificate shall be in Form D in the Schedule. G.N. 28/1989, 22/1997, 26/2005

5. Registration of transfers

Any transferee of a valid stop-order may apply to the registration officer to have his name entered on the register as the payee thereof. Such application may be made either in person during the normal office hours or by registered post on Form E in the Schedule. If the registration officer is satisfied that it is proper for him so to do, he shall enter the name of the applicant in the register as the payee of the stop-order, on payment of a fee of K500. G.N. 22/1997, 26/2005

6. Notification of satisfaction or cancellation

Notification of the satisfaction or cancellation of a registered stop-order shall be sent to the registration officer on Form F in the Schedule by registered post on the last day of the month in which the stop-order has been satisfied or cancelled.

7. No fee for Government departments

Notwithstanding these Regulations, no fee shall be payable by any Government department thereunder.

SCHEDULE

GOVERNMENT OF MALAWI

reg. 2 (2) FARMERS' STOP-ORDER REGULATIONS

FORM A

ENDORSEMENT OF STOP-ORDER

I certify that I ..... at ..... a.m.

p.m.

on the ..... day of ..... , 20....., registered this stop-order, registered number  
..... ,

in the register of stop orders, and that other stop-orders do exist in respect of the crops  
listed in this stop-order.

do not

Date: ..... , .....

Registration Officer

GOVERNMENT OF MALAWI

FARMERS' STOP-ORDER REGULATIONS reg. 3

FORM B

REGISTER OF STOP-ORDERS

Form No. .... Drawer's surname .....

Postal address..... Other names .....

Date and time	Order registered	Registered No.	Date Order executed	Amount	Drawn on
	In favour of	Crop	Name and address of any transferee with date of transfer		
	Date satisfaction or cancellation advised				

GOVERNMENT OF MALAWI

FARMERS' STOP-ORDER REGULATIONS

FORM C reg. 4

REQUISITION FOR OFFICIAL SEARCH

PURSUANT to regulation 4 of the Farmers' Stop-order Regulations, I, the undersigned, do hereby make application for an official search to be made in the register of stop-orders in respect of stop-orders executed by:

Full name .....

of ..... Farm in the ..... District of Malawi.

Fee paid 5s.

Date .....

(Signature)

.....

Address .....

.....

GOVERNMENT OF MALAWI

FARMERS' STOP-ORDER REGULATIONS

FORM D reg. 4

CERTIFICATE OF OFFICIAL SEARCH

Date and time	Order registered	Regd. No.	Date Order executed	Amount	Drawn on
In favour of	Crop	Particulars of name and address of transferee with date of transfer			

Certified a true copy of all entries in the register of stop-orders relating to unsatisfied stop-orders executed by ..... of .....

(Signed) .....

Registration Officer

Date .....

GOVERNMENT OF MALAWI

FARMERS' STOP-ORDER REGULATIONS

FORM E reg. 5

APPLICATION FOR REGISTRATION OF TRANSFER



Pursuant to regulation 5 of the Farmers Stop-Order Regulations, I, the undersigned, do hereby apply to have my name entered on the register of stop-orders as payee of a stop-order, registered number .....

..... registered at ..... on the ..... day of .....19....., transferred to me as payee thereof on the ..... day of ..... 19.....,

Date.....

(Signed) .....

Address .....

.....

.....

I, the undersigned, as the previous payee of the stop-order described above, do hereby consent to the granting of the above application.

Date.....

(Signed) .....

.....

GOVERNMENT OF MALAWI

FARMERS' STOP-ORDER REGULATIONS

FORM F reg. 6

NOTICE OF SATISFACTION OR CANCELLATION

I, the undersigned, hereby give notice that a stop-order, registered number..... drawn upon me, was, on the .....day of .....19....., .

To the registration officer  
(Signature) .....

Address .....

.....

Date

.....

[Chap6401]CHAPTER 64:01

PLANT PROTECTION

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Interpretation
3. Inspectors
4. Duties of owners of land
5. Powers of inspectors
6. Owners to provide access and facilities to inspectors
7. Appeals
8. Sale by nurserymen of plants infested with a pest
9. Compensation
10. Limitation of action against Government
11. Offences
12. Regulations

11 of 1969

An Act to provide for the eradication of pests and diseases destructive to plants to prevent the introduction and spread of pests and diseases destructive to plants, and for matters connected therewith and incidental thereto

[Ch6401s1]1. Short title

This Act may be cited as the Plant Protection Act.

[Ch6401s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

“board of inquiry” means a board of inquiry appointed under section 7;

“container” means any case, package, pot, sack or other thing used as a container and includes any covering, wrapping or packing material;

“disease” means any abnormal condition of a plant, communicable or believed to be communicable by the transfer of a causative agent or by the propagation of an affected plant;

“growing medium” means a medium, including soil, capable of being used for the propagation or culture of plants;

“host plant” means a plant capable of being the host of a pest;

“infested area” means any area or place in which a pest exists;

“injurious organism” means any organism or like agent including a virus which is—

- (a) inimical to the growth or existence of living plants;
- (b) injurious to plants or plant products; or
- (c) capable of producing a disease;

“inspector” means a person authorized in writing by the Minister to exercise the powers or perform the duties of an inspector under this Act;

“invertebrate” means a living invertebrate animal organism in whatever stage of development it may be;

“nursery” means land or premises where nursery stock is grown or cultivated;

“nurseryman” means the owner or other person responsible for the management of a nursery;

“nursery stock” means woody perennial plants grown or cultivated for the purposes of trade;

“owner” in relation to land or premises includes a joint owner, part owner, lessee or occupier, or the agent of such owner, joint owner, part owner, lessee or occupier;

“pest” means an injurious organism which has been declared to be a pest under subsection (2);

“phytosanitary certificate” means a certificate issued by an officer of the plant protection service of Malawi, or of any other country concerned, as to the health of a plant or a growing medium;

“plant” means any member of the vegetable kingdom, whether living or dead, and includes any part of a plant, or the fruit or flowers thereof, whether severed therefrom or not, and any unmanufactured plant product;

“quarantine area” means an area declared to be a quarantine area under this Act;

“vehicle” includes an aircraft or a railway train.

(2) For the purposes of this Act, the Minister may, by notice, declare any injurious organism to be a pest either generally or in respect of a particular type of plant and either with a view to its control or the prevention of its introduction or spread, or for some other purpose.

(1) The Minister may, in writing, authorize any person to exercise the powers or perform the duties of an inspector under this Act, or such of them as shall be specified in such written authorization.

(2) Every inspector shall, in the exercise of his powers or the performance of his duties under this Act, comply with any directions or instructions which the Minister may from time to time issue for the purposes of this Act.

[Ch6401s4]4. Duties of owners of land

(1) An owner of land or premises shall take all measures prescribed or required by or under this Act, and such additional or alternative measures as are reasonably necessary for the eradication, reduction or prevention of the spread of a pest or disease which an inspector may, in accordance with the provisions of this Act, in writing order him to take.

(2) If an owner of land or premises fails or neglects to take all or any of the measures which he is required to take in accordance with this section, an inspector may—

(a) on giving the owner not less than seven days' notice in writing of his intention so to do, cause the measures to be taken;

(b) if he is satisfied that the measures must be taken without delay, cause the measures to be taken immediately without giving the notice referred to in paragraph (a).

(3) An owner of land or premises shall, without prejudice to any other penalty incurred by reason of his failure or neglect to take the measures which he is required to take in accordance with subsection (1), be liable to pay the costs incurred by the inspector in respect of the measures he causes to be taken in accordance with subsection (2), which shall be recoverable as a debt due to the Government.

[Ch6401s5]5. Powers of inspectors

(1) An inspector may, in the performance of his functions under this Act, and upon production of his written authorization by the Minister, if demanded—

(a) at all reasonable times enter upon and inspect any land, premises, buildings, vehicles or vessels on or in which growing media or plants may be found, or on or in which he reasonably suspects that a pest may be found;

(b) inspect any growing media, and plants, and for the purpose of detecting pests, expose the roots of any plant, remove bark or cut any plant or open any container which he believes to contain growing media or plants liable to harbour a pest;

(c) order the taking of measures which are prescribed or are reasonably necessary for the eradication or prevention of a pest;

(d) declare any plants, growing media or containers to be infested with a pest;

(e) order the destruction at any time of any host plants or any plants declared by him to be infested with a pest, or any plant which is growing on land or in any growing media contrary to the provisions of this Act or any regulations made thereunder;

(f) if he reasonably suspects the presence of a pest on land, premises or in a building, declare the area in which the land, premises or building is situated to be an infested area, and in writing prohibit for a period not exceeding fourteen days, the removal from the land, premises or building of growing media, plants, containers or other things whatsoever capable of spreading a pest;

(g) subject to the provisions of subsection (2), order the seizure, detention and destruction without compensation of any imported growing medium or plant or injurious organism or invertebrate, together with the container thereof—

(i) which is imported in contravention of the provisions of this Act or any regulations made thereunder;

(ii) which is imported otherwise than in accordance with the conditions of a permit to import issued under this Act or any regulations made thereunder;

(iii) which is not at the time of importation accompanied by such a certificate of origin, phytosanitary certificate, or other document as may be prescribed or which is accompanied by such a certificate or other document which is incorrect in a material particular.

(2) Where an importer or owner of a growing medium or plant or other thing which has been the subject of an order of destruction under this section, other than a growing medium or plant which has been declared by an inspector to be infested with a pest, gives notice of his intention to appeal in accordance with section 7 the order of destruction shall not take effect unless and until the period specified for lodging notice of appeal is elapsed and no notice of appeal has been lodged, or the appeal is dismissed, withdrawn or abandoned.

#### [Ch6401s6]6. Owners to provide access and facilities to inspectors

An owner of land, premises, a building, vehicle or vessel, or of a growing medium or plant, and the agent of such owner, shall afford an inspector access thereto and shall give such information and provide such labour and facilities as the inspector may require for the purposes of carrying out an inspection under this Act.

#### [Ch6401s7]7. Appeals

(1) Subject to the provisions of subsection (2), the importer or owner of a growing medium or plant or other thing, the destruction of which has been ordered in accordance with the provisions of this Act may, within seven days of the date of the order, lodge with the Minister a notice of appeal against the order:

Provided that there shall be no right of appeal in respect of—

(i) an order for the destruction of a growing medium or plant declared by an inspector to be infested with a pest; or

(ii) an order of destruction made under section 5 (1) (e).

(2) A notice of appeal shall be in writing and shall specify the grounds of the appeal.

(3) The Minister may, after such inquiries as he considers necessary thereupon determine the appeal himself or may if he considers it desirable refer the appeal to a board of inquiry appointed by him in accordance with the provisions of this section.

(4) A board of inquiry for the purposes of this section shall consist of three members appointed by the Minister of whom—

(a) one member, who shall be the chairman, shall be a legal practitioner; and

(b) not less than two members shall be persons who are not public officers.

(5) The powers, rights and privileges of a board of inquiry shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and the provisions of sections 9 to 13 of that Act shall mutatis mutandis apply in relation to the proceedings of a board of inquiry appointed under this section and to a person summoned to give evidence or giving evidence before a board of inquiry. Cap. 18:01

(6) The board of inquiry shall as soon as possible report its findings and make recommendations in writing to the Minister who shall thereupon determine the appeal giving due consideration to the findings and recommendations of the board of inquiry.

(7) If a board of inquiry recommends that an appeal be dismissed it may also recommend that the appellant pay to the Government the costs incurred by the Government in connection with the appeal or may make such other recommendation as it considers appropriate, and the Minister in determining the appeal may give effect to such recommendations.

(8) Any determination by the Minister shall be final and shall not be questioned in any court and any order by the Minister that the appellant shall pay any of the costs of the Government in connection with the appeal shall constitute a debt owing by the appellant to the Government which may be sued for in any court.

(9) Members of a board of inquiry who are not public officers shall be paid, out of moneys appropriated for the purpose by Parliament, such remuneration as the Minister may prescribe.

(10) All members of a board of inquiry shall be paid, out of moneys appropriated for the purpose by Parliament, such allowances to meet the reasonable expenses incurred by them in connection with an appeal as the Minister may prescribe.

[Ch6401s8]8. Sale by nurserymen of plants infested with an injurious organism

If within three days of the delivery to him of plants sold by a nurseryman, the purchaser of the plants finds that they are infested with an injurious organism he may return the plants to and at the expense of the nurseryman and shall thereupon be freed from the liability to pay for them, or if he has paid for them he may recover the purchase price.

[Ch6401s9]9. Compensation

(1) Subject to the provisions of this Act, the Minister may, out of moneys appropriated for the purpose by Parliament, pay compensation to the owner of a growing medium or plant destroyed under the powers conferred by this Act.

(2) If the owner of the growing medium or plant so requires, the Minister may appoint two assessors, one of whom shall be nominated by the owner, to assist him in assessing the amount of compensation payable.

#### [Ch6401s10]10. Limitation of action against Government

No claim shall lie against the Government, the Minister, the Permanent Secretary, an inspector or any other servant or agent of the Government for anything done in good faith under the powers conferred by this Act.

#### [Ch6401s11]11. Offences

(1) A person who—

(a) wilfully resists, obstructs, impedes or hinders an inspector in the exercise of his powers or the performance of his duties under this Act or any regulations made thereunder;

(b) contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder or of any order or direction made or given under this Act, or of any regulations made thereunder, with which it is his duty to comply; or

(c) without reasonable cause contravenes or fails to comply with any of the conditions of a permit or other document issued in accordance with this Act or of any regulations made thereunder; or

(d) maliciously introduces a pest on to land or premises in Malawi; or

(e) on being required to do so fails or refuses to produce to an inspector a permit, certificate or other document which he is required to have in accordance with this Act, or any regulations made thereunder; or

(f) fails or refuses without reasonable cause to give information to an inspector when required to do so in accordance with this Act or knowingly gives false or incomplete information; or

(g) for the purpose of obtaining, whether for himself or any other person, the issue of a permit, certificate or other document makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true or knowingly makes use of a declaration, statement or document containing the same;

shall be guilty of an offence and liable—

(i) for an offence under paragraph (d), to a fine of four hundred pounds and to imprisonment for four years;

(ii) for any other offence, to a fine of one hundred pounds and to imprisonment for six months.

(2) An inspector may seize and detain, and may order the destruction without compensation of, a growing medium, plant or other thing whatsoever which is removed from an infested or quarantine area in contravention of the provisions of this Act or an order made in accordance with the provisions of this Act.

(3) The confiscation or destruction of a growing medium, plant or other thing in accordance with subsection (2) shall not free the person responsible for its illegal removal from liability to prosecution.

#### [Ch6401s12]12. Regulations

(1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

(a) the form of and the fees payable in respect of any permits or certificates or other documents required under this Act, and the manner of applications to be made in respect thereof;

(b) the issue of, the duration of, the cancellation, surrender or amendment of, and the conditions which may be attached to, any permit, certificate or other document required under this Act;

(c) the regulation, prohibition, restriction or control of the import or export of any plant, or class of plant or any growing medium, invertebrate, pest or other injurious organism;

(d) the disinfection, treatment, destruction or disposal of pests, or plants infested or appearing to be infested with a pest, or anything whatever, whether similar in nature to a plant or not, which is liable to infest a plant with a pest;

(e) the prohibition, restriction and regulation of the removal, transport or export of pests, growing media or plants;

(f) the control and destruction of any plant infested with a pest;

(g) the prohibition, restriction and regulation of the cultivation and harvesting of plants if a pest cannot otherwise be readily or adequately controlled or eradicated;

(h) the control and destruction of host plants not under cultivation for the current season's crop;

(i) the reporting of the occurrence of a pest and the collection and transmission of specimens of a pest;

(j) the methods of planting, cleaning, cultivating and harvesting to be adopted and the precautions and measures, including the destruction of plants, to be taken by an owner of land for the purpose of eradicating a pest or of preventing or controlling attacks by or the spread of a pest;

(k) the destruction after harvest of a particular kind of plant by a specified date;



(l) the disinfection, fumigation or other treatment of any land, building, vehicle or vessel used for the storage or conveyance of any plant, agricultural produce or anything else whatever likely to infest a plant with a pest;

(m) the declaration of areas infested with a pest as infested areas and of areas around infested areas as quarantine areas;

(n) the registration and inspection of nurseries, the regulation of the sale or removal of plants from nurseries and the regulation of the sale of nursery stock;

(o) the payment and recovery of fees for any services carried out by an inspector under this Act;

(p) the detention and inspection before importation or exportation of growing media and plants and their containers, and the grant of phytosanitary certificates in accordance with such inspection;

(q) the disinfection, fumigation or treatment of imported growing media and plants and their containers;

(r) the immediate destruction, without compensation, of imported growing media and plants which, on inspection, appear to be infested with a pest or an injurious organism;

(s) the immediate destruction, without compensation, of an imported invertebrate if, in the opinion of an inspector, the invertebrate might be a potential danger to agriculture;

(t) the prohibition of the importation of growing media, invertebrates and plants except by specified ports or places of entry and routes and by specified methods of transport;

(u) the detention of imported growing media, invertebrates and plants for observation and the precautions to be taken during detention;

(v) the imposition and recovery of fees for sorting, disinfecting, fumigating or treating growing media and plants on importation;

(w) the disposal of imported growing media and plants in respect of which prescribed fees are not paid and of the proceeds, if any, resulting from their disposal;

(x) the issue of permits as a pre-requisite to the importation of growing media, injurious organisms, invertebrates and plants;

(y) the production of phytosanitary certificates signed by responsible persons or authorities in the country or territory of origin relating generally or specifically to—

(i) the freedom of imported growing media, invertebrates and plants, or the area in which they were produced or grown, from injurious organisms; and

(ii) the treatment of imported growing media and plants before despatch from their place of origin;

(z) the production of certificates of origin of imported growing media, injurious organisms, invertebrates and plants and for the furnishing by the importer of particulars relating to imported growing media, injurious organisms, invertebrates and plants.

## SUBSIDIARY LEGISLATION

### PLANT PROTECTION (EXPORT) REGULATIONS

under s. 12

G.N. 106/1969

32/1982

#### 1. Citation

These Regulations may be cited as the Plant Protection (Export) Regulations.

#### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“phytosanitary certificate” means a statement in the form in the Schedule hereto issued by an inspector certifying that he has, before despatch, thoroughly examined the plants to which the statement relates, or a representative sample thereof, and found the plants or sample to be substantially free from any pest or disease.

#### 3. Application

(1) These Regulations shall apply to the export of all plants except tung oil, tea, cotton lint, coffee, cut flowers, fresh fruit and vegetables.

(2) These Regulations shall not apply to any consignment of plants imported in any vehicle, aircraft or vessel and then exported in such vehicle, aircraft or vessel without at any time having been unloaded therefrom, or to anything in transit through Malawi which is consigned by a method approved by the Permanent Secretary or which has been transhipped for re-export within seven days of their arrival in Malawi.

#### 4. Phytosanitary certificate

(1) Save as is provided in regulation 3 (1) no person shall export or cause to be exported any plants from Malawi without having applied for and obtained a phytosanitary certificate relating to such plants. G.N. 32/1982

(2) A fee of K5 shall accompany every application for a certificate.

#### 5. Powers of inspector

(1) Upon receiving an application for a phytosanitary certificate, an inspector shall order that the plants shall be made available for his inspection at a place specified by him and he shall

thereupon examine the plants to which the application relates or a representative sample of such plants and he may give such orders as he considers necessary for the disinfection, fumigation and treatment of the plants and of the vehicle, aircraft or vessel in which the plants are to be exported.

(2) When an inspector is satisfied that the orders, if any, given by him under subregulation (1) have been complied with in relation to the plants or vehicle, aircraft or vessel in which the plants are to be exported, he shall issue a phytosanitary certificate in accordance with the result of his examination.

(3) In giving any order under the provisions of subregulation (1) an inspector may order that only a specific chemical shall be used for fumigation or other treatment, and that such chemical shall be applied at such concentration and by such means as he may direct.

SCHEDULE

MALAWI GOVERNMENT

PLANT PROTECTION ACT

(CAP. 64:01)

PHYTOSANITARY CERTIFICATE

THIS IS TO CERTIFY

that the plants, parts of plants or plant products described below or representative samples of them were thoroughly examined on (date) ..... by (name) .....

an authorized officer of the plant protection service and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon and otherwise.

Fumigation or disinfection treatment (if required by importing country):—

Date ..... Treatment .....

Duration of exposure ..... Chemical and concentration .....

ADDITIONAL DECLARATION

....., 19.....

(Signature) .....

(Stamp)(Rank) .....

Description of the Consignment

Name and address of exporter .....

Name and address of consignee .....

Number and description of packages .....

Distinguishing marks .....

Origin (if required by importing country) .....

Means of conveyance .....

Point of entry .....

Quantity and name of produce .....

Botanical name (if required by importing country)  
.....

#### PLANT PROTECTION (IMPORT) REGULATIONS

under s. 12

G.N. 107/1969

1. Citation

These Regulations may be cited as the Plant Protection (Import) Regulations.

2. Interpretation

In these Regulations unless the context otherwise requires—

“eastern Africa” means Kenya, Uganda and Tanzania;

“forest tree” means any tree which is commonly grown for the production of timber and not solely for ornamental purposes;

“form” means the appropriate form prescribed in the Schedule to these Regulations;

“palm” means any plant belonging to the natural order “palmates”;

“permit” means a permit in form No. 2 in the Third Schedule;

“phytosanitary certificate” means a certificate issued by a competent authority in the exporting country which is substantially the same as form No. 3 in the Third Schedule and which certifies that the plants or a representative sample thereof to which the certificate relates have been examined and found to be substantially free from any pest or disease;

“protective treatment” means the sorting, disinfecting, fumigation or other treatment or quarantine of growing media, plants or containers in terms of these Regulations and cognate expressions shall be construed accordingly;

“quarantine” means the detention and culture of plants in isolation under the supervision of the Ministry under such conditions, at such place and for such period as the Permanent Secretary may determine;

“soil” means a growing medium which is neither sterile nor inert;

“southern Africa” means Angola, Botswana, Lesotho, Malawi, Moçambique, Rhodesia, South Africa, Swaziland and Zambia;

“submit” in relation to a permit or a phytosanitary or other certificate relating to a consignment of growing media, injurious organisms, invertebrates or plants, means the submission of the permit or certificate to an inspector at the place of inspection or port of entry of the consignment, and cognate expressions shall be construed accordingly;

“vegetable” means a herbaceous plant, grown for human consumption in whole or in part, but does not include cereals, fodder crops, culinary herbs, spices and soft fruits;

“vegetative material” means—

- (a) any growing plant; or
- (b) any part of a plant, other than the seed,

which can be used for and is intended to propagate the plant, and includes budwood, cuttings, fruits, grafts, rooted material, suckers, bulbs, bulbils, corms, rhizomes, and tubers.

### 3. Goods in transit

The provisions of these Regulations shall not apply to anything in transit through Malawi which is consigned by a method approved by the Permanent Secretary or which have been transhipped for re-export within seven days of their arrival in Malawi.

### 4. Permit to import

(1) Save as is otherwise provided, no person shall import vegetative material, mushroom or other fungal spawn, seeds or any unmanufactured plant product, or any rooting compost, soil or other growing media, unless a permit authorizing such importation is submitted.

(2) No person shall import any live insect or other invertebrate, or any plant pathogen unless a permit authorizing such importation is submitted.

### 5. Permit subject to conditions

(1) Where a permit in terms of regulation 4 has been issued but stipulates that certain conditions must be fulfilled, an inspector may refuse to allow the import unless he is satisfied that these conditions have been fulfilled or are capable of being fulfilled.

(2) Where a condition of import is that the plants shall be accompanied by a phytosanitary certificate such certificate shall be substantially the same as form No. 3 in the Third Schedule hereto.

6. Application for permit

(1) Application for a permit to import any item indicated in regulation 4 shall be made to the Permanent Secretary and, if the Permanent Secretary so requires, shall be made in form 1, in the Third Schedule hereto.

(2) The Permanent Secretary may—

- (i) issue a permit;
- (ii) refuse to issue a permit; or
- (iii) cancel, suspend or amend any permit which has been issued.

7. Exemption from permits

Subject to the provisions of these regulations, no permit shall be required for the importation of—

- (a) cured tobacco of the previous season's crop from Rhodesia or Zambia;
- (b) cut flowers intended for ornament;
- (c) fruit, other than citrus fruit and tomatoes, from Moçambique, Rhodesia, South Africa or Zambia;
- (d) grains and pulses produced in Africa intended for human consumption;
- (e) plants, or parts of plants, carried by travellers by road or rail and intended for consumption as food on the journey;
- (f) seeds of ornamental flowering plants, excluding trees and shrubs, other than Althaea, Berberis, Helianthus, Hibiscus, Hollyhock, Malva, Nicotiana and Pyrethrum;
- (g) seeds of vegetables other than those of aubergine (egg plant, brinjal), beans, Capsicum (green peppers or chillies), lettuce, pea, Physalis (Cape gooseberry) and tomato;
- (h) vegetables, except potatoes and tomatoes, from Moçambique, Rhodesia, South Africa or Zambia;
- (i) a plant, other than citrus or grape vines, produced in a nursery approved by the Permanent Secretary.

8. Powers of inspector

Subject to the provisions of these Regulations an inspector may—

(a) cause any vehicle known to have brought or suspected of having brought a pest or disease or plant known or suspected of being infested with a pest or disease into Malawi, to be protectively treated;

(b) detain for inspection any growing medium, plant or container on importation;

(c) cause any growing medium, plant or container detained in terms of paragraph (b) to be protectively treated whether or not the growing medium, plant or container is diseased or infested with a pest;

(d) cause any imported growing medium or plant which appears to be diseased or infested with a pest listed in the Second Schedule hereto, or with any other pest or disease which, in the opinion of the inspector is of a particularly dangerous nature, and any other plant in the same container, to be destroyed immediately.

#### 9. Treatment

Unless the Permanent Secretary otherwise directs, the protective treatment of any imported growing medium, plant or container shall be carried out on Government premises.

#### 10. Restrictions on imports

(1) No person shall import—

(a) any plant packed in soil which is not the product of a nursery approved by the Permanent Secretary and bears a label certifying such origin;

(b) fresh fruits from Asia or the Pacific Islands;

(c) any plant or part of a plant specified in the First Schedule hereto;

(d) any grain, pulse or similar produce unless it is accompanied by a phytosanitary certificate stating that it has been fumigated in an approved manner not more than fourteen days prior to entry into Malawi;

(e) rooted vegetative material of any plant, unless it is certified as having been rooted in a sterile medium, from any country outside eastern and southern Africa;

(f) vegetative material of any plant species or cultivar from any country outside eastern and southern Africa;

without the consent in writing of the Minister.

(2) The Minister shall not give his consent to the importation of any plant or part of a plant mentioned in subregulation (1) (a) (b) (c) (e) and (f) unless he is satisfied that the importation is made—

(a) (i) for scientific purposes; or

(ii) because the plant cannot be grown from seed; and

(b) under the direct supervision of the Ministry.

#### FIRST SCHEDULE

#### PLANTS AND PARTS OF PLANTS THE IMPORTATION OF WHICH IS PROHIBITED WITHOUT THE SPECIAL WRITTEN AUTHORITY OF THE MINISTER

1. Acacia species, vegetative material from countries outside Africa.
2. Banana from countries other than eastern Africa, Moçambique, Rhodesia, South Africa and Zambia.
3. Beans, Phaseolus species, vegetative material from all countries and seeds from Australia, eastern Europe, Mexico and the United States of America.
4. Capsicum species, all parts except seed.
5. Cereals, small, such as barley, oats, rice, rye, and wheat, all parts except seed.
6. Chestnut, and all other species of Castanea, all parts except seed, from countries other than eastern and southern Africa.
7. Crysanthemum, all parts except seed.
8. Citrus, rooted vegetative material from all countries except Rhodesia and Zambia.
9. Clover (Trifolium species), including shamrock, all parts except seed and ornamental foliage.
10. Cocoa (Theobroma cacao), all parts.
11. Coconut, all parts except seed.
12. Coffee, all parts except seed.
13. Conifers, all parts except seed.
14. Cotton, all parts except seed, seed-cotton, lint and seed-bran.
15. Dahlia, vegetative material from South Africa.
16. Elm, and all other species of Ulmus and Zelkova, all parts.
17. Eucalyptus species, vegetative material, from countries outside Africa.
18. Grape vine, and all other species of Vitaceae, all parts, except seed, from countries other than eastern and southern Africa.
19. Hibiscus, and all other species of Malvaceae, all parts except seed.
20. Lucerne, all parts except seed.
21. Maize, all parts except seed.



22. Oak (*Quercus* species), vegetative material, from countries other than southern Africa.
23. *Opuntia* species, including spineless cactus, all parts.
24. Palms from all American countries.
25. Pea (*Pisum*, *Dolichos*, *Lathyrus* and *Vicia* species), all parts except seed.
26. Peach, including nectarine, stones and seed from countries other than Rhodesia and South Africa.
27. Plane (*Platanus* species), all parts except seed.
28. Potato, seed tubers, from all countries except Australia, the United Kingdom and southern Africa.
29. Rice, all parts except grain for food.
30. Rose, and all other species of *Rosaceae*, from Asia or the Pacific Islands.
31. Rubber (*Hevea* species) from South and Central America.
32. Soya bean, all parts except seed; and seeds from Australia, eastern Europe, Mexico and the United States of America.
33. Sunflower (*Helianthus* species) including Jerusalem artichoke, all parts except seed.
34. Sweet potato, all parts, except tubers for consumption from eastern and southern Africa.
35. Tea, all parts, from countries other than eastern Africa and Rhodesia.
36. Tobacco, all parts except trade samples and seed, and cured tobacco from eastern and southern Africa.
37. Tomato, all parts, except fruit from eastern Africa, Moçambique, Rhodesia and Zambia, and seeds.
38. Forest trees, all parts except seed.

## SECOND SCHEDULE

### PESTS AND DISEASES OF A PARTICULARLY DANGEROUS NATURE THE PRESENCE OF WHICH RENDERS AN IMPORTED PLANT LIABLE TO IMMEDIATE DESTRUCTION

Anthraxnose of tobacco *Colletotrichum tabacum* Boning

Bacterial blight of grapes *Erwinia vitivora* (Baccarini) Du Plessis

Bacterial blight of peas *Pseudomonas pisi* Sackett

Bacterial canker of tomato *Corynebacterium michiganense* (E.F.S.) Jensen

Bacterial ring-rot of potato      *Corynebacterium sepe-donicum* (Spieck and Kotth.) Skaptason and Burkholder

Bacterial streak of sugar cane    *Xanthomonas albilineans* (Ashby) Dowson

Blister blight of tea      *Exobasidium vexans* Masee

Blue mould of tobacco    *Peronospora tabacina* Adam

Cereal foot rots *Helminthosporium* species

Chestnut canker      *Endothia parasitica* (Murr.)

Chlorotic streak virus of sugar cane      *Guignardia citricarpa* Kiely

Citrus canker    *Xanthomonas citri* (Hase) Dowson

Coffee Berry Disease    *Colletotrichum coffeanum* Noack

Crown gall      *Agrobacterium tumefaciens* (Smith & Townsend) Conn.

Crown wart of lucerne    *Urophlyctis alfalfae* (Lagerh.) Magnus

Dodder *Cuscuta* species

Dutch Elm disease      *Ceratocystis ulmi* (Buism.) C. Moreau

Ergot of rye      *Claviceps purpurea* Fr. (Tul)

Fiji disease virus of sugar cane    *Saccharum virus 2*. Smith

Fireblight      *Erwinia amylovora* (Burrill) Winslow et al.

Internal cork virus disease of sweet potato      *Corynebacterium insidiosum*

Lucerne wilt    (McCulloch) Jensen

Onion smut      *Urocystis cepulae* Frost

Panama disease of banana      *Fusarium oxysporum* f. *cubense* (E.F.S.) Snyder & Hansen

Pierce's disease of the grape (lucerne dwarf virus)      *Medicago virus 3*. Smith

Rose mosaic virus      *Rosa virus 1*. Smith

Rose streak virus      *Rosa virus 4*. Smith

Rose wilt virus    *Rosa virus 3*. Smith

Stewart's disease of maize      *Xanthomonas stewarti* (E.F.S.) Dowson

Strawberry red core      *Phytophthora fragariae* Hickman

Tomato spotted wilt virus (kromnek)      *Lycopersicum virus 3*. Smith

Wart disease of potato *Synchytrium endobioticum* (Schilb.) Percival  
Potato root eelworm (golden nematode) *Heterodera rostochiensis* Wollenw  
Root knot eelworm *Meloidogyne* species  
Stem and bulb eelworm *Ditylenchus dipsaci* (Kuhn)  
American bollworm *Haliotis armigera* Hubn.  
Apple codling moth *Cydia pomonella* (L)  
Cereal midges *Contarinia* species and *Sitodiplosis* species  
Cherry fruit-fly *Rhagoletis cerasi* (L)  
Chrysanthemum midge *Diarthronomyia chrysanthemi* Ahlb.  
Citrus Black Fly *Aleurocanthus woglumi* Ashby  
Coffee berry borer *Stephanoderes hampei* Ferr.  
Colorado beetle *Leptinotarsa decemlineata* (Say)  
Dry wood termite *Cryptotermes brevis* (Wlk.)  
European house-borer *Hylotrupes bajulus* (L)  
Japanese beetle *Popillia japonica* Newn.  
Khapra beetle *Trogoderma granarium* Ev.  
Mediterranean fruit fly *Ceratitis capitata* Wiedm.  
Oriental fruit fly *Dacus dorsalis* Hend.  
Oriental fruit moth *Cydia molesta* Busck.  
Pink bollworm *Platydra gossypiella* (Saund)  
Red scale *Aonidiella aurantii* Mask  
San Jose scale *Quadraspidiotus perniciosus* (Comst.)  
Tobacco moth *Ephestia elutella* Walk  
Woolly aphid (American blight) *Eriosoma lanigerum* (Ham.)

THIRD SCHEDULE

FORM No. 1

MALAWI GOVERNMENT

PLANT PROTECTION ACT

( CAP. 64:01)

PLANT PROTECTION (IMPORT) REGULATIONS

APPLICATION FOR A PERMIT FOR THE IMPORTATION OF PLANTS

THE SECRETARY TO THE MINISTRY OF AGRICULTURE

(PLANT IMPORTATION PERMITS),

P.O. Box 748,

LIMBE

Date .....

I, .....

(State full name)

of .....

.....

(State postal and residential addresses)

hereby apply to import by .....

(State mode of importation i.e. whether by post, rail, road, or air freight)

from .....

(State full name of consignor)

of .....

through .....

(State port of entry in Malawi if mode of importation is not by post)

the following plants .....

(State number and kinds of plants) .....

.....

for the purpose of .....

(State which one or more of the following applies: sale, private use, manufacture, consumption or propagation for sale)

I intend to grow these plants at .....

(State exact locality if plants are to be grown)

.....

(Signature of Applicant)

FORM No. 2

MALAWI GOVERNMENT

PLANT PROTECTION ACT

( Cap 64:01)

PLANT PROTECTION (IMPORT) REGULATIONS

PERMIT AUTHORIZING THE IMPORTATION OF GROWING MEDIA/INJURIOUS ORGANISMS/INVERTEBRATES/PLANTS

(This permit is to be sent by the importer to the supplier who shall ensure that it accompanies the growing media/injurious organisms/ invertebrates/plants.)

Permission is granted to .....

of ..... to import in one consignment, within six months of the date of this permit by ..... from ..... of ..... through ..... the following .....

.....

subject to the following conditions .....

.....

.....

Date .....

.....

for Secretary for Agriculture

FORM No. 3

MALAWI GOVERNMENT

PLANT PROTECTION ACT

( Cap 64:01)

PHYTOSANITARY CERTIFICATE

THIS IS TO CERTIFY

that the plants, parts of plants or plant products described below or representative samples of them were thoroughly examined on (date)

..... by (name) ..... an authorized officer of the ..... plant protection service and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon or otherwise.

Fumigation or disinfection treatment (if required by importing country):

Date ..... Treatment .....

Duration of exposure ..... Chemical and concentration .....

ADDITIONAL DECLARATION

.....19.....

(Signature) .....

(Rank) .....

Description of the Consignment

Name and address of exporter .....

Name and address of consignee .....

Number and description of packages .....

Distinguishing marks .....

Origin (if required by importing country) .....

Means of conveyance .....

Point of entry .....

Quantity and name of produce .....

Botanical name (if required by importing country)  
.....

## PLANT PROTECTION (FUMIGATION) REGULATIONS

### ARRANGEMENT OF REGULATIONS

#### REGULATION

1. Citation
2. Interpretation
3. Essential fumigation equipment: First Schedule
4. Fumigators must possess Forms No. 1 and No. 2 of Second Schedule
5. Notice of intention to fumigate where phytosanitary certificate required
6. Inspector may be present at fumigation
7. Procedure to be followed in fumigating
8. Inspection of equipment
9. Competence of fumigators
10. Unsatisfactory fumigation: Re-fumigation
11. Certificate of Competence where fumigation is unsatisfactory
12. Fumigants and application

#### First Schedule (Regulation 3)

Essential equipment for fumigation

#### Second Schedule (Regulations 4 and 9)

Forms

#### Third Schedule (Regulation 7)

Fumigation Procedure—Directions

## Fourth Schedule (Regulation 12)

### Fumigants

G.N. 114/1973

#### PLANT PROTECTION (FUMIGATION) REGULATIONS

under s. 12

1. Citation

These Regulations may be cited as the Plant Protection (Fumigation) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“fumigant” means any gaseous or readily volatilized chemical used as a pesticide or any substance or substances producing such a chemical;

“fumigation” means the application of a fumigant to any growing medium, plant, commodity or building for the purpose of destroying injurious organisms, and cognate words shall be construed accordingly;

“sand-snake” means a cylinder of hessian, at least three inches in diameter, and two feet in length, filled with sand and sealed at each end.

3. Essential fumigation equipment: First Schedule

Before commencing any fumigation, the person who intends to fumigate shall have on hand at the site of the proposed fumigation, and available for use in the operation, the equipment listed in the First Schedule, and such equipment shall be in good repair.

4. Fumigator must possess Forms No. 1 and No. 2 of Second Schedule

No person shall commence any fumigation, unless he has in his possession a Record of Fumigation Form and a Certificate of Clearance Form, being Form No. 1 and Form No. 2, respectively, of the Second Schedule.

5. Notice of intention to fumigate when phytosanitary certificate required

Where—

(a) under the Act, or any other written law, or any instruction of the Minister, a phytosanitary certificate is required to be obtained by the owner in respect of any fumigation; or

(b) any owner desires to obtain a phytosanitary certificate in respect of any particular fumigation which he intends to have carried out,



such owner shall, not less than twenty-four hours before the commencement of the fumigation, cause notice in writing of his request for a phytosanitary certificate in respect of such intended fumigation to be served upon an inspector, and such notice shall contain particulars of the date, time and place of the intended fumigation and of the fumigant intended to be used therefor unless the inspector, acting in his discretion, deems the furnishing of all or any of such particulars unnecessary.

6. Inspector may be present at fumigation

An inspector shall be entitled to be present at any fumigation made pursuant to a notice served under regulation 5, and shall be entitled to direct the same.

7. Procedure to be followed in umigating

The procedure to be followed in the fumigation of buildings and commodities shall be as set forth in the Third Schedule.

8. Inspection of equipment

An inspector shall be entitled to inspect, at all reasonable times, all equipment used, or intended to be used, in any process of fumigation, and such equipment shall be kept readily available by the fumigator for any such inspection.

9. Competence of fumigators

The Minister may, at any time and as often as he deems it necessary, require any person who undertakes, or intends to undertake, contracts for fumigation for reward, to show to the satisfaction of any duly authorized inspector, or other public officer, as the case may be, that he, or any employee of his responsible for carrying out any fumigation on his behalf, possesses sufficient knowledge of both the theory and practice of fumigation to engage in such operations. Upon being satisfied that such person possesses such knowledge, the said duly authorized inspector, or other public officer, as the case may be, shall issue to such person a Certificate of Competence in Fumigation in the form set out in Form 3 of the Second Schedule.

10. Unsatisfactory fumigation: Re-fumigation

Where any inspector has cause to believe that any fumigation has not been carried out in a satisfactory manner, or in accordance with these Regulations, he may order that the building or commodity be refumigated as often as such inspector may deem it necessary until the said building or commodity has been fumigated to the inspector's satisfaction. If the fumigation is one for which a phytosanitary certificate is requested or required, the inspector shall not issue such certificate until such fumigation has been properly and satisfactorily executed.

11. Certificate of Competence where fumigation is unsatisfactory

Where a re-fumigation has been ordered under regulation 10, the inspector may require that the person responsible for the unsatisfactory fumigation which necessitated the re-fumigation procure a Certificate of Competence in Fumigation pursuant to regulation 9 before undertaking any further or other fumigation under these Regulations, and this requirement may be imposed on any

such person whether he has undertaken, undertakes or intends to undertake, contracts for fumigation for reward or otherwise. If, however, the person responsible for any such unsatisfactory fumigation is the holder of a Certificate of Competence in Fumigation, the inspector may cancel such Certificate and may require the said person to procure a new such Certificate under regulation 9 before undertaking any further fumigation operations.

## 12. Fumigants and application

The fumigants to be used in any fumigation under these Regulations shall be those fumigants set forth in the Fourth Schedule and shall be used for the respective specific fumigation purposes, and in the respective specific manner, set forth in the said Schedule in respect of such respective fumigation purposes.

### FIRST SCHEDULE reg. 3

#### ESSENTIAL EQUIPMENT FOR FUMIGATION

(a) Fumigation sheets of a size adequate to cover completely any produce to be fumigated allowing an overlap on the ground all round of at least one foot.

(b) Sand-snakes or heavy chains sufficient in number completely to seal the fumigation sheet to the ground.

(c) Where methyl bromide cylinders are used, dispersal tube systems sufficient to ensure even distribution of gas.

(d) Where methyl bromide cans are used, applicators adequate in number to secure even distribution of gas.

(e) Respirators with appropriate canisters sufficient in number to supply one to each person engaged in fumigation.

(f) Halide detector lamp or gas concentration meter.

(g) Sufficient warning notices in English and Chichewa to warn any person of his approach to the fumigation operation.

(h) Where fumigation sheets are to be joined, clamps sufficient in number for such purpose.

### SECOND SCHEDULE Reg. 4 and 9

#### FORMS

##### FORM No. 1

#### PLANT PROTECTION ACT

( CAP. 64:01)

#### RECORD OF FUMIGATION

Record of Fumigation No. ....

1. Date and time of application of fumigant .....

2. Name of owner .....

3. Location of premises .....

4. Situation on premises (Diagram if more than one stack)

.....

5. Commodity .....

6. Distinguishing marks of commodity to be fumigated

.....

7. (Tobacco only) Nature of Liners .....

8. Dimensions of stacks or building and cubic capacity

.....

9. Nature of infestation if known .....

10. Number and sizes of sheets used .....

11. Dosages required for each stack or room .....

12. (Methyl bromide cylinders only) identification numbers and weights of each cylinder at beginning and end of application to each stack or room (for main and booster doses of tobacco)

.....

13. Date and time of commencement of airing .....

14. Date and time of issue of clearance certificate

.....

15. Person to whom clearance certificate given .....

16. Air temperature at time of application of fumigant

.....

17. Evidence, if any, of efficacy of treatment (e.g. presence of dead insects)

.....

18. Name of person responsible for fumigation .....

Signed .....

Rank : .....

Date : .....

FORM No. 2

PLANT PROTECTION ACT

( CAP. 64:01)

CERTIFICATE OF CLEARANCE

Certificate of Clearance No. ....

This is to certify that I have carried out fumigation on the premises of .....in accordance with Record of Fumigation number..... and now declare the premises free of gas and ready for reoccupation.

Signed .....

Rank .....

Date and time .....

FORM No. 3

PLANT PROTECTION ACT

( CAP. 64:01)

CERTIFICATE OF COMPETENCE IN FUMIGATION

This is to certify that I have today examined ..... as to both his theoretical and practical competence in fumigation with ..... and found that he has the knowledge adequate to enable him to carry out such fumigation satisfactorily.

Signed .....

for Permanent Secretary for Agriculture

and Natural Resources

Date .....

THIRD SCHEDULE reg. 7

FUMIGATION PROCEDURE

DIRECTIONS

Building:

Where an entire building is to be fumigated the walls and roof must be rendered impervious to gas, and all doors and ventilators, as well as all cracks or joints, shall be sealed while the fumigation is in progress, and a warning notice shall be placed outside each entrance to the building.

Commodities :

(a) Where any commodity is to be fumigated it shall be placed in a stack or stacks in such a manner as to allow full penetration of the fumigant throughout such stack or stacks.

(b) Before commencing fumigation—

(i) indoors, the floor of the building in which the operation is to be carried out shall be of concrete or firm dry earth and shall be examined thoroughly to ensure that it is impervious to gas. If the floor is not of concrete or of firm dry earth, or if it is found not to be impervious to gas, the commodity to be fumigated shall be stacked on a fumigation sheet in accordance with these directions;

(ii) out of doors, the commodity to be fumigated shall be stacked on a concrete slab, or on a fumigation sheet in accordance with these directions.

(c) For fumigation by—

(i) Methyl bromide, the distribution piping shall be placed in position on top of the stack;

(ii) Aluminium phosphide, the tablets shall be distributed evenly around the stack, preferably in papier mache egg-trays, ensuring that adjacent tablets do not touch each other, and such fumigant shall be applied in the manner and at the dosage appropriate thereto, as set out in the Fourth Schedule.

(d) A fumigation sheet shall be fitted over each stack, completely covering the same so that a one-foot wide margin of the sheet shall be extending on to the floor all round the stack.

(e) The sand-snakes, or chains, shall be placed in position on the floor on top of the extended margin of the sheet all round the stack, ensuring that each sand-snake, or chain, touches those on each side of it.

(f) The warning notices shall be placed in position; at least one warning notice at each accessible corner of each stack. If the stacks are inside a building a warning notice shall also be placed outside each entrance to the building.

(g) Where methyl bromide is to be used as the fumigant each person present shall put on a respirator and see that it is properly fitted. Respirators shall continue to be worn by all present throughout the operation until after compliance with direction (h); and at least two persons shall be present at all times until the fumigation is concluded.

(h) A check for leaks shall be made. Wherever possible, a halide lamp or gas concentration meter shall be used for this purpose.

If any leaks are found, they shall be sealed off immediately, by adjusting the position of the sand-snakes, chains or clamps. When the stack or stacks are found free of leaks, respirators may be removed.

(i) Record of Fumigation (Form No. 1, Second Schedule) shall be completed as far as item 12 and delivered to the owner, and the owner shall be instructed that unauthorized persons must not be permitted access to the fumigation area.

(j) If the stack or stacks are indoors and the relevant period of fumigation has elapsed, all doors, windows and ventilators to the building, in which the stack or stacks are located, shall be opened. The fumigation sheets covering the stack or stacks shall be removed, and the building vacated quickly. Respirators shall be worn by all persons before entering the building during this operation, and shall be worn throughout the operation. The warning notices shall be put back in position. When the building is declared free of gas by the fumigator, the respirators may be taken off, the warning notices removed, and general access to the building permitted.

(k) If the stack or stacks are outdoors and the relevant period of fumigation has elapsed, the fumigation sheet covering each stack may be removed and the warning notices put back in position. Respirators shall be worn by all persons present during this operation.

When the fumigator declares the area free of gas, the respirators may be taken off, the warning notices removed, and general access to the area permitted.

(l) A building, or an area, shall not be declared free of gas by the fumigator until the halide lamp, or gas concentration meter, shows that the building, or area, is safe, or all smell of phosphine gas has dissipated.

(m) The fumigator shall complete items 13 to 18 of the Record of Fumigation and a Certificate of Clearance (Form No. 2, Second Schedule) and deliver them to the owner.

(n) Where a phytosanitary certificate is required, a copy of the Record of Fumigation (Form No. 1, Second Schedule) and of the Certificate of Clearance (Form No. 2, Second Schedule) shall be delivered to the inspector who was notified pursuant to regulation 5.

#### FOURTH SCHEDULE reg. 12

#### FUMIGANTS

#### DOSAGE RATES (per 1,000 cu. ft. or 30 cu. m)

[Exposure time given is the minimum. It is always advantageous to lengthen it. If the commodity temperature is below 20°C the times should be increased by 50 per cent.]

Fumigant	Commodity	Quantity	Minimum Exposure Time
1. Methyl bromide	Grain, rice, cassava, flour, etc.	2 lb.	24 hours
	Beans, groundnuts, cotton	3 lb.	24 hours
	Tobacco (with followed by polythene liners)	4 lb. followed by additional 2 lb. after 24 hours	72 hours (total)

Tobacco (with paper liners) 4 lb. 72 hours

Tobacco (no lining) 3 lb. 72 hours

Empty buildings 2 lb. 24 hours

Tobacco seedbeds 1 lb. per 100 square feet 48 hours

2. Aluminium phosphide Grain, rice, cassava, flour, etc. 45 tablets 3 days

Tobacco 20 tablets 5 days

Beans, groundnuts 30 tablets 3 days

Empty buildings 20 tablets 3 days

If *Trogoderma granarium* is present (not at present known in Malawi) 45 tablets for at least 5 days exposure time must be used.

3. DDVP—Dichlorvos Empty buildings 2 gms a.i. weekly application

4. Ethylene dibromide (EDB) Tobacco seedbeds By injector gun using 5 ml. (ccs) per injection point. Spacing 38 cm. × 38 cm. (15 in. × 15 in.) to depth of 25-30 cm. (10-12 in.).

5. Dichloropropane dichloropropane (DD) As EDB but 8 ml. per injection point.

[Chap6402]CHAPTER 64:02

NOXIOUS WEEDS

ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title
2. Interpretation
3. Duty of persons responsible to clear
4. Power to enter upon land
5. Notice to be served on persons responsible for infected land
6. Manner in which notices may be served
7. Penalty for failure to comply with notice
8. Inspector may clear at expense of person responsible

9. Penalty for obstruction of weed inspector in exercise of his duty
10. Noxious weed not to be disposed of in certain ways
11. Power to take samples of seed and treatment of plant, seed or grain offered for sale
12. Penalty for offering for sale infected seed, etc.
13. Local Authorities authorized to make By-laws ad hoc
14. Responsible person in any district may petition Government to have plant declared noxious weed
15. Minister may declare plant to be noxious weed or remove any plant from list of noxious weeds
16. Regulations

17 of 1936

8 of 1951

1 of 1963

G.N. 22/1963

50/1963

1/1965

137/1966

An Act to make Provision for the Eradication of Noxious Weeds

[31ST OCTOBER 1936]

[Ch6402s1]1. Short title

This Act may be cited as the Noxious Weeds Act.

[Ch6402s2]2. Interpretation

In this Act, except where the context otherwise requires—

“clear” means to dig up or pull up and burn noxious weeds, or to employ other means of destruction authorized by the Minister;

“noxious weed” means any plant which the Minister may by notice published in the Gazette declare to be a noxious weed, either throughout the whole of Malawi or in one or more Districts or portions of Districts thereof;



“owner”, in relation to unoccupied land, includes—

(a) in the case of a company or an association, the manager or, if his name be not known, any director of the company or association:

(b) in the case of a partnership, the manager or, if his name be not known, any member of the partnership;

“person responsible”, in relation to land, means—

(a) the occupier of land, or in the case of unoccupied land the registered owner thereof;

(b) in the case of a mining location, the holder of such location;

(c) in the case of public land or customary land over which grazing or other rights have been granted, the holder of such rights;

(d) in the case of land in customary land, the occupier or person who has the use of such land, or the Chief who has jurisdiction thereover, or all or any of the inhabitants of the nearest village;

(e) in the case of commonage or town lands or roads or other areas, the Municipal Council or Town Council under whose control or within whose jurisdiction such land, road or other area is situate;

“weed inspector” means any person authorized by the Minister to perform the duties of an inspector under this Act. Magistrates, District Commissioners, Assistant District Commissioners, and all members of the police force shall be ex officio weed inspectors for the purposes of this Act.

[Ch6402s3]3. Duty of persons responsible to clear

It shall be the duty of every person responsible under this Act to clear or cause to be cleared any noxious weeds growing or occurring on the land in respect of which he is responsible. It shall further be the duty of any person to report forthwith to the nearest known weed inspector the occurrences of any noxious weeds on any land in respect of which such person is responsible.

Any person contravening this section shall be liable to a fine of £10 or in default of payment to imprisonment for one month.

[Ch6402s4]4. Power to enter upon land

A weed inspector may at all reasonable times enter upon any land, whether enclosed or not, for the purpose of ascertaining if any noxious weeds are growing thereon.

[Ch6402s5]5. Notice to be served on persons responsible for infected land

If a weed inspector finds any noxious weed growing or occurring upon land, he may by notice in writing to the person responsible require him to clear such land within a reasonable time to be specified in the notice, and it shall thereupon be the duty of the person responsible to do so.

Such notice shall indicate the particular noxious weed occurring upon the land and as nearly as practicable the portion or portions of the land on which the said noxious weed occurs.

[Ch6402s6]6. Manner in which notices may be served

Any notice under this Act shall be in writing, signed by the person giving such notice. Such notice shall be deemed to be duly served—

(a) if served personally upon the person responsible; or

(b) if left addressed to the person responsible at his usual or last known place of abode;  
or

(c) if posted in a prepaid registered letter addressed to the person responsible at his last known place of abode or business.

[Ch6402s7]7. Penalty for failure to comply with notice

Any person responsible who fails to comply with any such notice shall be liable to a fine of £25, or in default of payment to imprisonment for three months.

[Ch6402s8]8. Inspector may clear at expense of person responsible

If the person responsible fails to clear the land as aforesaid, or if such notice cannot be served in the manner prescribed by section 6, a weed inspector may, upon receiving written authority from the Permanent Secretary, enter upon the land with or without assistance and eradicate any noxious weed found thereon; but nothing herein contained shall relieve the person responsible from any penalty he may have incurred under this Act, and the Permanent Secretary may recover the cost, charges and expenses of clearing the land aforesaid by action in any competent court.

[Ch6402s9]9. Penalty for obstruction of weed inspector in exercise of his duty

Any person who obstructs or hinders a weed inspector in the exercise of his duty under this Act shall be guilty of an offence and shall be liable to the penalty prescribed in section 7.

[Ch6402s10]10. Noxious weed not to be disposed of in certain ways

No person shall throw any noxious weed or the seed of such noxious weed into any river or stream, or on to any road or land.

Any person disobeying this section shall be liable to the penalty prescribed in section 7.

[Ch6402s11]11. Power to take samples of seed and treatment of plant, seed or grain offered for sale

Any weed inspector may at all reasonable times enter any premises where any plant, seed or grain is offered for sale and may take samples thereof, and should such weed inspector find any plant, seed or grain which is likely to propagate or spread the growth of noxious weeds, such plant, seed or grain shall, when deemed necessary by the inspector, be treated by or at the expense of the consignee or vendor, or in the manner prescribed by or to the satisfaction of the inspector, and if

not so treated, or if such treatment be deemed ineffectual, the Permanent Secretary may cause such plant, seed or grain to be destroyed.

[Ch6402s12]12. Penalty for offering for sale infected seed, etc.

Any person who knowingly sells or offers or exposes for sale any plant, seed or grain which is likely to propagate or spread the growth of noxious weeds shall be liable to the penalty prescribed in section 7.

[Ch6402s13]13. Local Authorities authorized to make By-laws ad hoc

Every Municipal Council and Town Council shall have power to make By-laws or Regulations compelling occupiers of land within the Municipality or Township to keep their land free from noxious weeds.

Contravention of such By-laws or Regulations shall be punishable in the same way as in the case of Municipality or Township By-laws or Regulations.

[Ch6402s14]14. Responsible person in any district may petition Government to have plant declared noxious weed

Any responsible person or persons in any District or portion of a District of Malawi may petition the Minister to declare any plant to be a noxious weed for the purpose of this Act in such District or portion of a District. On receipt of such petition the Minister shall cause notice to be given in the Gazette setting forth the nature of the petition and calling upon any responsible persons in the said District or portion of a District to lodge, in writing, within a reasonable time to be fixed by such notice, objections (if any) to the said petition being acceded to. Thereupon, on the expiration of the period fixed for receiving objections, the Minister shall take the same into consideration and may grant or refuse the petition.

[Ch6402s15]15. Minister may declare plant to be noxious weed or remove any plant from list of noxious weeds

Notwithstanding the last preceding section, the Minister may at any time, by notice published in the Gazette, declare any plant to be a noxious weed, either throughout the whole of Malawi or in one or more Districts or portions of Districts thereof, and may by like notice remove any plant from the list of plants declared noxious weeds:

Provided that at least thirty days before exercising his powers under this section the Minister shall, by publication in the Gazette and in the local press, signify his intention of declaring a plant to be a noxious weed.

[Ch6402s16]16. Regulations

The Minister may make, alter and amend Regulations, not inconsistent with this Act, prescribing the measures to be taken to prevent the introduction and spread of noxious weeds, the authority and duties of weed inspectors and generally for the better carrying out of the objects and purposes of this Act. The penalty for contravention of any such regulation shall be that prescribed in section 7.

## SUBSIDIARY LEGISLATION

### DECLARATION OF NOXIOUS WEEDS

under s. 15

The following plants have been declared to be noxious weeds throughout the whole of Malawi in terms of section 15 of the Act—

Indian hemp G.N. 167/1953

Eichhornia crassipes (water hyacinth) G.N. 97/1956

Acanthospermum hispidum DC (upright Starbur) G.N. 20/1957

Lantana Camara G.N. 122/1961

[Chap6501]CHAPTER 65:01

### SPECIAL CROPS

#### ARRANGEMENT OF SECTIONS

##### SECTION

1. Short title
2. Interpretation
3. Special Crops
4. Authority for special crops
5. Powers of Authority
6. Licences

27 of 1963

1 of 1969

9 of 1972

An Act to make provision for the development and marketing of special crops and for the establishment of Special Crop authorities

[7TH SEPTEMBER 1963]

[Ch6501s2]1. Short title

This Act may be cited as the Special Crops Act.

[Ch6501s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Authority” means an Authority established by the Minister under section 4;

“special crop” means a crop declared by the Minister to be a special crop under section 3.

[Ch6501s3]3. Special crops

When the Minister is satisfied that the development of any crop should be promoted or fostered under this Act, he may declare that crop to be a special crop.

[Ch6501s4]4. Authority for special crops

(1) Whenever a crop is declared to be a special crop under section 3, the Minister shall, by order published in the Gazette, establish an Authority for promoting and fostering the development of a special crop in such areas as the Minister shall determine:

Provided that nothing in this section shall prevent the Minister from making an Authority responsible for the development of more than one special crop in one or more areas.

(2) An Authority established under subsection (1) shall, by the name by which it is established by the Minister, be a body corporate having perpetual succession, a common seal and power to hold land, and may in its corporate name sue and be sued, and, for and in connexion with the purposes of this Act, shall be capable of purchasing, selling, leasing or otherwise acquiring or disposing of, holding or managing both movable and immovable property, entering into such contracts as may be necessary or expedient, and performing all such acts as bodies corporate may perform, subject both to this Act and to any other law in force in Malawi.

[Ch6501s5]5. Powers of Authority

(1) An order under section 4 establishing an Authority may, in relation to the Authority and the special crop, make provision for all or any of the following matters—

(a) the authentication of the seal, the signification of the decisions and the execution of documents of the Authority;

(b) the appointment of a Chairman of the Authority and its members and the regulation of meetings and procedure and voting thereat;

(c) the terms of office of the Chairman and members;

(d) the remuneration of and allowances to be paid to the Chairman and members;

(e) the appointment of committees and the delegation of powers to such committees or to officers of the Authority;

- (f) the appointment and remuneration of officers;
- (g) the functions of the Authority, which may include—
  - (i) the establishment and management of nurseries;
  - (ii) the purchase and sale of seed and seedlings;
  - (iii) the control and supervision of cultivation of crops;
  - (iv) the inspection of growing and harvested crops;
  - (v) the purchase, transportation and storage of crops;
- (h) the powers of the Authority, which may include power—
  - (i) to employ and remunerate agents and employees;
  - (ii) subject to the provisions of any law generally regulating the borrowing powers of the Government and statutory corporations constituted under any law of Malawi, to raise loans whether by bank overdraft or otherwise;
  - (iii) with the approval of the Minister, to impose levies on growers for financing its operations and to provide for the manner in which and the persons by whom any such levies shall be collected;
  - (iv) to create and operate price stabilization funds in respect of the special crops for which it is responsible;
  - (v) to make loans for the purpose of the development of special crops;
  - (vi) to engage in the marketing of special crops;
  - (vii) to regulate and control the marketing of special crops;
  - (viii) to establish or acquire, and to operate, factories for the processing of special crops and to enter into agreements with other persons operating factories for them to purchase or process special crops;
  - (ix) to invest moneys not immediately required for use;
  - (x) with the approval of the Minister, to do such other things as in the opinion of the Authority will assist in the development of the special crops in the area for which the Authority was established;
  - (xi) to do any other thing which is incidental or conducive to the exercise of its powers under this Act;
    - (i) the manner of utilization of profits;
    - (j) the manner in which accounts shall be kept, audited and produced by the Authority;

(k) the imposition of a penalty, which shall not exceed a fine of K100 or imprisonment for a term of three months or both such fine and imprisonment for the contravention of any of the provisions of the order.

(2) An order under section 4 may make different provisions with respect to different special crops or in relation to different parts of the area for which the Authority was established.

(3) An order under section 4 shall not be made so as to conflict with the provisions of any other Act relating to agricultural crops.

(4) Any Authority established under the provisions of section 4 shall act in accordance with any general or special directions given by the Minister and not otherwise.

(5) The Minister may, by order published in the Gazette, amend or revoke an order, and any order of revocation may provide for the winding up of the affairs of an Authority and for distributing, transferring or otherwise disposing of the property and liabilities of the Authority, and for all such matters as appear to the Minister to be connected with or incidental to the dissolution of the Authority.

[Ch6501s6]6. Licences

9 of 1972(1) When a crop has been declared to be a special crop, and an Authority in respect of that special crop has been established in any area, no person shall grow, sell, barter or buy that special crop in such area unless he is the holder of a valid licence authorizing him so to do.

(2) The Minister may, by Regulation, prescribe—

(a) the form and manner in which and the person to whom an application for a licence shall be made;

(b) the form and manner in which and the person by whom a licence shall be issued;

(c) the conditions that attach to any licence;

(d) the manner in which records or registers of all applications for licences and licences shall be kept;

(e) the fee that shall be paid on the issue of a licence;

(f) the person who and the circumstances in which that person may enter any land, building, vehicle, aircraft or vessel to ascertain whether the terms and conditions of any licence are being complied with;

(g) the penalty for failure to comply with the provisions of any regulations.

9 of 1972(3) The Minister may, in his discretion, and without assigning any reasons therefor, refuse to issue a licence to any person, or revoke or suspend any licence that has been issued. Any decision of the Minister to refuse, revoke or suspend any licence shall be final and shall not be questioned in any court.

1 of 1969(4) Any person who fails to comply with subsection (1) shall be liable to a fine of K2,000 and to imprisonment for three years, and in the case of a continuing offence to a further fine of K20 and to further imprisonment for one week for each day during which the offence continues.

(5) In addition to any fine or imprisonment or both which may be imposed by a court under the last preceding subsection, the court may order the special crop in respect of which the offence was committed to be forfeited.

(6) The provisions of section 6 (1) shall not apply to persons growing tobacco as tenants registered under the Tobacco Act. Cap. 65:02

#### SUBSIDIARY LEGISLATION

#### SPECIAL CROPS DECLARATIONS

under s. 3

G.N. 212/1963

225/1965

138/1967

34/1970

176/1970

168/1971

124/1973

11/1979

12/1979

31/1980

1/1996

The Minister has declared the crops listed in the Schedule hereto to be special crops for the purposes of the Act.

#### SCHEDULE

Cashew

Coffee

Cotton

Groundnuts

Macadamia



Tea

Tobacco (*nicotiana tabacum*)

Tung

Flue-cured Tobacco

#### KASUNGU FLUE-CURED TOBACCO AUTHORITY ORDER

under s. 4

[Revoked by G.N. 3/2003]

#### KASUNGU FLUE-CURED TOBACCO AUTHORITY LICENSING REGULATIONS

under s. 6

G.N. 123/1978

##### 1. Citation and application

These Regulations may be cited as the Special Crops Kasungu Flue-Cured Tobacco Authority Licensing Regulations and shall apply within every Flue-Cured Tobacco Development Area, in relation to every holding within such Area.

##### 2. Interpretation

In these Regulations, unless the context otherwise requires— Cap. 65:01, sub. leg. p. 10

“Authority” means the Kasungu Flue-Cured Tobacco Authority established under the Kasungu Flue-Cured Tobacco Authority Order, hereinafter referred to as the “Order”;

“Flue-Cured Tobacco Development Area” means any area of land described in the Schedule to the Order;

“grower” means the holder of a grower’s licence issued pursuant to subregulation (1) of regulation 4;

“holder” means any person to whom a holding has been allotted by the Authority;

“holding” means any subdivision of any Flue-Cured Tobacco Development Area allotted to any person by the Authority and used or intended to be used by such person for the primary purpose of growing flue-cured tobacco;

“licence” means a grower’s licence issued pursuant to subregulation (1) of regulation 4.

##### 3. Non-application of Cap. 65:01 sub. leg. p. 31

The provisions of the Special Crops (Licensing) Regulations shall not apply in relation to the growing, buying, bartering or selling of flue-cured tobacco by any holder within any Flue-Cured Tobacco Development Area.

4. Grower's licence

(1) The Authority may, on application by any holder, issue to such holder a grower's licence in respect of his holding.

(2) Every application for a grower's licence shall be in Form I set out in the Schedule. Schedule Form I

(3) Every grower's licence shall be in Form II set out in the Schedule. Schedule Form II

5. Conditions of licence

It shall be a condition of every licence that the grower shall—

(a) purchase from the Authority all seeds, fertilizer and stores required from time to time for the growing of flue-cured tobacco on his holding;

(b) during the duration of his licence, except with the consent of the Authority, not sell or otherwise dispose of any draught animal, of any equipment or other goods or materials purchased by him from, or supplied to him by, the Authority under these Regulations;

(c) employ such number of labourers on his holding upon such terms and conditions of service as the Authority may from time to time require and approve;

(d) market solely through the agency of the Authority any flue-cured tobacco grown on his holding;

(e) authorize the Authority to retain all proceeds of sale of such flue-cured tobacco until all such crop is sold and to deduct from such proceeds any amount outstanding and due by him to the Authority pursuant to these Regulations;

(f) conform to such accounting methods and procedure as may from time to time be laid down by the Authority;

(g) accumulate, on deposit with the Authority and in such amounts as the Authority may from time to time deem necessary, a sum of money sufficient to—

(i) provide for periodic contributions towards the fixed and working capital of the Authority, such contributions to be determined from time to time by the Authority in accordance with a rate to be made applicable in common to all growers in any one scheme specified by the Authority;

(ii) provide for the purchase by him, at such price as the Authority may determine, of such draught animals, equipment or other goods as are supplied to him from time to time by the Authority for exclusive use on his holding; and

(h) do or perform, or refrain from doing or performing, all such acts or things as the Authority may, in lawful exercise of any power conferred upon it by the Order, require of him to do or perform or to refrain from doing or performing.

6. Food crops

Any grower may, with the consent of the Authority and subject to such conditions as the Authority may impose, use such portion of his holding as shall be agreed with the Authority for the purpose of growing such food crops as may be necessary for his subsistence and for that of his immediate family living with him.

7. Duration and termination of licence

(1) Subject to subregulations (2) and (3), every licence shall remain in force for the period specified therein and may be renewed from time to time.

(2) If the Authority is satisfied that the licensee under any licence—

(a) is unable to pay his debts to the Authority when due and payable or to pay, when due and payable, any other moneys that he may be lawfully required to pay to the Authority under these Regulations or otherwise;

(b) fails to look after his flue-cured tobacco crop or has, for any reason, become incapable of looking after such crop;

(c) is in breach of any provision of these Regulations or conditions of such licence,

the authority may, by giving to the licensee thirty days written notice thereof, terminate the licence issued to such licensee.

(3) Any licensee may terminate his licence by giving the Authority not less than six months written notice of termination of such licence with effect from the 31st day of July next following the expiry of such notice.

8. Consequences upon termination of a licence

(1) Upon notice of termination of any licence being issued or received by the Authority—

(a) the Authority, unless the Minister otherwise directs, may seize and sell the licensee's flue-cured tobacco crop for the purpose of realizing such sums of money as may be outstanding or owing by the licensee to the Authority under these Regulations;

(b) the licensee shall, if so required by the Authority, refund to the Authority such sum of money as the Authority may require in respect of costs incurred by the Authority in training him as a tobacco farmer, but so, however, that no licensee shall be required to make such refund if his licence was terminated by mutual agreement of the Authority and the licensee or on grounds of the licensee's ill health or mental or physical disability.

(2) Whenever the Authority has exercised the power of sale given to it by paragraph (a) of subregulation (1), the Authority shall, upon termination of the licence, pay to the licensee at such time or times as the Authority may determine—

(a) such balance as may be standing to the credit of the licensee in any account with the Authority;

(b) an amount equivalent to the value, as assessed by the Authority, of all permanent fixtures attached to the holding by such licensee with the consent of the Authority.

#### 9. Licensee's right of appeal

(1) If any licensee is aggrieved by any decision of the Authority or by any act done by the Authority in exercise of its powers pursuant to these Regulations he may, within fourteen days after receipt by him of notice in writing of such decision or of the doing of such act, or within such longer period as the Minister may allow, appeal to the Minister by notice in writing stating the subject matter and grounds of such appeal.

(2) Upon receipt of any notice of appeal pursuant to subregulation (1), the Minister shall consider the appeal and may allow or dismiss it or make such other ruling thereon as he considers appropriate.

(3) For the purposes of the consideration of any such appeal the Minister may call upon the licensee or the Authority to adduce such further or other evidence on the matter, as he considers necessary to enable him to determine the appeal.

#### 10. Duplicate licences

(1) Where the Authority is satisfied that any licence has been lost, stolen, defaced or destroyed it may cancel such licence and issue to the licensee thereunder a duplicate licence in its stead.

(2) Every duplicate licence issued pursuant to subregulation (1) shall bear the words "Duplicate Licence" conspicuously printed or written thereon and shall be so issued on payment of a fee of one Kwacha.

#### 11. Register

The Authority shall keep a register of all applications received under these Regulations and shall retain a true copy of each licence and duplicate licence issued and such register and copy licences shall be kept at the principal office of the Authority in Malawi and may be inspected—

(a) by any public officer acting in the course of his official duties;

(b) by any licensee, solely in respect of his licence; and

(c) by any applicant, solely in respect of his application.

#### 12. Right of entry

For the purposes of ascertaining that these Regulations are being complied with, any person duly authorized in writing in that behalf by the Minister or by the Authority may enter upon any land, building, vehicle, aircraft or vessel within any Flue-Cured Tobacco Development Area where any flue-cured tobacco is, or is reasonably believed to be, grown, purchased, sold, stored or transported.

13. Licences to be available for inspection

Every licence shall, on the demand of any person duly authorized in that behalf by the Minister or by the Authority, be produced by the holder thereof for inspection by such authorized person for any of the purposes of these Regulations.

14. Offences

(1) Any person who—

(a) in any application made under these Regulations, knowingly or recklessly, makes any statement which is false or misleading in any material fact;

(b) not being duly authorized in that behalf, alters any licence or any particular shown thereon;

(c) wrongfully purports to lend, transfer or assign any licence issued to him or to any other person; or

(d) without reasonable cause or excuse, fails or refuses to comply with any demand lawfully made upon him pursuant to regulation 13,

shall be guilty of an offence.

(2) Any person who is guilty of an offence under subregulation (1) shall—

(a) in the case of a first offence, be liable to a fine of forty Kwacha or to imprisonment for a term of one month; and

(b) in the case of any second or subsequent offence, be liable to a fine of one hundred Kwacha or to imprisonment for a term of three months.

SCHEDULE

FORM I

FORM OF APPLICATION FOR A GROWER'S LICENCE

SPECIAL CROPS ACT reg. 4 (2)

SPECIAL CROPS (KASUNGU FLUE-CURED TOBACCO AUTHORITY) LICENSING REGULATIONS

APPLICATION FOR A GROWER'S LICENCE

NOTE: This application may be made only by persons who have been licensed to occupy a holding in a Flue-Cured Tobacco Development Area, and must be submitted, in duplicate, to the Chairman, Kasungu Flue-Cured Tobacco Authority, Private Bag 12, Lilongwe.

I (name in full): .....

.....

of (postal address): .....

..... and (home village

address, if any): .....

.....

Village: ..... Chief ..... District ..... having been licensed to occupy Holding No. .... situate at ..... Scheme in the ..... Flue-Cured Tobacco Development Area, hereby apply for a grower's licence in respect of the flue-cured tobacco season 20 ...../ 20 ..... under which licence I intend to grow .....

hectares of flue-cured tobacco.

I hereby confirm that I am not the holder of any other licence to grow tobacco of any kind for the tobacco growing season

20 ...../ 20 ..... and I further undertake not to apply for any such licence.

Date ..... .....

Signature of applicant or his duly

authorized agent

FORM II

SPECIAL CROPS ACT reg. 4 (3)

CAP. 65:01

SPECIAL CROPS (KASUNGU FLUE-CURED TOBACCO AUTHORITY) LICENSING REGULATIONS

GROWER'S LICENCE

Licence Number: .....

Name of grower (in full): .....

Address of grower—

(a) Postal address: .....

.....  
.....

(b) Home village address:

Village: .....

Chief: .....

District: .....

Holding No.: ..... or Farm .....

Block No.: ..... Management Section .....

Scheme: .....

The said (name of grower) .....

having been licensed to occupy Holding No. ....in  
the

(name of area) ..... Flue-Cured Tobacco

Area, is hereby licensed to grow approximately ..... hectares of flue-cured tobacco on such holding during the growing season ending on 31st July, 20 ..... subject to the provisions of the Special Crops (Kasungu Flue-Cured Tobacco Authority) Licensing Regulations. Issued by the Authority this ..... day of ....., 20 .....

Signed: .....

for and on behalf of the Authority

#### RENEWALS

Renewed for a further flue-cured tobacco growing season—

(1) 20 ..... / 20 .....

Signed .....

for and on behalf of the Authority

Date: .....

(2) 20 ..... / 20 .....

Signed .....

for and on behalf of the Authority

Date: .....

(3) 20 ..... / 20 .....

Signed .....

for and on behalf of the Authority

Date: .....

SMALLHOLDER TEA AUTHORITY ORDER

under s. 4

G.N. 26/1967

129/1968

56/1969

267/1969

268/1970

63/1971

88/1971

117/1985

1. Citation

This Order may be cited as the Smallholder Tea Authority Order.

2. Interpretation

In this Order, unless the context otherwise requires—

“Authority” means the Smallholder Tea Authority established under this Order;

“green leaf” means leaf detached from tea plants but not artificially dried or processed in any way;

“grower” means any person who has planted or is cultivating tea or who intends to plant and cultivate tea as a smallholder;

“licensed grower” means a grower licensed under any rules for the time being in force pertaining to the growing of tea by smallholders;

“nursery” means any place where planting material is prepared and cultivated;

“planting material” includes seeds, seedlings, roots, stumps, cuttings and any other means of propagating tea;

“smallholder” means a person growing not more than 4 hectares of tea on any land whether customary, private or public; G.N. 267/1969, 117/1985

“tea location” means an area, the boundaries of which are defined by the Authority, and within which growers have common interests;



“tea” means tea grown by a smallholder.

3. Establishment of the Smallholder Tea Authority

There is hereby established an Authority, to be known as the Smallholder Tea Authority, for promoting and fostering the development of tea by smallholders in the areas of Mulanje, Thyolo and Nkhata Bay districts.

4. Composition of Authority

(1) The Authority shall consist of—

- (a) the Principal Secretary, who shall be Chairman;
- (b) the Deputy Secretary (Agriculture);
- (c) a representative nominated by the Tea Association and appointed by the Minister;
- (d) the Secretary to the Treasury;
- (e) not more than two persons noted for their ability and experience in the field of finance or commerce as the Minister may appoint;
- (f) not more than three growers’ representatives who shall—
  - (i) be appointed by the Minister who, in making such appointments, shall be advised by the district committees set up under paragraph 13 of this Order;
  - (ii) be appointed from areas in which, in the opinion of the Minister, tea growing or interest in tea growing warrants representation;
- (g) not more than one other member who, in the opinion of the Minister, is qualified to further the work of the Authority; and
- (h) a representative, if the institution so desires, appointed by the Minister on the advice of any institution which provides medium- or long-term loan, for so long as such loan is outstanding.

TEA ORDER

under para. 7 of the Smallholder Tea Authority Order

G.N. 58/1968

174/1968

65/1969

219/1971

27/1987

1. Citation

This Order may be cited as the Tea Order.

2. Interpretation

“Project Manager” means the person appointed by the Authority to be its senior executive.

3. Permission

No grower may establish a tea nursery except with the written permission of the Authority, which may attach to such permission such conditions as it considers appropriate.

4.

[Deleted by G.N. 219/1971].

5. Planting material

A grower may use only planting material which has been supplied by the Authority.

6. Standards of soil and plant husbandry

A grower will be required at all times to maintain his tea garden to the standards of soil and plant husbandry laid down from time to time by the Project Manager.

7. Uprooting and destruction

A grower will uproot and destroy tea plants in his garden if required to do so in writing by the Authority.

8. Sale of green leaf

A grower may offer green leaf for sale only to the Authority:

Provided that where a grower already had a green leaf sale agreement with a factory at the time of the establishment of the Authority, he may, with the written approval of the Authority, continue to sell his leaf to the factory so long as his agreement lasts.

9. Discretion to refuse to buy

The Authority may at its discretion refuse to buy green leaf offered.

10. Weighing

Green leaf accepted by the Authority shall be weighed in the presence of the person delivering it, and a receipt shall be issued for the weight of the leaf in kilograms:

Provided that a reduction in weight may be made by the Authority if surface moisture is present on the green leaf.

11. Price

The price to be paid to growers by the Authority for green leaf shall be such as may be from time to time published by notice in the Gazette.

12. Made tea

No person shall—

(a) convert fresh green tea leaf as plucked from the tea bush into made tea by any means except under and in accordance with the terms of the grower's licence issued under this Order by the Authority, or without the authority in writing of the Authority;

(b) sell, exchange, give, offer or expose for sale or otherwise dispose of any made tea manufactured or prepared in contravention of subparagraph (a).

13. Penalties

Any person who contravenes or fails to comply with any of the provisions of this Order shall be liable to a fine of K100 and to imprisonment for 6 months, and in addition, any made tea belonging to him or found in the possession of any person convicted of an offence under paragraph 12 shall be confiscated and destroyed in such manner as the Court may direct:

Provided that this power of the Court shall relate only to the made tea which is the subject of the charge before the Court.

TEA LEVY ORDER

under para. 7 of the Smallholder Tea Authority Order

G.N. 101/1985

27/1988

1. Citation

This Order may be cited as the Smallholder Tea Authority (Tea Levy) Order.

2. Tea levy

The Authority shall levy a cess of 2 tambala per kilogram to be known as "capital cess" on all green tea leaf purchased by the Authority from growers. G.N. 27/1988

3. Commencement of levy

Capital cess shall be levied from the fifth year following the year of registration of the grower.

SMALLHOLDER COFFEE AUTHORITY ORDER

under s. 4

G.N. 175/1971

120/1980

121/1982

[Revoked by G.N. 23/1999]

SMALLHOLDER COFFEE AUTHORITY (DECLARATION OF COFFEE LOCATION AREAS) ORDER

under para. 7 (g) (ii)

G.N. 1/1990

[Revoked by G.N. 23/1999]

SPECIAL CROPS (TREE NUT AUTHORITY) ORDER

under s. 4

G.N. 129/1973

1. Citation

This Order may be cited as the Special Crops (Tree Nut Authority) Order.

2. Interpretation

In this Order unless the context otherwise requires—

“Authority” means the Tree Nut Authority established under paragraph 3;

“fruit” means the nut surrounded by the husk;

“kernel” means the oil bearing part of the nut;

“nut” means the kernel surrounded by the shell;

“tree nut” means any tree nut which may be declared as such under the “Special Crops Act”.

3. Establishment of Authority

There is hereby established an Authority to be known as the Tree Nut Authority (hereinafter referred to as “the Authority”) for promoting and fostering the development of tree nut industry in all areas of Malawi.

4. Composition of Authority

(1) The Minister shall, by notice published in the Gazette, appoint the members of the Authority other than the members representing the Tree Nut Growers’ Association.

(2) The Authority shall consist of—

(a) one member designated as Chairman by the Minister;

(b) one member representing the Agricultural Development and Marketing Corporation appointed by the Minister;

(c) six members representing the Tree Nut Growers' Association (hereinafter referred to as the Association), appointed from a panel of ten individuals nominated by the said Association.

(3) The Minister may appoint to the Authority such additional members as he deems essential to the Authority in the exercise of its powers and functions.

(4) No person shall be appointed to the Authority who—

(a) is an undischarged bankrupt;

(b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(c) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(5) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(6) Alternate members may, when not acting under the provisions of subsection (4), attend meetings of the Authority as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.

(7) No person shall be appointed to the Authority who—

(a) is an undischarged bankrupt;

(b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(c) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(8) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(9) The names of all members of the Authority as first constituted and every change in membership thereof shall be published in the Gazette.

## 5. Tenure of office of members

(1) Members of the Authority other than members representing the Association, shall, subject to this paragraph hold office for such period, being not less than two years, as may be specified in their respective appointments.

(2) Members of the Authority representing the Association shall hold office as such so long as they remain members of the said Association:

Provided that at the expiration of one year from the date of this Order and at the expiration of one year thereafter, three members shall retire by rotation, the order of which shall be decided by the Authority by ballot.

(3) The office of a member shall be vacated—

- (a) upon the expiry of the period specified in his appointment;
- (b) upon his death;
- (c) if he is adjudged bankrupt;
- (d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;
- (e) if he is convicted of an offence involving fraud or dishonesty;
- (f) in the case of a member other than the Chairman if he is absent, without the permission of the Chairman, from three successive meetings of the Authority of which he has notice;
- (g) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister;
- (h) upon his being given notice by the Minister of the termination of his appointment;
- (i) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority;
- (j) if the Minister, or the Association is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Authority is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for reappointment if not disqualified under paragraph 4 (4).

#### 6. Remuneration of members

Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances, if any, as the Minister may in his case fix.

#### 7. Meetings

(1) At the first meeting of the Authority, the members present shall elect a Vice-Chairman.

(2) The Authority may meet at such places and times as the Chairman may determine or as he may be directed by the Minister, and shall meet at least twice in every year unless, in the opinion of the Minister, there are valid reasons for not so doing.

(3) Meetings of the Authority shall be convened by at least seven days notice thereof in writing being given to the members by the Chairman.

(4) The Chairman shall preside at all meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(5) The Chairman, or in his absence, the Vice-Chairman, together with four other members shall form a quorum.

(6) Meetings of the Authority shall be conducted in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Authority deems fit.

(7) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or in his absence, by the Vice-Chairman.

(8) Decisions of the Authority shall be made by a majority of the members present at a meeting of the Authority; at all such meetings the person presiding shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.

#### 8. Member to declare pecuniary interest

(1) If a member of the Authority or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Authority he shall, as soon as is practicable after becoming aware of such interest in such matter, disclose the facts relating thereto to the Chairman and to the Minister.

(2) A member referred to in sub-paragraph (1) shall not take part in the consideration of, or vote on, any question before the Authority which relates to the matter referred to in that sub-paragraph, without the written permission of the Chairman and the Minister.

#### 9. Functions of the Authority

The Authority shall have the following functions—

(a) to promote the development of tree nut industry on commercial lines to the maximum benefit of the growers and the country;

(b) to prepare and carry out schemes for the development of the tree nut industry either directly or through the employment of agents;

(c) to control the sale of nuts, fruit or kernel sold either to the Authority directly or to its agents;

- (d) to control the import and export of nuts, fruits, kernel or any tree nut products;
- (e) to approve the methods of the marketing of nut oil by any agency;
- (f) to register and license tree nut growers and tree nut buyers and factories for processing tree nut products;
- (g) to determine and fix prices (annually) which shall be paid for tree nut products;
- (h) to purchase tree nuts from growers;
- (i) to process and market tree nuts;
- (j) to control and authorize the expenditure of money collected as levy:
- (k) to keep a record of tree nut sales of each grower;
- (l) to provide such other services and facilities as shall be conducive to the development of tree nut industry.

#### 10. Powers of the Authority

The Authority shall have the following powers—

- (a) with the approval of the Minister to employ agents for the implementation of any tree nut schemes or for the performance of any function of the Authority under this Order on such terms as may be agreed;
- (b) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act; Cap. 37:01
- (c) to promote and purchase shares in any company incorporated in Malawi for the purpose of growing, processing or marketing of tree nuts;
- (d) to establish or acquire, and to operate, factories for the processing of tree nuts and to enter into agreements with other persons operating factories for them to purchase or process tree nuts;
- (e) to invest or deposit at interest any moneys standing to the credit of the Authority;
- (f) to acquire land for the purpose of carrying out its functions under this Order;
- (g) with the approval of the Minister by order published in the Gazette—
  - (i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;
  - (ii) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of the tree nut industry of incidental or conducive to the exercise of any of the functions or powers of the Authority;



(iii) to do any other thing which will assist in the development of the tree nut industry.

11. Collection of levies

Levies imposed by the Authority under paragraph 10 (g) shall be collected by way of deduction from payments made to growers for the sale of tree nuts and shall be made in such manner as the Authority shall direct.

12. Appointment of staff

(1) The Authority may appoint a Secretary and such other staff as it considers necessary.

(2) The terms and conditions of service of the persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority.

13. Common seal

The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting and in the presence of the Chairman, and such member of the Authority as the Chairman shall appoint, both of whom shall sign every instrument to which the common seal is attached.

14. Signification of documents

All documents, other than those requiring seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or Vice-Chairman, in the absence of the Chairman.

15. Financial year

The financial year of the Authority shall be from the 1st day of April in each year to the 31st day of March in the following year. G.N. 33/1979, 69/1989

16. Auditing of accounts

(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall, within a period of four months after the end of its financial year, or such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

(a) a balance sheet showing in detail the assets and liabilities of the authority; and

(b) such other statements of accounts as the Minister may require.

(3) The auditor shall be entitled to examine all books and papers in the possession or control of the Authority, and may require from members, employees or agents of the Authority such information as is necessary for the performance of his duties.

(4) The Authority shall, within four months of the end of its financial year, or such longer period as the Minister may approve, submit to the Minister a report on its operations during the year, together with audited accounts.

## SMALLHOLDER SUGAR AUTHORITY ORDER

### ARRANGEMENT OF PARAGRAPHS

#### PARAGRAPH

#### PART I

##### PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Non-application of Cap. 65:01 sub. leg. p. 31

#### PART II

##### THE AUTHORITY

4. Establishment of Authority
5. Composition of Authority
6. Tenure of office of members
7. Meetings of the Authority
8. Project Manager
9. Local Committees

#### PART III

##### POWERS AND OBJECTS OF THE AUTHORITY

10. Powers of the Authority
11. Functions of the Authority

## PART IV

### FINANCIAL PROVISIONS

12. Funds of the Authority
13. Books, accounts, audit and reports
14. Allowances
15. Fees for services

## PART V

### MISCELLANEOUS

16. Common seal

## SMALLHOLDER SUGAR AUTHORITY ORDER

under s. 4

G.N. 30/1978

## PART I

### PRELIMINARY

1. Citation

This Order may be cited as the Smallholder Sugar Authority Order.

2. Interpretation

In this Order, unless the context otherwise requires—

“Authority” means the Smallholder Sugar Authority established under paragraph 4;

“holding” means the sub-division of the settlement area allocated to a smallholder;

“licence to grow and sell” means a certificate to grow and sell sugar-cane on lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Authority and allocated to a smallholder;

“Management” means the Managing Agents or the Project Manager appointed under paragraph 8;

“Managing Agents” mean the body corporate, firm or any organization employed by the Authority from time to time under paragraph 10 (1);

“settlement area” means the lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Smallholder Sugar Authority and allocated to smallholders,

“smallholder” means a person who has been granted a right of occupancy or a tenancy under the Special Crops (Sugar-cane) (Licensing) Regulations;

“training farms” mean estates run by the Management for training selected persons for up to two years prior to their becoming smallholders;

3. Non-application of Cap. 65:01 sub. leg. p. 31

Save as is otherwise expressly provided by this Order, the provisions of the Special Crops (Licensing) Regulations shall not apply to smallholders licensed to grow sugar-cane on lands held under a sublease from the Dwangwa Sugar Corporation Limited to the Authority.

PART II

THE AUTHORITY

4. Establishment of Authority

There is hereby established an Authority to be known as the Smallholder Sugar Authority for promoting and fostering the development of sugar-cane grown by smallholders in such areas as the Minister shall declare.

5. Composition

(1) The Minister shall, by notice published in the Gazette, appoint the members of the Authority other than the ex officio members.

(2) The Authority shall consist of—

- (a) one member designated as Chairman by the Minister;
- (b) one member designated as Vice-Chairman by the Minister;
- (c) the Secretary for Agriculture and Natural Resources, ex officio;
- (d) the Secretary to the Treasury, ex officio;
- (e) two members representing the Dwangwa Sugar Corporation Limited, nominated by the said Corporation;
- (f) one member representing the Commonwealth Development Corporation, nominated by the said Corporation;
- (g) one member representing the smallholders, appointed from a panel of three individuals nominated by the said small-holders;
- (h) two ordinary members;
- (i) the Project Manager.

(3) Any of the following members may appoint any person to be his alternate at any meeting of the Authority by causing a letter of appointment signed by him to be delivered to the Chairman before or at that meeting—

(a) the holder of any of the public offices specified in subparagraph (1);

(b) the representatives of the Dwangwa Sugar Corporation Limited and the Commonwealth Development Corporation.

#### 6. Tenure of office of members

(1) Members of the Authority, other than ex officio members, shall, subject to this paragraph, hold office for such period, being not less than three years, as may be specified in their respective instruments of appointment.

(2) Ex officio Members of the Authority shall hold office as such so long as they hold the public offices by virtue of which they are members pursuant to paragraph 5.

(3) The office of a member, other than an ex officio member, shall be vacated—

(a) upon the expiry of the period specified in his instrument of appointment;

(b) upon his death;

(c) if he is adjudged bankrupt;

(d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(e) if he is convicted of an offence involving fraud or dishonesty;

(f) in the case of a member other than the Chairman, if he is absent, without the permission of the Chairman, from three successive meetings of the Authority of which he has notice;

(g) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(h) upon his being given notice by the Minister of the termination of his appointment;

(i) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority;

(j) if the Minister, or the authority by which he is nominated, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Authority, who is not a member ex officio, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for re-appointment if not disqualified under subparagraph (3).

(6) Where the office of any member of the Authority appointed under paragraphs 5 (2) (e), 5 (2) (g) or 5 (2) (h) is vacated pursuant to subparagraph (3), the Minister shall require the relevant body to submit to him a panel of three names for the purposes of appointment of a new member.

#### 7. Meetings of the Authority

(1) The Authority may meet at such places and times as the Chairman may determine.

(2) Meetings of the Authority shall be convened by at least fourteen days' notice thereof in writing being given to the members by the Chairman.

(3) The Chairman shall preside at meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(4) The Chairman or, in his absence, the Vice-Chairman together with four other members shall form a quorum:

Provided that a quorum shall not be constituted unless the Secretary for Agriculture and Natural Resources and the Secretary to the Treasury or their respective alternates are present.

(5) For the purposes of this paragraph, an alternate shall be deemed to be a member for the purposes of forming a quorum.

#### 8. Project Manager

(1) The Authority shall appoint a Project Manager and such other staff as it deems meet.

(2) The terms and conditions of service of persons employed by the Authority shall be determined by the Authority subject to the general or special directions of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority, subject to a right of appeal to the Minister in the case of senior staff of the rank of technical officer or its equivalent and above:

Provided that where the Authority has appointed Managing Agents under paragraph 10 (1), such Managing Agents shall, with the approval of the Authority, determine the terms and conditions of service of persons so employed and exercise the powers to dismiss, discipline and control any such persons subject to a right of appeal to the Minister in the case of senior staff of the rank of technical officer or its equivalent and above.

#### 9. Local Committees

(1) The Authority may establish local committees for specified areas to advise on any problems arising between the smallholders and the management in that area.

(2) Any local committee established under subparagraph (1) shall consist of—

- (a) the Project Manager;
- (b) a representative of the smallholders appointed by the Minister;
- (c) a chief appointed by the Minister; and
- (d) a Member of Parliament for that area.

### PART III

#### POWERS AND OBJECTS OF THE AUTHORITY

##### 10. Powers of the Authority

The Authority shall have the following powers—

(1) to employ Managing Agents for the implementation of any scheme or for the performance of any function of the Authority under this Order, on such terms as may be agreed with the approval of the Minister;

(2) subject to the Finance and Audit Act to raise moneys by way of loan or bank overdraft;

(3) to invest and deal with any of its moneys not immediately required in securities, and, in such manner as it may think fit, to vary or realize such investments;

(4) to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal, moveable or immoveable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions;

(5) to give credit to smallholders for financing any crops grown in the settlement area and to deduct amounts in respect of capital contributions or to make provisions for taxation on trading profit and any outstanding debts incurred by the smallholders from any moneys payable to such smallholders from time to time under this Order;

(6) to levy appropriate charges, at rates approved by the Minister, for the provision of irrigation water, management and accounting expenses, the amortisation of the capital cost of the scheme and such other services as are provided under the direction of the Minister;

(7) to operate accounts for smallholders in respect of any transactions made under the Order on which interest may be paid or charged;

(8) to arrange for the sale of sugar-cane to the factory or to make such arrangements through the Managing Agents, as the case may be;

(9) to receive the proceeds of sale of the sugar-cane from the factory on behalf of the smallholders in accordance with such agreement as may, from time to time, be in force;

(10) to make regulations, with the prior approval of the Minister—

- (a) to control the relationship between the smallholders and the management;

(b) to do all things incidental or conducive to the performance of its powers or functions under this Order.

11. Functions of the Authority

The Authority shall have the following functions—

(1) to prepare and carry out sugar development schemes including—

- (a) the establishment of training farms;
- (b) the provision of a central agricultural machinery and transport pool for hire to smallholders;
- (c) the provision of a central purchasing and selling agency for use by the smallholders;
- (d) the provision of a central accounting agency for the benefit of the smallholders;
- (e) the development of new farms for smallholders;
- (f) the provision of an estate management service and of a cane cutting service for the benefit of smallholders; and
- (g) the provision of any other essential service;

(2) to deduct from any moneys payable to a smallholder from time to time under this Order such amount or amounts in respect of any levies or fees for services or materials, rendered or provided, as the case may be, capital contributions and provisions for taxation on the trading profit, or, for any other expense incurred by the Authority on behalf of any such smallholder.

PART IV

FINANCIAL PROVISIONS

12. Funds of the Authority

The funds of the Authority shall consist of—

- (a) such sums as may be payable to the Authority from moneys appropriated by Parliament for the purpose;
- (b) such moneys or other assets as may accrue to or vest in the Authority whether in the course of the exercise of its functions or powers, or otherwise;
- (c) such moneys or other assets as may accrue to or vest in the Authority by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;
- (d) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Authority;



(e) such moneys or other assets as may be donated to the Authority by any foreign government, international agency or other overseas body.

13. Books, accounts, audit and reports

(1) The Authority shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Authority shall be audited annually by professional auditors appointed by the Authority with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Authority.

(3) The Authority shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

14. Allowances

(1) Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances, if any, as the Minister may in his case determine.

(2) Any member of the Authority who is an officer in the public service shall be paid from the funds of the Authority allowances at the appropriate relevant rate payable in accordance with the Malawi Public Service Commission Regulations:

Provided that such member shall not be paid any allowances from the funds of the Authority if he has been paid such allowances from public funds.

15. Fees for services

Fees for services rendered for which a charge is levied, shall be deducted from moneys due and payable to smallholders under this Order and any such deductions shall be made in such manner as the Authority deems fit

PART V

MISCELLANEOUS

16. Common seal

(1) The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting.

(2) The common seal shall be affixed—

(a) in the presence of the Chairman and Project Manager; or

(b) in the presence of the Chairman or the Project Manager together with one duly authorized member of the Authority.

(3) Every instrument to which such seal is affixed shall be signed by the two persons in whose presence the seal is so affixed.

(4) Where no Project Manager has been appointed, the Chairman may appoint two members in whose presence the common seal may be affixed to any instrument, and such instrument shall be signed by both such members.

#### SPECIAL CROPS (LICENSING) REGULATIONS

under s. 6

G.N. 211/1963

212/1965

118/1985

6/1986

#### 1. Citation

These Regulations may be cited as the Special Crops (Licensing) Regulations.

#### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“application” means an application for a licence;

“licence” means a licence under section 6 of the Act to grow, buy, barter or sell a special crop in a special crop area;

“special crop” means a crop declared to be a special crop by the Minister under section 3 of the Act;

“special crop area” means that area in respect of which the Minister has established an Authority for promoting and developing a special crop.

#### 3. Applicants

(1) Any person who is, or will be when the licence comes into force, the—

(a) owner of;

(b) occupier of;

(c) lessee of;

(d) manager of;

- (e) person otherwise entitled to use; or
- (f) person otherwise using,

land in a special crop area and intends to grow a special crop thereon shall apply for a licence.

(2) Any person who intends to buy, barter or sell a special crop in a special crop area shall apply for a licence on or before the 31st day of October in the year next preceding the year in which he so intends.

#### 4. Applications

(1) Every application shall be in writing, signed by the applicant, and submitted to the Regional Agricultural Officer of the Region in which the estate of the applicant is situate.

(2) Applications shall be made on the appropriate section of Form I of the First Schedule or on clearly legible copies of such form. Printed copies of Form I may be obtained at the places listed in the Second Schedule or from the Ministry of Agriculture, P.O. Box 30134, Capital City, Lilongwe 3.

#### 5. Licences

(1) Each licence shall be issued on the appropriate section of Form II of the First Schedule. In issuing any licence, those sections of Form II that do not apply to the licensee shall be deleted.

(2) No licence issued under these Regulations shall exempt the holder thereof from the requirements to obtain a licence or permit under any other law in force in Malawi.

#### 6. Conditions

In addition to any special conditions that may be endorsed on any licence, the following conditions shall apply to all licences—

(a) the licence grants permission only with respect to the particular special crop and the particular special crop area or part thereof specified in the licence;

(b) the licence is valid until the date of expiry endorsed thereon unless it is sooner surrendered, suspended or revoked:

Provided that in the case of a coffee grower's licence, the licence shall be validated annually by the Minister issuing to the grower a certificate in Form III set out in the First Schedule; G.N. 6/1986

(c) the licence shall be available for inspection by the Minister or any person authorized by him in writing for any of the purposes of regulation 9;

(d) the licence is valid only with respect to the person named therein any may not be loaned, transferred or assigned.

#### 7. Duplicate licences

When the Principal Secretary is satisfied that any licence issued under these Regulations has been lost, stolen, defaced or destroyed, he may cancel the validity of such licence and issue a duplicate licence. A duplicate licence shall bear the words "Duplicate Licence" conspicuously thereon, and shall be issued only on payment of a fee of one Kwacha.

#### 8. Register

(1) The Principal Secretary shall arrange to keep a register of all applications received and a copy of each licence issued under these Regulations.

(2) The register shall be kept at the offices of the Ministry of Agriculture, Lilongwe.

(3) The register may be inspected only—

(a) by a public officer acting in the course of his official duties:

(b) by an applicant or a licensee only in respect of his application or licence.

#### 9. Entry

The Minister, or any person authorized by him in writing, may, for the purpose of ascertaining that these Regulations or any licence issued under these Regulations are being complied with, enter upon or into any land, building, vehicle, aircraft or vessel where any special crop is or is reasonably believed to be grown, purchased, bartered, sold, stored or transported.

#### 10. Offences

(1) Any person who—

(a) wilfully obstructs or hinders any properly authorized person from carrying out his duties under regulation 9;

(b) knowingly or recklessly makes a statement in any application that is false or substantially misleading in any material particular;

(c) not being authorized to do so, alters or amends any licence or any particular in any licence;

(d) lends, transfers or assigns any licence issued to him to any other person;

(e) fails or neglects without reasonable cause to have his licence available for inspection by the Minister or by any person authorized by him in writing for the purposes of regulation 9, shall be guilty of an offence.

(2) Any person convicted of an offence against these Regulations shall, in the case of a first conviction, be liable to a fine of K40 or to imprisonment for one month, and in the case of a second or subsequent conviction to a fine of K100 and to imprisonment for three months.

FIRST SCHEDULE

THE SPECIAL CROPS ACT

THE SPECIAL CROPS (LICENSING) REGULATIONS regs. 4 and 5, G.N. 118/1985, 6/1986

FORM I—APPLICATIONS

(Two copies to be submitted by 31st October to the Regional Agricultural Officer of the Region where the estate is situated.)

Section A G.N. 118/1985

APPLICATION FOR LICENCE TO GROW AND SELL

(This section to be completed by occupiers of private land who wish to grow a special crop on their land by paid labour.)

I/We (name in full) .....

of (address) .....

hereby apply for a licence to grow and sell (describe special crop) ..... in the season 19...../..... on our (name) ..... Estate in the ..... District, held by us under Deed No. ....

Total hectarage of estate .....

Hectarage of special crop to be grown .....

Quantity expected to be sold .....

Date .....

.....

(Signature)

Section B G.N.11/1985

APPLICATION FOR LICENCE TO GROW AND RESELL

(To be completed by occupiers of private land who wish to buy a special crop grown on their estate other than by paid labour.)

I/We (name in full) .....

of (address) .....

hereby apply for a licence to buy for resell (describe special crop) .....

..... which will be grown in the season 19...../..... by tenants on our (name) .....

Estate in the ..... District, held by us under Deed No. ....

Total hectarage of estate .....  
No. of tenants producing special crop .....  
Estimated hectarage of special crop .....  
Estimated quantity to be bought .....  
Date .....

.....

(Signature)

Section C

COMMENTS BY REGIONAL AGRICULTURAL OFFICER

.....  
.....

THE SPECIAL CROPS ACT

THE SPECIAL CROPS (LICENSING) REGULATIONS

FORM II—LICENCE

Section A

LICENCE TO GROW AND SELL

Part(i)

Name of licensee .....

of (address) .....

is hereby licensed in the season 19..... /..... to grow by paid labour and sell (describe special crop) ..... on (name) ..... Estate in the ..... District, held under Deed No. ....

Hectare of special crop .....

This licence shall be valid until 30th September next following the season for which issued, unless extended or suspended.

This licence is issued under and subject to the provisions of the Special Crops Act, any Regulations made thereunder and the following special conditions—

.....  
.....

.....  
Date of issue .....

No. of licence .....

(Issuing Authority)  
Part (ii)

Quantity for which licence is valid .....

Date of issue .....

(Issuing Authority)

Section B

LICENCE TO BUY AND RESELL

Part (i)

Name of licensee .....

of (address) .....

is hereby licensed in the season 19 .... / .... to buy and resell (describe special crop) ..... on (name) ..... Estate in the ..... District, held under Deed No. ....

Hectare of special crop .....

No. of tenants producing special crop .....

This licence shall be valid until 30th September next following the season for which issued, unless extended or suspended.

This licence is issued under and subject to the provisions of the Special Crops Act, and Regulations made thereunder and the following special conditions—

.....  
.....  
.....

Date of issue .....

No. of licence .....

(Issuing Authority)

Part (ii)

Quantity for which licence is valid .....

Date of issue .....

.....

(Issuing Authority)

SPECIAL CROPS ACT reg. 6(b), G.N. 6/1986

(CAP. 65:01)

SPECIAL CROPS (LICENSING) REGULATIONS

FORM III—ANNUAL VALIDATION CERTIFICATE FOR COFFEE GROWER'S LICENCE

CERTIFICATE No. ....

Licence No. ....

Grower's name .....

District .....

Agricultural Development Division .....

.....

This certificate validates for the period ..... to .....

Coffee Grower's Licence No. ....

issued to the above-named grower; and, where applicable, increases the hectarage of the licensed area as follows—

Hectares

Hectarage of the original licensed area

\*Hectarage of additional area

Total

SECOND SCHEDULE reg. 4

1. Agricultural Development and Marketing Corporation

Headquarters, P.O. Box 5052, Limbe.



Area Offices, P.O. Box 5, Lilongwe.

2. Offices of Regional Agricultural Officer

Northern Region, P.O. Box 13, Mzuzu.

Central Region, P.O. Box 92, Lilongwe.

Southern Region, P.O. Box 32, Blantyre.

3. Offices of all District Commissioners and Assistant District Commissioners.

#### MALAWI TOBACCO RESEARCH AUTHORITY ORDER

under s. 4

G.N. 17/1980

97/1985

1. Citation

This Order may be cited as the Malawi Tobacco Research Authority Order. G.N. 97/1985

2. Interpretation

In this Order "the Authority" means the Malawi Tobacco Research Authority established by paragraph 3. G.N. 97/1985

3. Establishment of the Authority

There is hereby established an Authority to be known as the Malawi Tobacco Research Authority for promoting and fostering the development of tobacco in Malawi. G.N. 97/1985

4. Composition of the Authority

(1) The Authority shall consist of a Chairman appointed by the Minister and of the following ex officio members—

- (a) the Principal Secretary of the Ministry of Agriculture;
- (b) the Chief Agricultural Research Officer of the Ministry of Agriculture;
- (c) the Chief Agricultural Development Officer of the Ministry of Agriculture;
- (d) the General Manager of the Authority;
- (e) the Project Manager of the Kasungu Flue-Cured Tobacco Authority;

and of the following persons appointed by the Minister for a term of office of three years—

(f) two members nominated by the Chairman of the Agricultural Development and Marketing Corporation;

(g) two members nominated by the Tobacco Association one to represent the growers of burley tobacco and the other to represent the growers of flue-cured tobacco;

(h) two members nominated by the Tobacco Exporters Association.

#### MALAWI TOBACCO RESEARCH AUTHORITY ORDER

under s. 4

[Revoked by G.N. 99/1989.]

#### SPECIAL CROPS (NATIONAL COFFEE AUTHORITY) ORDER

under s. 4

G.N. 46/1989

3/1990

##### 1. Citation

This Order may be cited as the Special Crops (National Coffee Authority) Order.

##### 2. Interpretation

In this Order unless the context otherwise requires—

“Association” means the Coffee Growers Association;

“Authority” means the National Coffee Authority established under paragraph 3;

“coffee” means the beans and cherries of a coffee tree whether parchment, green or roasted and includes ground, decaffeinated, liquid and soluble coffee;

“decaffeinated coffee” means green, roasted or soluble coffee from which caffeine has been extracted;

“dried cherry” means dried fruit from coffee tree;

“green coffee” means coffee in the naked bean form before roasting;

“parchment coffee” means the green coffee bean contained in the parchment skin;

“roasted coffee” means the green coffee roasted to any degree and includes ground coffee;

##### 3. Establishment of Authority

There is hereby established an Authority to be known as the National Coffee Authority (in this Order referred to as the “Authority”) for promoting and fostering the development of coffee in all areas of Malawi.

##### 4. Composition

(1) The Authority shall consist of the following members appointed by the Minister—

- (a) one member whom the Minister shall designate as the Chairman of the Authority;
- (b) one member representing the Smallholder Coffee Authority, a body corporate established under the Smallholder Coffee Authority Order;
- (c) six members representing the Association, nominated by the Association from amongst its members;
- (d) the following ex-officio members—
  - (i) the Secretary for Agriculture or his representative,
  - (ii) the Secretary for Trade and Industry or his representative;
  - (iii) the Secretary to the Treasury or his representative; and
  - (iv) the Secretary for Economic Planning and Development or his representative.

(2) The Minister may appoint to the Authority such additional members, not exceeding three in number, as he deems qualified to assist the Authority in the exercise of its powers and functions, but such members shall not have the right to vote.

(3) No person shall be appointed to the Authority who—

- (a) is an undischarged bankrupt;
- (b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment exceeding six months, otherwise than as an alternative to, or in default of, the payment of a fine;
- (c) has, during the preceding five years been convicted of an offence involving fraud or dishonesty.

(4) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(5) The names of all members of the Authority as first constituted and every change in membership thereof shall be published in the Gazette.

## 5. Tenure of office of members

(1) Members of the Authority, other than ex-officio members, shall subject to this paragraph, hold office for such period, being not more than two years, as may be specified in their respective instruments of appointment.

(2) The office of a member of the Authority shall be vacated—

- (a) upon the expiry of the period specified in his appointment;
- (b) upon his death;

- (c) if he is adjudged bankrupt;
- (d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding six months, otherwise than as an alternative to, or in default of, the payment of a fine;
- (e) if he is convicted of an offence involving fraud or dishonesty;
- (f) in the case of a member other than the Chairman if he is absent, without permission of the Chairman, from three successive meetings of the Authority which he has had notice;
- (g) upon giving one month's notice in writing to the Minister of his intention to resign;
- (h) upon his being given notice by the Minister of the termination of his appointment;
- (i) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority; and
- (j) if the Minister, of himself or on the advice of the Association, is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and consequently it is inexpedient for him to continue to hold office as a member.

(3) Upon the expiry of the period for which a member of the Authority is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall further period exceed three months.

## 6. Remuneration of members

Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances as the Minister may determine.

## 7. Meetings

(1) At the first meeting of the Authority, the members present shall elect a Vice-Chairman.

(2) The Authority may meet at such places and times as the Chairman may determine and shall meet at least three times in every year unless, in the opinion of the Minister, there are valid reasons for not so doing.

(3) Meetings of the Authority shall be convened by at least seven days' notice thereof in writing being given to the members by the Chairman.

(4) The Chairman shall preside at all meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(5) The Chairman or, in his absence, the Vice-Chairman together with four other members shall form a quorum.

(6) The Authority shall have the power to regulate its own procedure.

(7) Minutes of every meeting of the Authority shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman or in his absence, by the Vice-Chairman.

(8) Decisions of the Authority shall be made by a majority of the members present; and the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

8. Member to declare pecuniary interest

(1) A Member who is aware that he has a personal, proprietary or pecuniary interest in a matter which is to be considered or is being considered by the Authority shall declare the interest to the Chairman in writing and shall not be entitled to take part in the deliberations or to vote on the matter.

(2) A member who is unable to attend a session of the Authority—

(a) may, with the written consent of the Chairman submit to the Authority, in writing, his views on any matter to be considered by the Authority; and

(b) shall not be entitled to vote on any matter which has been considered by the Authority at that session.

9. Functions of the Authority

The Authority shall have the following functions—

(a) to promote the development of the coffee industry in Malawi on commercial lines;

(b) to prepare and carry out schemes for the development of the coffee industry either directly or through agents;

(c) to control the sale of coffee either directly or through agents;

(d) to control the exports and imports of coffee either directly or through agents;

(e) to approve the method of marketing coffee;

(f) to licence and register—

(i) coffee growers and coffee buyers; and

(ii) factories for processing coffee;

(g) to control all matters of a phytosanitary nature and to license and register coffee seed producers and commercial coffee plant nurseries;

(h) to appoint an agent to keep records of coffee production and sales of each grower;

(i) to control and authorize the expenditure of money collected as levy;

(j) to provide research and such other services and facilities as shall be conducive to the development of the coffee industry.

## 10. Powers of the Authority

The Authority shall have the following powers—

- (a) with the approval of the Minister to employ agents for the implementation of any coffee industry schemes or for the performance of any function of the Authority under this Order on such terms as may be agreed;
- (b) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act; Cap. 37:01
- (c) to promote and purchase shares in any company incorporated in Malawi for the purpose of growing, processing or marketing of coffee;
- (d) to establish or acquire, and to operate, factories for the processing of coffee and to enter into agreements with other persons operating factories for them to purchase or process coffee;
- (e) to invest or deposit at interest any moneys standing to the credit of the Authority
- (f) to acquire land for the purpose of carrying out its functions under this Order;
- (g) with the approval of the Minister and by notice published in the Gazette—
  - (i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;
  - (ii) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of the coffee industry or incidental or conducive to the exercise of any of the functions or powers of the Authority; and
  - (iii) to do any other thing which will assist in the development of the coffee industry.

## 11. Collection of levies

Levies imposed by the Authority under paragraph 10 (g) shall be collected in such manner as the Authority may direct.

## 12. Appointment of staff

(1) The Authority may appoint a Secretary and such other staff as it considers necessary.

(2) The terms and conditions of service of the persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority.

## 13. Common seal

The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting and in the presence of the Chairman, and such member of the Authority as the Authority shall appoint, both of whom shall sign every instrument to which the common seal is attached.

14. Signification of documents

All documents, other than those requiring seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or, in his absence, the Vice-Chairman.

15. Financial year

The Minister may, by notice published in the Gazette, from time to time, determine the financial year of the Authority.

16. Auditing of accounts

(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall, within a period of four months after the end of its financial year, or such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

- (a) a balance sheet showing in detail the assets and liabilities of the Authority; and
- (b) such other statements of accounts as the Minister may require.

(3) The Auditor shall be entitled to examine all books and papers in possession or control of the Authority, and may require from members, employees or agents of the Authority such information as is necessary for the performance of his duties.

(4) The Authority shall, within four months of the end of its financial year, or such longer period as the Minister may approve, submit to the Minister a report on its operations during the year, together with audited accounts.

SPECIAL CROPS (NATIONAL COFFEE BOARD) (IMPOSITION OF A COFFEE LEVY) NOTICE

under s. 10 (g) (i)

1. Citation

This Notice may be cited as the Special Crops (National Coffee Board) (Imposition of a Coffee Levy) Notice. G.N. 79/1991

2. Coffee levy

There is hereby imposed a levy on growers at the following maximum rates—

(a) for estate growers with 20 or more hectares of planted coffee—

K      t

(i) per hectare of planted coffee    10    00

(ii) per tonne of green coffee produced    150    00

(b) for smallholder growers under the Smallholder Coffee Authority Scheme and other growers with less than 20 hectares of planted coffee—

(i) per hectare of planted coffee    6    00

(ii) per tonne of green coffee produced    10    00

[Chap6502]CHAPTER 65:02

TOBACCO

ARRANGEMENT OF SECTIONS

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18 of 1970

5 of 1971

16 of 1971

8 of 1972

5 of 1975

9 of 1986

An Act to amend and to consolidate the law relating to the production, manufacture and marketing of tobacco and matters incidental thereto

[24TH AUGUST 1970]

## PART I

### PRELIMINARY

[Ch6502s1]1. Short title

This Act may be cited as the Tobacco Act.

[Ch6502s2]2. Interpretation

In this Act, unless the context otherwise requires—

16 of 1971, 9 of 1986“Corporation” means the body corporate established by section 3 of the Agricultural Development and Marketing Corporation Act; Cap. 67:03

“domestic tobacco grower” means a person who grows tobacco within the scheduled areas for his own use or consumption by himself or his family;

“economic crop” means a crop grown for the purpose of commerce and not for use or consumption by the grower or his family;

“manufactured tobacco” means tobacco made into cigarettes, snuff, pipe mixture, roll, twist, cigars, cigarillos, cake, plug or stick;

“owner” includes the agent, manager, overseer or other person in charge of any land;

“scheduled area” means an area declared as such by the Minister by notice in the Gazette;

“sell” with its grammatical variations and cognate expressions, includes “barter”;

“tenant” means any person who is cultivating tobacco on his own behalf on private or public land to which he himself has no title;

“tobacco” means unmanufactured tobacco, whether cured or uncured, but does not include “*nicotiana rustica*”;

“tobacco grower” means a person who, within the scheduled areas, grows tobacco as an economic crop, on his own behalf, by his own labour or by the labour of his servant.

PART II

THE UPROOTING OF TOBACCO, TOBACCO SEED

[Ch6502s3]3. Tobacco plants to be uprooted at direction of Minister

(1) The Minister may, by notice published in the Gazette, fix dates prior to which all tobacco of the preceding planting shall be uprooted.

(2) Such dates may vary in respect of—

- (a) tobacco grown in different parts of Malawi;
- (b) tobacco grown in nurseries, fields or gardens, or for seed;
- (c) tobacco of different types.

(3) Any person who fails to uproot tobacco plants prior to any date applicable to such plants which may have been fixed by the Minister under subsection (1) shall be guilty of an offence.

[Ch6502s4]4. Persons responsible for uprooting

The persons responsible for uprooting tobacco plants under section 3 shall be—

- (a) in the case of tobacco planted by a tenant, the tenant;
- (b) in the case of tobacco planted on land which is leased or subleased, the lessee or sublessee;
- (c) in the case of tobacco planted on land which is not leased or subleased, the owner of such land;
- (d) in any other case, the person who planted the tobacco or caused it to be planted, or both such persons.

[Ch6502s5]5. Tobacco seed

(1) No person shall use, sell, import into Malawi or issue to any person any seed to be used for growing tobacco unless the seed has been approved by the Minister or by an officer of the Ministry authorized by the Minister in that behalf.

(2) No person shall grow tobacco for seed production except with the permission in writing of the Minister or of an officer of the Ministry authorized by the Minister in that behalf.

16 of 1971, 9 of 1986(3) No person other than an officer of the Ministry shall issue seed to any tobacco grower or domestic tobacco grower, and no such grower shall grow tobacco except from seed issued to him by an officer of the Ministry.

(4) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and, in addition to any other penalty, the court shall order that any tobacco—

- (a) grown from seed which has not been approved under subsection (1);
  - (b) grown for seed production or grown from seed produced contrary to subsection (2);
- or
- (c) grown from seed issued otherwise than in conformity with subsection (3),

shall be destroyed, with such time as the court shall direct, by the owner of such tobacco or by his agent, or, in default of his so doing, by such other person as the court shall appoint, or shall order that such tobacco be forfeited.

### PART III

#### TOBACCO REGISTRATION

[Ch6502s6]6. Registration of tobacco growers

(1) No person shall grow tobacco within the scheduled areas unless he is registered in accordance with this Act.

8 of 1972(2) Application for registration shall be made at such time, to such persons, in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.

(3) Any person who is aggrieved by the refusal of his application for registration may appeal to such person and in such manner as may be prescribed and any regulations made under this Act may provide for a further appeal and that such further appeal may be final.

(4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.

(5) Upon the registration of a tobacco grower or domestic tobacco grower under this section, the person keeping the register shall issue to such grower a certificate of registration in such form, valid for such period and subject to such conditions as may be prescribed.

(6) No person shall be registered to grow tobacco both on customary land and as a tenant.

(7) Any person who grows tobacco in any scheduled area without being registered as a tobacco grower in accordance with this Act shall be guilty of an offence.

[Ch6502s7]7. Selling prohibited without registration certificate

No person required to be registered under this Part shall sell tobacco without first producing to the buyer a valid certificate of registration or, if he is selling on behalf of another person, the written authority and the valid certificate of registration of that other person. Any person who fails to comply with this section shall be guilty of an offence.

[Ch6502s8]8. Endorsement of registration certificate

Every person who buys tobacco from a registered grower shall endorse on the back of the grower's certificate of registration the quantity of tobacco bought, the date of the purchase, and such other particulars as may be prescribed, and shall sign and date the endorsement. Any person who fails to comply with this section shall be guilty of an offence.

[Ch6502s9]9. Registration certificate not transferable

(1) A certificate of registration issued under this Part shall not be transferable.

(2) No person shall have in his possession for any purpose a certificate of registration and a written authority which is not his own except when he is selling tobacco as the agent of a registered tobacco grower and, for the purpose of such agency, has in his possession the certificate of registration and the written authority of that registered tobacco grower.

(3) The Minister or any officer authorized in that behalf may require any person growing tobacco in a scheduled area to produce for his inspection his certificate of registration or, when a

person is acting as a selling agent for a registered grower, the written authority and the certificate of registration of his principal.

(4) Any person who contravenes subsection (1) or (2), or who refuses or neglects to produce for inspection his or his principal's certificate of registration when required to do so under subsection (3) shall be guilty of an offence.

#### PART IV

#### MARKETING

##### [Ch6502s10]10. Purchase of tobacco forbidden except by certain persons

16 of 1971(1) Tobacco shall not be bought elsewhere than on auction floors licensed under the Control of Tobacco Auction Floors Act, except by the following persons— Cap. 65:03

- (a) the Corporation;
- (b) a person who holds a valid tobacco-buying licence issued under Part VI;
- (c) a person who is buying tobacco as the agent, duly authorized in writing, of the Corporation; or
- (d) a person specially authorized in writing by the Minister.

(2) Where the holder of a tobacco-buying licence fails to buy any tobacco in respect of which the licence was issued, he shall report to the Corporation that such tobacco is available for purchase. The Corporation or its authorized agent may buy such tobacco at such price as may appear to the Corporation to be equitable.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

##### [Ch6502s11]11. Minister may define tobacco classes and may fix prices

(1) The Minister may from time to time define the classes and grades in which tobacco may be sold or bought.

(2)(a) The Minister may from time to time fix the prices to be paid by the persons referred to in paragraphs (a), (b), (c) and (d) of section 10 (1) for different classes and grades of tobacco and may fix different prices in respect of different areas of the country.

(b) The prices fixed under this subsection shall be published in the Gazette.

(3) The Minister may from time to time fix tobacco quotas in respect of all registered growers selling tobacco to the corporation.

##### [Ch6502s12]12. Restriction on sale of certain tobacco

16 of 1971(1) A person growing tobacco on customary land shall sell such tobacco only to the Corporation, unless the Minister specially authorizes another person, in writing, to buy such tobacco.

(2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.

## PART V

### CESS

#### [Ch6502s13]13. Meaning of tobacco

For the purposes of this Part—

“tobacco” means manufactured or unmanufactured cured tobacco other than tobacco imported into Malawi by a manufacturer for use by such manufacturer in the manufacture within Malawi of pipe tobacco, cigarettes, cigars, cigarillos, cake, plug or stick tobacco.

#### [Ch6502s14]14. Imposition of cess

5 of 1975(1) The Minister may, by order, prescribe a cess at an expressed rate per stated unit of net weight to be levied, paid and collected in respect of—

- (a) tobacco sold in Malawi;
- (b) tobacco exported from Malawi; Provided that—
  - (i) such cess shall not be paid twice in respect of the same tobacco;
  - (ii) no cess shall be paid by any person in respect of tobacco grown by him and sold to a person authorized to buy tobacco under paragraphs (a), (b), (c) or (d) of section 10 (1).

(2) An order made under subsection (1) may provide for cess at different rates on different types of tobacco, or may exempt any type of tobacco from liability for cess.

#### [Ch6502s15]15. Tobacco not to be manufactured or exported unless cess paid

(1) Any person who sells any tobacco and does not immediately upon completion of the sale pay any amount due for cess in respect of such tobacco shall be guilty of an offence.

(2) Any person who exports any tobacco in respect of which the cess has not been paid shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be liable to a fine of K200 and to imprisonment for six months.

#### [Ch6502s16]16. Proceeds of cess to be used for benefit of tobacco industry

The proceeds of the cess paid and collected under this Part shall be used exclusively for the benefit of the tobacco industry in such manner as the Minister may from time to time approve.

## PART VI

### TOBACCO BUYING LICENCES

[Ch6502s17]17. Designation of licensing authorities

(1) The Minister may by notice published in the Gazette designate any organization or person to be a licensing authority for the issue of licences to buy tobacco for the purposes of paragraphs (b) and (c) of section 10 (1), in this Act referred to as tobacco buying licences, and may assign to such licensing authority responsibility for any area or areas of Malawi.

(2) In carrying out their or his duties under this Act, a licensing authority shall act subject to the general or specific directions of the Minister.

[Ch6502s18]18. Application for licence

8 of 1972 Application for a tobacco buying licence shall be made to the Minister, or to the licensing authority designated by him to be responsible for the area in which such licence is required:

Provided that where a licence to buy and resell tobacco has been issued to an owner of land in respect of his tenants under the Special Crops Act, no licence to buy tobacco shall be required under this section. Cap. 65:01

[Ch6502s19]19. Exclusive tobacco growing licence

The Minister may issue an exclusive tobacco buying licence in respect of any area or areas of Malawi or in respect of a particular grade or class of tobacco, and where the Minister has issued such a licence no other tobacco buying licence shall be issued in respect of same area or areas, or in respect of the same grade or class of tobacco.

[Ch6502s20]20. Procedure for licensing authority

In respect of an application for a tobacco buying licence a licensing authority may—

(a) if the application is approved, issue the licence to the applicant as soon after such approval as possible;

(b) if the application is refused, advise the applicant in writing of such refusal as soon after such refusal as possible, and forward a copy of such advice to the Minister.

[Ch6502s21]21. Grounds for refusal of licence

(1) Unless the Minister otherwise directs in any case, a licence shall not be refused by a licensing authority except on one or more of the following grounds—

(a) that the applicant has knowingly given false or misleading information or made false or misleading statements in his application;

(b) that the applicant has been convicted within five years preceding the date of application of an offence against this Act, or any written law replaced by this Act;

(c) that an exclusive tobacco buying licence has been granted in respect of the tobacco or area for which the application was received;



(d) that the Minister has determined that for the purpose of maintaining adequate stocks of tobacco within the area for which the licensing authority is responsible, licences may be issued only in respect of a designated quantity of tobacco and licences have been issued in respect of that quantity.

(2) The Minister may, in his discretion, direct that any application for a licence shall be refused, and his decision shall be final and shall not be questioned in any court.

#### [Ch6502s22]22. Revocation or suspension of licences

(1) A tobacco buying licence may be revoked or suspended by a licensing authority when the licensee has—

- (a) knowingly given false or materially misleading statements or information in his application;
- (b) violated or failed to comply with the terms or conditions of his licence;
- (c) been convicted of an offence against this Act.

(2) The Minister may, in his discretion, revoke or suspend any tobacco buying licence or exclusive tobacco buying licence, and his decision shall be final and shall not be questioned in any court.

#### [Ch6502s23]23. Appeal

Where an application for a tobacco buying licence is refused by a licensing authority, or when such a licence is revoked or suspended by a licensing authority, the person involved may, within thirty days of the receipt of notification of such refusal, revocation or suspension, appeal in writing to the Minister, and the Minister's decision shall be final and shall not be questioned in any court.

#### [Ch6502s24]24. Register

(1) Each licensing authority shall maintain a permanent register of all licences issued by such licensing authority.

(2) The register shall be kept as the Minister may direct.

(3) The register shall be open to inspection by the Minister or by any person authorized by the Minister to inspect such register.

#### [Ch6502s25]25. Condition of licence

It shall be a condition of every tobacco buying licence or exclusive tobacco buying licence that the licensee may not purchase tobacco—

- (a) in excess of any amount specified in his licence;
- (b) which has not been grown on the area of land specified on his licence;

- (c) of a grade or class excluded on his licence.

[Ch6502s26]26. Evidence

In any prosecution for an offence under this Act—

(a) any tobacco which is the subject of a charge shall be presumed to be tobacco within the meaning of those expressions as defined in this Act, and the burden of proving the contrary shall be on the accused;

(b) a certificate under the hand of the Commissioner for Lands that any land is customary land, public land or private land, or that any land is not included in the area of land specified in any licence, shall be admitted as evidence of the facts stated in such certificate, and the burden of proving the contrary shall be on the accused.

[Ch6502s27]27. Power of entry

(1) The Minister, or any person authorized by him in writing, may, during daylight hours, enter upon or into any land, building, vehicle, aircraft or vessel where tobacco is grown, purchased, stored or transported for the purpose of ascertaining that the provisions of this Act or the conditions of any licence or authority issued under this Act are being complied with.

(2) The Minister, or a person authorized by him under subsection (1), may call upon the owner, occupier or manager of, such land, building, vehicle, aircraft or vessel to—

(a) produce books or records relating to such land, building vehicle, aircraft or vessel as is used in connexion with the subject matter of this Act;

(b) produce books or records that will enable him to check the accuracy of any return or application made or required under this Act; or

(c) permit reasonable samples of tobacco to be taken to ascertain that this Act and the conditions of any licence or authority are being complied with.

(3) Any person who obstructs or refuses entry to a person authorized by the Minister under subsection (1) or fails, neglects or refuses to produce books or records or to permit samples to be taken under subsection (2) shall be guilty of an offence.

[Ch6502s28]28. Display of licence, etc., and price list

A person buying tobacco under the provisions of paragraphs (a), (b), (c) or (d) of section 10 (1) shall, at the beginning of and throughout each day upon which he exercises his right to buy, prominently display at the place of purchase both a copy of his authority to buy and the prices offered for the classes and grades of tobacco which he is authorized to buy. Any person who fails to comply with this section shall be guilty of an offence.

[Ch6502s29]29. False statements

If any person—

(a) in connexion with an application for registration as a grower of tobacco or for the issue of any licence or permit under this Act; or

(b) in or in connexion with any return required by this Act or any record or book kept in pursuance of this Act,

knowingly makes any statement or gives any information which is false in any material particular, he shall be guilty of an offence.

[Ch6502s30]30. Hindrance of person performing duty

Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

[Ch6502s31]31. Failure to produce document

Any person who refuses to produce for inspection a licence, certificate, register or other document issued under or required by this Act to any person authorized to inspect such licence, certificate, register or other document, shall be guilty of an offence.

[Ch6502s32]32. Order prohibiting sale, etc., where licence, etc., believed violated

Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence or an authority to buy tobacco issued for the purposes of paragraphs (a), (b), (c) or (d) of section 10 (1) are not being complied with in respect of certain tobacco, he may issue an order prohibiting the sale, exchange or movement of such tobacco or any part thereof for not more than five days. Any person who fails to comply with such an order shall be guilty of an offence.

[Ch6502s33]33. Hours during which tobacco may be bought

The buying of tobacco by persons authorized under paragraphs (a), (b), (c) and (d) of section 10 (1) shall not be undertaken outside such hours of the day as the Minister may, from time to time, by notice published in the Gazette, direct, and any such person who buys tobacco outside such hours shall be guilty of an offence.

[Ch6502s34]34. Compliance with conditions of licence, etc.

Any person who buys tobacco contrary to the conditions of his licence or authority to buy tobacco shall be guilty of an offence.

[Ch6502s35]35. Penalties

(1) Any person who is convicted of an offence against this Act for which no special penalty is provided shall be liable to a fine of K1,000 and to imprisonment for one year.

(2) A court may, in addition to any other penalty, order that any tobacco in respect of which an offence has been committed shall be forfeited.

[Ch6502s36]36. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the duties of licensing authorities and other public officers under this Act;
- (b) the forms to be used for any registration certificate, licence, return or application;
- (c) the manner in which any payment for tobacco shall be made;
- (d) the fees for any licence, certificate or application;
- (e) general conditions to be attached to licences required under this Act and further specific conditions which may be imposed by a licensing authority;
- (f) the returns to be made for the purposes of this Act;
- (g) the manner in which tobacco may be cured;
- (h) the movement of tobacco within Malawi;
- (i) any matter to be or which may be prescribed under this Act.

[Ch6502s37]37. Special Crops Act to prevail in case of conflict

When any tobacco or any class or grade of tobacco has been declared to be a special crop in relation to the whole or any part of Malawi under the Special Crops Act, then in respect of that area and of that tobacco or class or grade thereof, where the provisions of the Special Crops Act and any order made thereunder conflict with the provisions of this Act or of any regulations made thereunder, then the provisions of the Special Crops Act and any order made thereunder shall prevail. Cap. 65:01, Cap. 65:01

#### SUBSIDIARY LEGISLATION

#### DECLARATION OF SCHEDULED AREAS

under s. 2

G.N. 212/1971

The Minister has declared the following to be scheduled areas for the purpose of the Act—

NORTHERN REGION

CENTRAL REGION

SOUTHERN REGION

#### TOBACCO (REGISTERED GROWERS) REGULATIONS

under s. 12

G.N. 213/1970

121/1985

89/1986

101/1989

1. Citation

These Regulations may be cited as the Tobacco (Registered Growers) Regulations.

PART I

REGISTRATION OF TOBACCO GROWERS ON CUSTOMARY LAND

2. Interpretation

In this Part the expression "registering officer" means in respect of burley tobacco, dark-fired tobacco, sun-cured tobacco, fire-cured tobacco and oriental tobacco grown on customary land, the Agricultural Development and Marketing Corporation or its representative. G.N. 89/1986, 101/1989

3. Register of tobacco growers

Every registering officer shall keep a permanent register of persons registered to grow tobacco on customary land in his area in the form set out in the First Schedule.

4. Application for registration

Any person wishing to grow tobacco on customary land shall apply for registration to the registering officer of his area, on or before such date as the Minister may, in relation to any growing season, determine by a notice published in the Gazette, at such markets of the Agricultural Development and Marketing Corporation as the registering officer may appoint. The registering officer may require any applicant for registration to produce a tax receipt or some other means of identification. G.N. 89/1986

5. Certificate of registration and its surrender

Every person registered under this Part shall be issued with a certificate of registration in the form set out in the Second Schedule, which certificate shall remain valid until the last sale of tobacco by such person in the year following the issue of the certificate, after which the certificate shall be surrendered forthwith to the supervisor of the Agricultural Development and Marketing Corporation market at which such last sale was made, or, if the tobacco was sold to a person holding a tobacco buying licence or an authority from the Minister to buy tobacco grown on customary land, to such person.

6. Forwarding of surrendered certificate

Every person to whom a certificate of registration is surrendered under regulation 5 shall forthwith forward the same to the registering officer by whom such certificate was issued.

7. Grounds for refusal to register

(1) A registering officer may refuse to register any applicant for registration under this Part if, in his opinion, such applicant is not a fit and proper person to grow tobacco for all or any of the following reasons—

(a) that the land on which the applicant intends to grow tobacco, or the climatic conditions obtaining in the area, are not suitable for the purpose;

(b) that the applicant's methods and standards of cultivation, or of curing or handling tobacco are unlikely to produce leaf of an approved type and of reasonable quality;

(c) that the applicant does not give adequate consideration to the care and maintenance of the soil and timber resources available to him;

(d) that the applicant has inadequate or unsatisfactory curing accommodation at his disposal;

(e) that the applicant has been convicted of failing to uproot tobacco in breach of any notice under section 3 of the Act, or of any other offence against the Act or any regulations made thereunder;

(f) that the applicant has used or intends to use seed of a type not approved under section 5 of the Act, or has cured, or intends to cure, tobacco by a method other than that prescribed by the Tobacco (Method of Curing) Regulations;

(g) that the applicant is the husband or wife of a person to whom registration under this Part has already been refused.

(2) Any applicant aggrieved by a refusal to register under subregulation (1) may appeal to the Minister for the time being responsible for agriculture or any person authorized by him, whose decision shall be final.

#### 8. Conditions of certificate

It shall be a condition of every certificate of registration issued under regulation 5 that the applicant shall only sell the tobacco grown by him at the market specified in such certificate, or to the holder of a tobacco buying licence issued under the Act or to a person authorized by the Minister to buy tobacco grown on the area of customary land on which such applicant's tobacco has been grown.

#### 9. Record as quantity and quality of tobacco sold

(1) Every supervisor of a market or holder of a tobacco buying licence or person authorized by the Minister to buy tobacco grown on customary land who buys tobacco from a person registered under this Part shall enter on the back of the certificate of registration of such person any comments relevant to the condition and quality of such tobacco.

(2) The registering officer to whom a certificate of registration is sent under regulation 6 shall enter, in that part of the permanent register which refers to the holder of such certificate, particulars of the amount of tobacco sold by him during the preceding season and any relevant

comments regarding his fitness as a tobacco grower and the condition and quality of the tobacco sold by him recorded by the buyer of such tobacco.

## PART II

### REGISTRATION OF TOBACCO GROWERS ON PRIVATE OR PUBLIC LAND

#### 10. Register of tenants growing tobacco on private and public land

(1) The owner, lessee, occupier or manager of any private or public land shall keep a permanent register, in the form set out in the Third Schedule, of all tenants who grow tobacco for sale on such land. Such owner, lessee, occupier or manager shall be the registering authority for the purposes of this Part.

(2) A separate permanent register shall be kept by the registering authority in respect of each separate property owned, leased or managed by him.

(3) Any registering authority who fails to keep a permanent register in accordance with subregulations (1) and (2) shall be liable to a fine of K100.

#### 11. Inspection of permanent register

Every permanent register kept under regulation 10 shall be open at all reasonable times for inspection by Minister for the time being responsible for agriculture or any person authorized by him.

#### 12. Application for and certificate of registration

(1) Every person wishing to grow tobacco for sale as a tenant shall apply for registration to his registering authority on or before such date as the Minister may, in relation to any growing season, determine by a notice published in the Gazette. The Programme Manager of the relevant Agricultural Division may, on cause being shown, allow a registering authority to register growers after this date. G.N. 89/1986

(2) The registering authority shall issue to every person registered under this Part a certificate of registration in the form set out in the Fourth Schedule and shall complete the particulars required on such certificate.

(3) A certificate of registration under this Part shall be valid until the last sale of tobacco made by the holder thereof in the year following the issue of such certificate, after which the certificate shall be surrendered forthwith to the person who bought such tobacco, and such person shall forthwith forward the certificate to the registering authority who issued the same.

#### 13. Sale must be to licensed or authorized buyer

It shall be a condition of every certificate of registration issued under this Part that the applicant shall only sell the tobacco grown by him to the person licensed or authorized to buy tobacco grown on the land in question.

## PART III

MISCELLANEOUS

14. Offences

Any person who—

(a) fails to surrender a certificate of registration as required by regulation 5 or regulation 12 (3);

(b) sells tobacco in breach of a condition of his certificate of registration as prescribed by regulation 8 or regulation 13; or

(c) uses or attempts to use a certificate of registration which is, to his knowledge, invalid,

shall be liable to a fine of K100 and to imprisonment for three months.

FIRST SCHEDULE r. 3

No. ....

PERMANENT REGISTER OF TOBACCO) GROWERS

Chief ..... Village .....

Name ..... Registered area .....

Market of sale .....

Year	Endorsements and Remarks	kg sold
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SECOND SCHEDULE r. 5

CERTIFICATE OF REGISTRATION OF A TOBACCO GROWER

Weight

Date Sold Grade

Area of registration .....

Name of grower .....

Registered No. ....



Village .....  
Chief .....  
District .....  
Market of sale .....  
Day of Sale .....  
Date of issue .....  
Signature of registering officer .....

THIRD SCHEDULE r.10 (1)

PERMANENT REGISTER OF TOBACCO GROWERS REGISTERED TO GROW TOBACCO FOR SALE OF PRIVATE OR PUBLIC LAND G.N. 121/1985

Ref. No. Name Village Chief District Type of tobacco grown Hectarage

FOURTH SCHEDULE r. 12 (2)

CERTIFICATE OF REGISTRATION OF A TOBACCO GROWER ON PRIVATE OR PUBLIC LAND

Year ..... Name of estate ..... District .....  
No. ....  
Name .....  
Village .....  
Chief .....  
District .....  
Type of tobacco .....  
Hectarage .....  
Date of issue .....  
Signature of registering officer .....

TOBACCO (RATE OF CESS) ORDER

under s. 14

G.N. 176/1972

184/1972

120/1985

42/1986

1. Citation

This Order may be cited as the Tobacco (Rate of Cess) Order.

2. Rate of cess on tobacco

The rate of cess to be levied, paid and collected in respect of the tobacco specified in column 1 of the Schedule hereto shall be that respectively specified in column 2 of the said Schedule, whether such tobacco is sold in or exported from Malawi.

SCHEDULE G.N. 42/1986

Column 1

Coloumn 2

Type of Tobacco

Rate of Cess

1. All unmanufactured Flue-cured and Burley Tobacco 1.00 tambala per kilogram or part thereof

2. All unmanufactured Turkish Tobacco 0.485 tambala per kilogram or part thereof

TOBACCO (METHOD OF CURING) REGULATIONS

under s. 36

G.N. 212/1970

88/1986

1. Citation

These Regulations may be cited as the Tobacco (Method of Curing) Regulations.

2. Application

Within the areas specified in the Schedule all tobacco produced on customary land shall be cured by the method prescribed in the schedule in respect of such areas:

Provided that the Minister for the time being responsible for agriculture or any person authorized by him may, in his discretion, exempt any person from this regulation.

### 3. Exemption

Where any person is exempted from regulation 2, he shall be so informed in writing, or the fact that he has been so exempted shall be entered on his registration card issued to him under the Tobacco (Registered Growers) Regulations or any written law replacing or being in substitution for such Regulations.

### 4. Offence and penalty

Any person who cures tobacco in contravention of regulation 2 shall be liable to a fine of K100 and to imprisonment for three months.

## SCHEDULE

Area    Method of Curing

(a) Blantyre, Chiradzulu, Zomba, Mulanje and Thyolo Districts    Fired

(b) All Districts of the Central Region, except Ntcheu, Mchinji and Kasungu Districts    Dark    fired

(c) Mchinji, Kasungu, Ntcheu and Mangochi Districts    Sun/air

(d) Northern Region    Dark fired and Sun/air G.N. 88/1986

## TOBACCO (CONTROL OF MOVEMENT) REGULATIONS

under s. 36

G.N. 8/1971

### 1. Citation

These Regulations may be cited as the Tobacco (Control of Movement) Regulations.

### 2. Restriction of tobacco movement

(1) No tobacco shall be moved within Malawi between the hours of sunset and sunrise except such tobacco as is moved—

(a) for the purpose of sale at the established Agricultural Development and Marketing Corporation markets or for the purpose of sale to a person licensed to buy and resell tobacco under the Special Crops Act; Cap. 65:01

(b) by an owner who is in possession of an export permit issued under the Control of Goods Act to export such tobacco; Cap. 18:08

(c) by a person who is in possession of tobacco bought in accordance with section 10 of the Act;

(d) by a person licensed to grow and sell or to buy and resell tobacco under the Special Crops Act. Cap. 65:01

(2) Any person, tobacco transporter or carrier moving tobacco in accordance with subregulation (1) shall have in his possession such licence, permit or other document as may be necessary to establish compliance with the provisions of subregulation (1), and such licence, permit or other document shall be produced upon demand.

(3) Any person, tobacco transporter or carrier moving tobacco who fails, upon demand, to produce such licence, permit or document as required under subregulation (2) shall be deemed to be moving tobacco in contravention of subregulation (1) unless the contrary is proved.

### 3. Offence and penalty

When a person, tobacco transporter or carrier is found moving tobacco in contravention of regulation 2 such person, transporter or carrier shall be guilty of an offence and liable to a fine of K200 and to imprisonment for three months.

## TOBACCO (EXPORT) REGULATIONS

under s. 36

G.N. 9/1971

### 1. Citation

These Regulations may be cited as the Tobacco (Export) Regulations.

### 2. Restriction on export of tobacco

(1) No person shall export tobacco other than oriental (Turkish) tobacco or tobacco sold over the auction floors, in any year—

(a) unless he is in possession of an export permit issued under the Control of Goods Act; and Cap. 18:08

(b) until the Agricultural Development and Marketing Corporation has completed buying tobacco for that year.

(2) When the Agricultural Development and Marketing Corporation has completed buying tobacco in any year the Minister shall publish a notice in the Gazette requesting persons to apply for export licences in accordance with the provisions of the Control of Goods Act. Cap. 18:08

(3) Any person who exports tobacco in contravention of subregulation (1) shall be guilty of an offence and shall be liable to a fine of K200 and to imprisonment for three months.

[Chap6503]CHAPTER 65:03

CONTROL OF TOBACCO AUCTION FLOORS

ARRANGEMENT OF SECTIONS

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43 of 1970

9 of 1986

An Act to provide a Commission to control the tobacco auction floors, to confer powers and duties thereon and to make provision for matters incidental thereto or connected therewith

[10TH DECEMBER 1970]

PART I

PRELIMINARY

[Ch6503s1]1. Short title

This Act may be cited as the Control of Tobacco Auction Floors Act.

[Ch6503s2]2. Interpretation

9 of 1986In this Act, unless the context otherwise requires—

“auction floor buyer’s licence” means a licence to buy tobacco on the auction floors granted under section 21;

“auction floor licence” means a licence granted under section 18;

“commercial grading of tobacco” means the grading of tobacco by a grader;

“Commission” means the Tobacco Control Commission established under section 3;

“grader” means a person who carries on the business of grading tobacco for profit or gain but does not include a grower or buyer of tobacco who grades his own tobacco or any employee or servant of such a grower or buyer;

“registered seller” means a seller who is registered under section 23;

“tobacco” means un-manufactured tobacco, whether cured or uncured but does not include “*nicotiana rustica*” or oriental.

## PART II

### TOBACCO CONTROL COMMISSION

#### [Ch6503s3]3. Tobacco Control Commission

(1) There shall be a Commission to be known as the Tobacco Control Commission which shall be a body corporate having perpetual succession and a common seal and shall be capable of suing and being sued, and of purchasing and alienating land, and, subject to this Act, of performing all such acts and things as bodies corporate may by law perform.

(2) The Commission shall, in the exercise of its powers and the performance of its duties, under this Act or any other written law, be subject to the general or special directions of the Minister.

#### [Ch6503s4]4. Composition of Commission

(1) The Commission shall consist of the following members appointed by the Minister in his discretion—

- (a) a Chairman appointed by the Minister;
- (b) two members to represent the Agricultural Development and Marketing Corporation;
- (c) two members to represent the Tobacco Association;
- (d) two members to represent the Tobacco Exporters Association;
- (e) four members to represent tobacco farmers;
- (f) two members to represent the Government.



(2)(a) The members appointed under subsection (1) shall hold office during the Minister's pleasure and shall retire annually.

(b) Any members retiring as aforesaid shall be eligible for reappointment.

(3) Any member appointed under subsection (1) may resign by notice given in writing to the Minister, such resignation to take effect on the date specified in the notice, or 7 days after receipt of the notice by the Minister, whichever is the later.

#### [Ch6503s5]5. Meetings of Commission

(1) The Commission shall meet not less than twice in each year and at such other times as the Chairman shall direct.

(2) Five members of the Commission shall constitute a quorum. In the absence of both the Chairman and his alternate, the members present shall elect a Chairman.

(3) The Chairman of any meeting shall have a deliberative vote and, in the case of equality of votes, a casting vote.

(4) The members of the Commission shall be paid out of the funds of the Commission any reasonable expenses incurred by them in connexion with the business of the Commission.

#### [Ch6503s6]6. Appointment of secretary and other officers

The Commission may appoint a secretary and such other officers as it may consider necessary for assisting it in the proper execution of its duties and there shall be paid to such secretary or officers from the funds of the Commission such remuneration as the Commission may determine.

#### [Ch6503s7]7. Duties and powers of the Commission

(1) It shall be the duty of the Commission—

- (a) to advise the Government on the sale and export of tobacco;
- (b) to promote and expand the sale of tobacco;
- (c) to collate statistics relating to tobacco;
- (d) to distribute market studies and information relating to tobacco;
- (e) to control and regulate the sale of tobacco on the auction floors in Malawi.

(2) In addition to the other powers conferred upon it by this Act, the Commission shall, with the approval of the Minister, have power—

- (a) to acquire, lease or hire any property which it considers necessary for the purpose of exercising its functions;
- (b) to insure against losses, damages, risks and liabilities which it may incur;

(c) to enter into contracts in connexion with the exercise of its functions or the performance of its duties;

(d) to incur expenditure in the furtherance of any scheme for the better marketing of tobacco or for the development of external markets for tobacco.

[Ch6503s8]8. Protection of members of Commission

No member of the Commission shall be liable to any suit, claim or demand by reason of anything done in good faith or for any decision made in the rightful exercise of his discretion in his capacity as such member.

[Ch6503s9]9. Appeals from decisions of Commission

Any person aggrieved by a decision of the Commission in the exercise of its functions or the performance of its duties under this Act may appeal to the Minister, whose decision thereon shall be final and shall not be questioned in any court.

PART III

FINANCES OF COMMISSION

[Ch6503s10]10. Revenue of Commission

The revenue of the Commission shall include—

- (a) all charges levied by the Commission;
- (b) all other fees, cesses, dues or rents received by the Commission; and
- (c) the interest on money invested by the Commission.

[Ch6503s11]11. Bank accounts

Unless the Minister shall otherwise permit, all moneys received by the Commission shall be paid into a bank registered under the Banking Act and shall be credited to such of the Commission's accounts as may be appropriate. Cap. 44:01

[Ch6503s12]12. Investment of moneys by Commission

The Commission may invest all or any part of its moneys—

- (a) in the purchase of any security issued by the Government of Malawi;
- (b) in deposits in any bank or building society registered under the Banking Act or the Building Societies Act, as the case may be; or Cap. 44:01, Cap. 32:01
- (c) in such other manner as may be approved by the Minister and the Minister for the time being responsible for finance.

[Ch6503s13]13. Expenses of Commission

(1) The expenses of the Commission incurred in the execution of the functions, duties and powers conferred upon it, or in the discharge of any of its liabilities, shall be defrayed out of the funds of the Commission.

(2) The Commission may create such general and other reserves as may be approved by the Minister and may credit to such reserves such appropriations as may be authorized in the annual estimates of the Commission.

#### [Ch6503s14]14. Raising of loans by Commission

(1) It shall be lawful for the Commission from time to time to raise loans, whether by way of bank overdraft or otherwise, in such amounts and on such conditions as may be approved under the Finance and Audit Act, for the proper carrying out of this Act. Cap. 37:01

(2) Such loans may be secured on the property and revenues of the Commission, including any lands which may be specifically placed at the disposal of the Commission under any law:

Provided that this section shall not be deemed to confer any powers of alienating such lands other than such powers as may be conferred by any such law.

#### [Ch6503s15]15. Keeping of accounts

(1) The Commission shall cause a true account to be kept of all its financial transactions during each financial year.

(2) The Commission may keep such special accounts, including capital and renewals accounts, as it may consider necessary, and shall keep such further or other accounts as the Minister may from time to time direct.

(3) All accounts of the Commission shall be open to inspection by any member of the Commission.

#### [Ch6503s16]16. Audit of Commission's accounts

The accounts of the Commission shall be audited at the end of every one of the Commission's financial years by an auditor approved by the Minister.

#### [Ch6503s17]17. Financial year of Commission

The financial year of the Commission shall be such as may be prescribed by the Minister with the approval of the Minister for the time being responsible for finance.

### PART IV

#### AUCTION FLOOR LICENCES

#### [Ch6503s18]18. Licensed auction floors

(1) No person shall use any premises for the sale of tobacco by auction unless he holds a valid auction floor licence in respect of such premises in the prescribed form granted by the Minister and licensing such premises as a licensed auction floor.

(2) The grant to an applicant of an auction floor licence shall be made on payment of the prescribed fee, subject to the discretion of the Minister, bearing in mind the number of such licences which have already been granted in the year in respect of which the application for a licence is made.

(3) Every auction floor licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st day of December in the year in which it is granted.

(4) The Commission may, from time to time, after prior consultation with the holders of auction floor licences, and with the approval of the Minister, fix a tariff of weighing, selling and commission charges, which tariff shall be published in the Gazette, and it shall be a condition of every auction floor licence that the licensee's charges shall not exceed such tariff.

(5) If the holder of an auction floor licence or his manager or any other person employed by him for conducting the sale of tobacco on the auction floor to which such licence relates—

(a) fails to comply with, or contravenes, any condition to which the licence is subject; or

(b) is convicted of an offence against this Act, the Minister may, in his discretion—

(i) forthwith revoke such licence; or

(ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.

(6) No part of the fee paid for such licence shall be refunded on the cancellation, revocation or suspension of such licence.

(7) Any provision in any other Act which may require any person to hold a licence or permit to sell any article shall not apply to the holder of an auction floor licence or to his manager or to any other person employed by him for conducting the sale of tobacco on the licensed auction floor to which such licence relates in respect of the sale of such tobacco.

(8) Every holder of an auction floor licence shall comply with all lawful directions of the Commission and shall render to the Commission the prescribed returns.

(9) Whenever the Minister has reason to believe that sales on any auction floor are the subject of rigging or any other corrupt practice, or is otherwise satisfied that it is in the interests of fair trading so to do, he may order the holder of the auction floor licence concerned to suspend business on the auction floor until further notice.

[Ch6503s19]19. Minister may require holder of auction floor licence to give information

(1) The Minister may require any holder of an auction floor licence to disclose to him the amount of tobacco sold by such holder, or by his manager or other person employed by him, on behalf of any person, and the price for which such tobacco was sold, and any such holder who does not comply with such requirement or who, in complying with such request, knowingly or recklessly makes any false statement or gives any false information shall be guilty of an offence.

(2) The Minister shall treat any information given to him by reason of a requirement made under subsection (1) as confidential:

Provided that where the exercise of the Minister's powers under subsection (1) results in the disclosure of an alleged offence, such information may be used in the prosecution of such offence.

#### [Ch6503s20]20. Sale days and hours

(1) The Commission may from time to time appoint for each licensed auction floor days on which, or hours during which, tobacco of different type may be offered for sale, and it shall be a condition of every auction floor licence that tobacco may only be offered for sale on such days or during such hours.

(2) Any appointment made by the Commission under subsection (1) shall—

(a) be published by posting a copy in a prominent position at the licensed auction floor to which it applies and shall come into force upon the date of such publication;

(b) be broadcast as a public announcement by the Malawi Broadcasting Corporation.

#### [Ch6503s21]21. Tobacco sold on auction floors to be graded

No person shall sell tobacco on a licensed auction floor unless such tobacco has been graded in accordance with regulations made under this Act. Any person who contravenes this section shall be guilty of an offence.

### PART V

#### AUCTION FLOOR BUYER'S LICENCE

#### [Ch6503s22]22. Auction floor buyer's licence

(1) No person shall buy tobacco on a licensed auction floor unless he is the holder of a valid auction floor buyer's licence, in the prescribed form, granted by the Minister.

(2) The grant of an auction floor buyer's licence shall be at the discretion of the Minister and shall be subject to such conditions as the Minister may deem fit to impose.

(3) There shall be paid on the grant of an auction floor buyer's licence such fee as may be prescribed, and no part of such fee shall be repaid on the cancellation, revocation or suspension of such licence.

(4) An auction floor buyer's licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st December of the year in which it is granted.

(5) An auction floor buyer's licence may be granted to a company or partnership, and in any such case such company or partnership shall register with the Commission the name of every person who is authorized to buy tobacco in Malawi on its behalf, and every person so registered by any such company or partnership shall be deemed to be the holder of an auction floor buyer's licence.

(6) If the holder of an auction floor buyer's licence or any person who is deemed by virtue of subsection (5) to be the holder of such licence—

- (a) fails to comply with, or contravenes, any condition to which such licence is subject;
- (b) is convicted of an offence against this Act, the Minister may, in his discretion—
  - (i) forthwith revoke such licence; or
  - (ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.

(7) Where the holder of an auction floor buyer's licence has been convicted of an offence against this Act and the court has ordered the cancellation of such licence, or where such licence has been revoked by the Minister, the Commission may refuse to register such holder as a person authorized to buy tobacco in Malawi on behalf of a company or partnership which holds an auction floor buyer's licence.

(8) Every company or partnership holding an auction floor buyer's licence in accordance with subsection (5) shall render to the Commission the prescribed returns and shall comply with all lawful directions of the Commission.

(9) Any person who contravenes subsection (1) or who, being the holder of an auction floor buyer's licence, fails to comply with or contravenes any condition to which such licence is subject, shall be guilty of an offence.

## PART VI

### REGISTERED SELLERS

[Ch6503s23]23. Registration of tobacco sellers on the auction floors

(1) No person shall sell his tobacco on an auction floor unless he is registered as a seller by the Commission.

(2) Application for registration shall be made at such time to such persons in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.

(3) Any person who is aggrieved by the refusal of his application for registration may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

(4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.

(5) Upon the registration of such registered sellers under this section, the person keeping the register shall issue to such seller a certificate of registration in such form and subject to such conditions as may be prescribed:

Provided that such seller grows tobacco in accordance with Part 11 of the Tobacco Act within the scheduled areas declared under section 2 of the Tobacco Act. Cap. 65:02

## PART VII

### TOBACCO GRADERS AND GRADES

#### [Ch6503s24]24. Minister to define tobacco classes and grades

(1) The Minister shall from time to time define the classes and grades in which tobacco may be sold or bought.

(2) The classes and grades in which tobacco may be sold or bought shall be the same as those defined under section 11 of the Tobacco Act.

#### [Ch6503s25]25. No grading without prescribed licence

(1) No person shall carry on the business of a grader unless the Minister has issued to him such licence as may be prescribed.

(2) The Minister shall not license as a grader any person who is licensed as an auction floor buyer:

Provided that this subsection shall not come into operation until the Minister, by notice published in the Gazette, directs that it shall come into operation.

(3) Any person who carries on the business of a grader without a licence shall be guilty of an offence.

#### [Ch6503s26]26. Commercial grading premises shall be licensed

All premises where commercial grading of tobacco is carried out shall be licensed by the Commission after due consultation with the Minister.

#### [Ch6503s27]27. Appointment of grading inspectors

(1) With the approval of the Minister the Commission shall appoint a grading inspector or grading inspectors who will have the power of entry to all licensed commercial grading premises for the purpose of inspecting the premises themselves and the grading of tobacco on such premises.

(2) A grading inspector shall have power to open any bale of tobacco presented for sale at any licensed auction floor or at any commercial grading premises.

#### [Ch6503s28]28. Labelling of graded tobacco

(1) Every grader shall label distinctively each bale of tobacco graded by him with his licensed name and number for identification purposes.

(2) Any grader who wilfully fails to label his graded tobacco shall be guilty of an offence.

## PART VIII

## COMMISSION—GENERAL

### [Ch6503s29]29. Tobacco used in manufacture

(1) No person shall use for the purpose of manufacture for sale any tobacco grown in Malawi which has not been sold to such person or his agent across a licensed auction floor:

Provided that this section shall not apply to tobacco grown on customary land in excess of the requirements of the Farmers Marketing Board or of a person authorized to buy such tobacco under section 12 of the Tobacco Act and made by the grower into roll, twist, snuff, coil or ball tobacco for local sale or trade.

(2) Any person who uses tobacco for the purposes of manufacture in contravention of this section shall be guilty of an offence.

### [Ch6503s30]30. Commission may arrange for disposal of surplus tobacco

(1) If at any time the Commission deems fit, it may, with the written approval of the Minister, arrange for the collection of surplus tobacco into pools and for the disposal of such tobacco through the Commission.

(2) For the purposes of this section, “surplus tobacco” means tobacco delivered to a licensed auction floor for sale and remaining unsold and not removed therefrom after due notice given under section 31.

(3) The powers, duties and functions of the Commission under this section shall be such as may be prescribed by the Minister.

### [Ch6503s31]31. Power of Commission to authorize destruction of tobacco left on floor

If at any time the owner of any tobacco left unsold on a licensed auction floor has failed to remove such tobacco after receiving such notice to do so as the Commission may deem sufficient, the Commission may authorize the owner of such licensed auction floor to destroy such tobacco without liability to pay compensation to the owner of such tobacco.

## PART IX

## MISCELLANEOUS

### [Ch6503s32]32. Appeals

Any person aggrieved by a decision of the Commission may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

### [Ch6503s33]33. Hindrance of person performing duty

Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

### [Ch6503s34]34. Failure to produce document



Any person who refuses to produce for inspection a licence or other document issued under or required by this Act to any person authorized under the Act to inspect such licence or other document shall be guilty of an offence.

[Ch6503s35]35. Order prohibiting sale, etc., where licence, etc., believed violated

(1) Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence issued under Part IV, V and VII are not being complied with, he may issue an order prohibiting the sale, exchange, movement or grading of such tobacco until investigations therein have been completed.

(2) Any person who fails to comply with such an order shall be guilty of an offence.

[Ch6503s36]36. Power of entry

The Minister, a grading inspector or the Chairman of the Commission or any person authorized either by the Minister or by the Chairman of the Commission in writing in that behalf may enter upon any land or premises used for the purpose of buying or grading or handling tobacco for the purposes of ascertaining whether this Act is being complied with.

[Ch6503s37]37. Offences and penalties

(1) Any person who, in making any application under this Act or any return required by or under this Act, knowingly or recklessly gives false information or makes any false statement shall be guilty of an offence.

(2) Any person who is guilty of an offence against this Act shall be liable to a fine of K200 and to imprisonment for three months.

(3) When any person who holds a licence or permit under this Act is convicted of an offence against this Act, the Court may, in addition to any other penalty, order the cancellation of such licence or permit or order that any tobacco in respect of which an offence has been committed shall be forfeited.

[Ch6503s38]38. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the forms to be used for any licence, return or application;
- (b) the fees for any licence or application;
- (c) general conditions to be attached to licences required under this Act;
- (d) the returns to be made for the purposes of this Act;
- (e) the penalties for breaches of the regulations;
- (f) any matter to be or which may be prescribed under this Act.

## SUBSIDIARY LEGISLATION

### CONTROL OF TOBACCO AUCTION FLOORS (RETURNS AND LICENCES) REGULATIONS

under s. 38

G.N. 183/1971

44/1986

91/1986

#### 1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Returns and Licences) Regulations.

#### 2. Auction floor owner's licence

(1) Every auction floor licence shall be in Form I in the Schedule.

(2) Every owner of a licensed auction floor shall, on or before the 31st December in every year, render a return to the Secretary to the Commission in Form II in the Schedule, which return shall contain particulars of all tobacco purchased at his auction floor during the preceding season.

#### 3. Auction floor buyer's licence

(1) Every application for an auction floor buyer's licence shall be in Form III in the Schedule.

G.N. 91/1986

(2) Every auction floor buyer's licence shall be in Form IV in the Schedule.

(3) There shall be paid on the grant of an auction floor buyer's licence a fee of K500.

#### 4. Return by auction floor buyer

Every holder of an auction floor buyer's licence shall render to the Secretary to the Commission, on or before the 15th January in every year, a return in Form V in the Schedule setting forth details of every purchase of tobacco by him during the preceding season together with particulars of the manner of disposal of every such purchase of tobacco.

#### 5. Permit to export tobacco

(1) Every permit to export tobacco shall be in Form VI in the Schedule. G.N. 91/1986

(2) A fee of K10 shall be paid in respect of every permit to export tobacco.

#### 6. Import permit

Every permit to import tobacco shall be in Form VII in the Schedule.

#### 7. Returns by tobacco growers

(1) Every grower of tobacco shall, when required so to do by either the Minister or the Commission, submit to the Minister or the Commission, as the case may be, a return, in Form VII in the Schedule, of the estimated production of tobacco by him in the current season on every estate or area of land owned or used by him for the purpose of growing tobacco, together, with particulars of any tobacco sold by him during the current season.

(2) Every return required under subregulation (1) shall be completed and sent to the Minister or the Secretary to the Commission within 21 days of the despatch of the requisition therefor by the Minister or the Commission, as the case may be.

8.

(1) If any person fails to comply with these Regulations, the Minister may cancel his registration as a seller of tobacco under the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971. Sub. leg. p. 27

(2) Any person who fails to comply with these Regulations or who wilfully or recklessly makes any false statement in any return required to be made thereunder shall be liable to a fine of K100.

SCHEDULE

FORM I

CONTROL OF TOBACCO AUCTION FLOORS ACT (CAP. 65:03)

AUCTION FLOOR LICENCE No.....

Licence is hereby granted to .....

of ..... to use the premises situated at ..... as a licensed auction floor, subject generally to the Control of Tobacco Auction Floors Act and in particular to section 18, and to the following special conditions—

(1) A summary of sales shall be submitted daily and weekly in such forms as required by the Minister from time to time.

(2) .....

This licence expires on the 31st December, 19 .....

FEE: K1,000

.....

Minister of Agriculture

FORM II

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

RETURN

To: The Secretary,

Tobacco Control Commission, P.O. Box 5080, Limbe.

I/We, being the Owners of the ..... Auction Floor submit herewith a return of purchases of tobacco by licensed buyers on the above-mentioned auction floor during the year 19 .....

Name of Buyer Amount purchased in lb.

Flue-cured	Fire-cured	Air or Sun-cured	Burley
------------	------------	------------------	--------

Northern Division	Southern Division
-------------------	-------------------

.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

TOTALS

The average price per lb. was Flue-cured .....

Fire-cured N. Division .....

Fire-cured S. Division .....

Air or Sun-cured .....

Burley .....

Signature .....

Date .....

FORM III

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

APPLICATION FOR AUCTION FLOOR BUYER'S LICENCE

To: The Secretary,

Tobacco Control Commission, P.O. 5080, Limbe.

I/We ..... of ..... hereby apply for a licence to purchase tobacco on the ..... Auction Floor during the year ending 31st December, 19 .....

The fee of K100 is enclosed.

The following persons will be authorized to buy tobacco under the licence—

Names of buyers .....

.....  
.....  
.....

Signature .....

Address .....

Date .....

FORM IV

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

AUCTION FLOOR BUYER'S LICENCE

Licence is hereby granted to .....

of ..... to purchase tobacco subject to the Control of Tobacco Auction Floors Act on licensed auction floors during the year ending 31st December, 19 .....

The grant of this licence is subject to the following conditions—

(a) that you undertake to make arrangements for the removal of any purchase made by you at a sale before you commence to bid on an auction floor;

(b) .....

(c) .....

(d) .....

The under-mentioned persons are authorized to buy tobacco under this Licence—

Names of buyers .....

.....

.....

FEE: K100

Date .....

.....

Minister of Agriculture and

Natural Resources

FORM V

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

RETURN OF TOBACCO ON HAND

To: The Secretary,

Tobacco Control Commission, P.O. Box 5080, Limbe.

PURCHASES ON HAND

I/We certify that the following quantities of tobacco remained on hand for export at 31st December of last year for which I/we shall require an export permit—

A B

Green Stocks Packed Weight Stocks Total Equivalent Green Weights of A and B

Flue-cured .....

Fire-cured .....

Sun/Air cured .....

Burley .....

Signature .....

Address .....

Date .....

This return should be submitted not later than 15th January annually.

FORM VI

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

PERMIT TO EXPORT FROM MALAWI TOBACCO PURCHASED OVER A LICENSED AUCTION FLOOR IN MALAWI

Permission is hereby granted to ..... of ..... to export tobacco purchased over a licensed auction floor during the year 19 .....

This permit is issued subject to the following conditions—

(a) details of shipment giving—

- (1) type of tobacco (if fire-cured, specify whether Northern or Southern Division);
- (2) whether leaf, strips, scrap or stems;
- (3) weight—(a) dry weight—(b) equivalent green weight;
- (4) f.o.r. value; and
- (5) destination

shall be supplied under confidential cover to the Secretary, Tobacco Control Commission, not later than the 15th of each month for railings during the previous month;

(b) .....  
.....

This permit expires on the ..... day of ....., 19 .....

FEE: 50t paid

Date .....

Licence No. ....

FORM VII

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

PERMIT TO IMPORT TOBACCO

Permission is hereby granted to ..... of ..... to import tobacco into Malawi for sale on licensed auction floors during the year of .....

This permit is subject to the holder complying with the Control of Tobacco Auction Floors Act, the Tobacco Act, the Customs and Excise Act, and any subsidiary legislation thereunder.

This Permit expires on the 31st December, 19 .....

Date .....

Permit No.....

FORM VIII

CONTROL OF TOBACCO AUCTION FLOORS ACT G.N. 44/1986, 91/1986

(CAP. 65:03)

ESTIMATE

MARCH RETURN:

MAY RETURN:

To: Tobacco Control Commission

P.O. Box 5080, Limbe

I/We estimate that the following quantity(ies) of tobacco will be produced on my/our estate known as ..... in the ..... District during the 19 ..... season—

Amounts in kg Area in hectares

Flue cured .....

Fire cured .....

Signature .....

Date .....

Name and address

.....

JUNE RETURN:



JULY RETURN:

To: Tobacco Control Commission

P.O. Box 5080

Limbe

I/We estimate that the following quantity(ies) of tobacco will be produced on my/our estate known as ..... in the ..... District during the 19 ..... season—

Amounts in kg Area in hectares

Fired cured .....

Air and sun cured .....

Oriental .....

Dark fired .....

Signature .....

Date .....

Name and address

.....

.....

.....

NOTES—(1) This, return ,includes tobacco already sold during the current season.

(2) A separate return is required for each estate in respect of the March return, which must be submitted by 1st April. If any grower is in any difficulty in framing this estimate, the hectarage to be planted multiplied by the average production during past years will give a sufficiently accurate estimate.

(3) Growers are advised that a return in which the estimates for firecured and sun/air-cured are bracketed together will not be accepted by the Commission. Growers must state the quality of each type they are likely to produce and the probable hectarage; any variation in the weight of either type actually produced and the hectarage can be corrected in the June and July returns.

(4) With regard to the June and July returns, these must be submitted by the 1st June and 1st July respectively. The estimates in these cases need not be rendered for each estate separately, but the total production and hectarage should be given for each type of tobacco being produced, whether any tobacco has been sold or not.

(5) Failure by a grower to render these returns by the due date may lead to a cancellation by the Commission of the registration as a seller of tobacco of such grower until such time as the Commission may think fit.

FORM IX

CONTROL OF TOBACCO AUCTION FLOORS ACT G.N. 91/1986

(CAP. 65:03)

GRADER'S LICENCE

Licence is hereby granted to ..... of ..... to carry on the business of grading tobacco on the premises specified below for growers for the period commencing on the 1st January, 19.... and terminating on the 31st December, 19.... for which licence the sum of K200 has been paid.

The licence is issued subject to the observance by the licensee of the Regulations issued from time to time by the Minister under section 38 of the Control of Tobacco Auction Floors Act.

Premises:

Date ..... ..

Minister of Agriculture

CONTROL OF TOBACCO AUCTION FLOORS (GRADING) REGULATIONS

under s. 38

G.N. 184/1971

86/1973

40/1986

1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Grading) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“funked” used with reference to tobacco means that the tobacco has no visible sign of mould, but is known to have been mouldy or has an aroma characteristic of tobacco which has been or is about to become mouldy;

“mixed bales” means bales of tobacco containing only one type of tobacco of different grades;

“scrap” means any tobacco which does not conform to any of the grades set forth in the Schedule or to the description of “strip tobacco” and shall consist of portions of leaf free from loose stem and any foreign matter or tobacco dust;

“split bales” means bales of tobacco containing one type of tobacco of not more than two different grades and packed so that each grade is separately divided from the other;

“strip tobacco” means clean and sound tobacco leaf having the midrib removed therefrom so as to leave not more than one quarter of the midrib remaining at the tip of the leaf.

### 3. Grading before sale

No person shall send any tobacco for sale to a licensed auction floor unless such tobacco has been graded into one of the categories set forth in the Schedule or it is “strip” tobacco or “scrap”:

Provided that a bale of tobacco may be packed with a majority of leaves of mouldy, carbonized or funky tobacco, if the bale is declared upon consignment and sale to be “mouldy”, “carbonized” or “funky”, as the case may be.

## SCHEDULE G.N. 40/1986

### TOBACCO GRADES

#### FIRE CURED AND SUN/AIR CURED:

1. Heavy Bodied Wrapper (a) over 0.58 m (Fully ripe, not torn, without perish or disease)
  - (b) 0.53 m to 0.58 m
  - (c) 0.48 m to 0.53 m
  - (d) 0.41 m to 0.48 m
2. Thin Bodied Wrapper (a) over 0.58 m (Fully ripe, not torn, without perish or disease)
  - (b) 0.53 m to 58 m
  - (c) 0.48 m to 0.53 m
  - (d) 0.41 m to 0.48 m
3. Heavy Bodied Filler (a) over 0.58 m (Fully ripe, not torn, without perish or disease)
  - (b) 0.53 m to 0.58 m
  - (c) 0.48 m to 0.53 m

- (d) 0.41 m to 0.48 m
- (e) 0.30 m to 0.41 m (Thick and Thin Bodied disease)
- (f) 0.20 m to 0.30 m
- 4. Thin Bodied Filler (a) over 0.58 m (Fully ripe, not torn, without perish or disease)
  - (b) 0.53 m to 0.58 m
  - (c) 0.48 m to 0.53 m
  - (d) 0.41 m to 0.48 m
- 5. Mottled Filler (a) over 0.48 m (Mottled and Light Coloured Filler, not badly torn, without perish or disease)
  - (b) under 0.48 m
- 6. Greenish Filler (a) over 0.58 m (A greenish cast or running green, not badly torn, without perish or disease)
  - (b) 0.53 m to 0.58 m
  - (c) 0.48 m to 0.53 m
  - (d) 0.41 m to 0.48 m
  - (e) 0.30 m to 0.41 m
- 7. Heavy Bodied Torn Filler (a) over 0.48 m (Fully ripe, torn, without perish or disease)
  - (b) under 0.48 m
- 8. Light Bodied Torn Filler (a) over 0.48 m (Fully ripe, torn, without perish or disease)
  - (b) under 0.48 m
- 9. Non-descript (a) over 0.48 m (Ripe, badly torn, perish or disease, etc.)
  - (b) under 0.48 m
- 10. Hard Green over 0.48 m (Greenish, badly torn, perished, diseased, etc., and all qualities of hard green)
- 11. By-products (a) Strips (Means clean and sound tobacco having the midrib removed so as to leave not more than one-quarter of the midrib remaining at the top of the leaf)
  - (b) Scrap (Consists of portions of leaf that will not pass through 0.03 m mesh or sieve; free from foreign matter and dust)

(c) Fine Scrap (Consists of pieces of tobacco that will pass through a 0.03 m mesh or sieve, but not through a 0.01 m one and must be free from dust, loose stem and foreign matter)

(d) Nicotine Dust (Consists of pieces of tobacco which are not big enough to be included in the "Fine Scrap" classification)

## BURLEY

### Grade No.

1FC	Coloury over 0.48 m	Good texture and without blemish, green or damaged leaf
1FCR	Light red over 0.48 m	Good texture and without blemish, green or damaged leaf
2FC	Coloury over 0.48 m	Torn, blemished and perished leaf
2FCR	Light red over 0.48 m	Torn, blemished and perished leaf
2FCW	Coloury and tan over 0.48 m	Waterstained leaf
3FC	Coloury under 0.48 m	Good texture and without blemish, green or waterstained leaf
3FCR	Light red under 0.48m	Good texture and without blemish, green or waterstained leaf
4FC	Coloury under 0.48 m	Torn, blemished and perished leaf
4FCR	Light red under 0.48 m	Torn, blemished and perished leaf
4FCW	Coloury and tan under 0.48 m	Waterstained leaf
1C	Coloury over 0.58 m	Good texture and without blemished, green or damaged leaf
1CR	Light red	Good texture and without blemished, green or damaged leaf
1R	Red	Good texture and without blemish, green or damaged leaf
1CS	Coloury over 0.58 m	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1CSR	Light red	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1RS	Red	Slightly blemished, slightly torn, but not perished. No green or waterstained leaf
1CSB	Coloury over 0.58 m	Spotted, slightly torn leaf but not perished, green or waterstained
1CRSB	Light red	Spotted, slightly torn leaf but not perished, green or waterstained

1RSB Red Spotted, slightly torn leaf but not perished, green or waterstained

2C Coloury 0.48 m to 0.58 m Same quality as 1C, 1R, 1R

2CR Light red Same quality as 1C, 1R, 1R

2R Red Same quality as 1C, 1CR, 1R

2CS Coloury 0.48 m to 0.58m Same quality as 1CS, 1CRS and 1RS

2CRS Light red Same quality as 1CS, 1CRS and 1RS

2RS Red Same quality as 1CS, 1CRS and 1RS

2CSB Coloury 0.48 m to 0.58 m Same quality as 1CSB, 1CRSB and 1RSB

2CRSB Light red Same quality as 1CSB, 1CRSB and 1RSB

2RSB Red Same quality as 1CSB, 1CRSB and 1RSB

3C Coloury 0.41 m to 0.48 m Same quality as 1CS, 1CRS and 1RS

3CR Light red Same quality as 1CS, 1CRS and 1RS

3R Red Same quality as 1CS, 1CRS and 1RS

3CB Coloury 0.41 m to 0.48 m Same quality as 1CSB, 1CRSB and 1RSB

3CRB Light red Same quality as 1CSB, 1CRSB and 1RSB

3RB Red Same quality as 1CSB, 1CRSB and 1RSB

4C Coloury 0.30 m to 0.41 m Same quality as 1CS, 1CRS and 1RS

4CR Light red Same quality as 1CS, 1CRS and 1RS

4R Red Same quality as 1CS, 1CRS and 1RS

4CB Coloury 0.30 m to 0.41m Same quality as 1CSB, 1CRSB and 1RSB

4CRB Light red Same quality as 1CSB, 1CRSB and 1RSB

4RB Red Same quality as 1CSB, 1CRSB and 1RSB

5C Coloury 0.23 m to 0.30 m Sound and torn leaf but not shattery, perished, green or waterstained

5R Red Sound and torn leaf but not shattery, perished, green or waterstained

6C Coloury Torn and blemished leaf without green or waterstained

6CR Light red Torn and blemished leaf without green or waterstained

6R Red Torn and blemished leaf without green or waterstained

7C	Coloury under m 0.48	Same as 6
7CR	Light red	Same as 6
7R	Red	Same as 6
8C	Coloury over 0.48 m	Shattery and blemished leaf without green or waterstained
8R	Red	Shattery and blemished leaf without green or waterstained
9C	Coloury 0.30 m to 0.48 m	Same as 8
9R	Red	Same as 8
10RC	Coloury over 0.48 m	Greenish leaf without waterstained
10GR	Red	Greenish leaf without waterstained
11GC	Colour 0.30 m to 0.48 m	Same as 10
11GR	Red	Green
12	Over 0.48 m	Black, waterstained, perished and green
13	Under 0.48 m	Same as 12
14	Coloury Strips	
15	Red	Strips
16	—	Scrap
17	Mottled (red)	Over 0.48 m
18	Mottled (red)	Under 0.48 m
19	Mottled (light red)	Over 0.48 m
20	Mottled (light red)	Under 0.48 m
21	Mottled (coloury)	Over 0.48 m
22	Mottled (coloury)	Under 0.48 m
23	Mottled (yellow)	Over 0.48 m
24	Mottled (yellow)	Under 0.48 m

#### DESCRIPTION OF FLYINGS

F—Flyings consist of leaf normally grown at the bottom of the stalk. Usually numbering from three to five leaves. Relatively thin and fluffy leaves which show the highest degree of maturity.

COLOUR—Coloury and light tan

SPECIAL FACTORS

F — Flyings

C — Coloury

CR — Light red or tan

S — Slightly blemished and torn

B — Spotted and slightly torn

W — Waterstained

FLUE-CURED

NOTE— In the grades of flue-cured tobacco described below only leaf of an approximately similar length may be tied in the same hand. Hands of both short leaf and long leaf of the same grade must not be baled together. Where hands consist of leaves of the same grade of 0.30 m or over, there must not be a discrepancy of more than 0.13 m in length between the leaves, and discrepancy of not more than 0.08 m between the leaves where the hands consist of leaves under 0.30 m in length.

No. of Grades

WRAPPER GRADES 3

WL WO WR

LEAF GRADES 66

L1L L10 L1R

L2L L20 L2R L2S

L3L L30 L3R L3S L3D L3LK L30K L3RK L3KR

L4L L40 L4R L4S L4D L4LK L40K L4RK L4KR

L5L L50 L5R L5S L5D L5LK L50K L5RK L5KR

L2LF L20F L2RF L2LV L20V

L3LF L30F L3RF L3LV L30V L3RV L3GL L3GO L3GR L3M

L4LF L40F L4RF L4LV L40V L4RV L4GL L4GO L4GR L4M

L5LF L50F L5RF L5GL L5GO L5GR L5M



LEAF GRADES (SHORT) 8

TL TLK TGL

TO TOK

TR TRK TGR

SMOKING LEAF GRADES 13

H1L H10

H1L H20

H3L H30 H3R

H4L H40 H4R

H5L H50 H5R

CUTTER GRADES 28

C1L C10

C2L C10

C3L C30 C3LF C30F C3LV

C4L C40 C4LF C40F C4LK C40K C4LV C40V C4M

C5L C50 C5LF C50F C5LK C50K C5KR C5LV C50V C5M

LUG GRADES 36

X1L X10

X2L X20 X2LF X20F X2LV X20V

X3L X30 X3LF X30F X3LK X30K X3LV X30V X3G

X4L X40 X4LF X40F X4LK X40K X4KR X4LV X40V X4G

X4M X5L X50 X5LF X50F X5LK X50K X5G X5M

PRIMINGS 22

P2L P20 P2LF P20F

P3L P30 P3LF P30F P3G

P3L P40 P4LF P40F P4G P4K

P5L P50 P5LF P50F P5G P5K P5M

STRIPS 13

A1L A10 A1R A1G

A2L A20 A2R A2G

A3L A30 A3R A3G A3M

SCRAP 4

BL BO BR BO

NON-DESCRIPT

N1L N1GL 2NA (Strips)

N10 N1GO NB (Scrap)

N1D N1GD

N1K

TOTAL GRADES 203

#### KEY TO STANDARD GRADE MARKS

Groups	Qualities	Colours
W	— Wrappers 1 — Fine	L — Lemon
L	— Leaf 2 — Choice	O — Orange
T	— Short leaf 3 — Good	R — Light Mahogany
H	— Smoking leaf 4 — Fair	S — Dark Mahogany
C	— Cutters 5 — Low	D — Walnut
X	— Lugs	KR — Dappled red
P	— Primings	G — Green
A	— Strips	
N	— Non-descript	

SPECIAL FACTORS

F — High Maturity (in leaf, cutter, lug and priming grades only)

V — Greenish

GL — Green tobacco on the Lemon Side                      in Leaf Grades only

GO — Green tobacco on the Orange Side

GR — Green tobacco on the Mahogany Side

K — Variegated (grey, slick, slatey or unnatural colour shade)

LL — Loose Leaf

M — Mixed (lacking in uniformity to the extent of 35 per cent or more)

U — Unsound (damaged, mouldy, funky)".

## CONTROL OF TOBACCO AUCTION FLOORS (DELIVERY QUOTAS) REGULATIONS

under s. 38

G.N. 185/1971

90/1986

### 1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Delivery Quotas) Regulations.

### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“licensed auction floor” means an auction floor licensed for the purposes of selling tobacco under section 18 of the Act;

“registered seller” means a person who is registered as a tobacco seller in accordance with section 23 of the Act.

### 3. Registration of sellers

(1) Any person wishing to sell tobacco on an auction floor shall apply to the Commission in writing for registration as a registered seller.

(2) When the Commission registers a person as a registered seller it shall allocate to him a registration number, which number shall be used by the registered seller as an identity mark on every consignment of tobacco which he sells on an auction floor.

4. Payment instructions

Immediately upon the receipt by him of the registration number allocated to him by the Commission, every seller shall forward to the owner of the auction floor at which he intends to deliver tobacco for sale payment instructions in the form set forth in the Schedule, which payment instructions shall be complied with by the owner of the licensed auction floor to which those instructions are forwarded unless the Commission is satisfied that the same are, or are calculated to be, confusing.

5. Quota

(1) The Commission may allocate to every registered seller a quota expressed in terms of bales of tobacco.

(2) During such periods as the Commission may determine, no registered seller shall deliver tobacco to an auction floor for sale in excess of the quotas allocated to him under subregulation (1).

6. Return in writing of deliveries

(1) Upon his being required so to do in writing by either the Minister or by the Commission, every holder of an auction floor licence shall furnish daily to the Minister or the Commission a return in writing of deliveries of tobacco for sale received at his premises from registered sellers and from commercial tobacco-grading firms acting as agent for registered sellers during the 24-hour period ended at 12 o'clock mid-night on the day next preceding the day on which the return is required to be made. G.N. 90/1986

(2) Upon his being required so to do in writing by the Minister or the Commission, every holder of an auction floor licence shall, within such period as the Minister or the Commission may specify, submit a return in writing of deliveries of tobacco for sale received at his premises in every year from registered sellers and from commercial tobacco-grading firms acting as agents for registered sellers.

7. Excess tobacco

(1) The holder of an auction floor licence shall not retain or store at his premises any tobacco delivered thereto for sale by or on behalf of a registered seller which exceeds the quota allocated to him under regulation 5(1).

(2) Any registered seller and any commercial tobacco-grading firm acting as agent for a registered seller who delivers tobacco for sale to an auction floor in excess of the quota allocated to the registered seller under regulation 5 (1) shall remove such excess within 24 hours of the time of delivery thereof at the auction floor.

(3) If a registered seller or a commercial tobacco-grading firm, as the case may be, fails to comply with subregulation (2), the holder of the auction floor licence in respect of the auction floor to which such excess was delivered shall return the excess to the registered seller or commercial tobacco-grading firm, as the case may be, at the risk and expenses of the registered seller.

(4) Notwithstanding anything contained in subregulations (1), (2) and (3) the Commission may, if it thinks fit, permit such excess to be retained or stored by the holder of an auction floor licence subject to such conditions as it may impose.

8. Measurement of quota

(1) Every bale of tobacco which is delivered for sale to an auction floor by a registered seller or by a commercial tobacco grading firm acting as agent for a registered seller on and after a date on which quotas are allocated under regulation 5 (1) shall form part of the quota allocated to such seller, whether such bale be subsequently withdrawn from sale or not:

Provided that no bale of tobacco which is delivered to an auction floor for sale on or after the date on which quotas were allocated shall count as part of registered seller's quota if such bale had been delivered to and accepted by a railway company or road transport contractor for delivery to such auction floor prior to such date.

(2) Regulation 7 (2), (3) and (4) shall apply mutatis mutandis to a bale of tobacco which is withdrawn from sale for any reason whatsoever.

9. Limit on amount stored

The Commission may from time to time fix the quantity of tobacco for sale which may be stored at any one time at an auction floor, and no tobacco in excess of such quantity shall be so stored: G.N. 90/1986

Provided that this regulation shall not apply to tobacco which is rejected or withdrawn from sale.

SCHEDULE

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

CONTROL OF TOBACCO AUCTION FLOORS (DELIVERY QUOTAS) REGULATIONS, 1971 Sub. leg. p. 27

PAYMENT INSTRUCTIONS

To: .....  
.....  
.....

(Insert name and address of owner of licensed auction floor)

Dear Sir,

\*I/We hereby direct that all payments when due to me/us\* in respect of my/our\* tobacco sold by you, under registered number/numbers\* ..... be paid—

\*(a) To me/us\* direct.

\*(b) To my/our\* account at .....

\*(c) To .....

These instructions shall continue in effect throughout the year 19 ..... unless earlier revoked.

Yours faithfully,

Signature .....

Designation .....

Full Name of Registered Grower

.....

Address .....

Date .....

NOTE—No payments will be made until this form is received by the owner of the licensed auction floor.

#### CONTROL OF TOBACCO AUCTION FLOORS (LICENSED AUCTION FLOORS) REGULATIONS

under s. 38

G N. 186/1971

92/1975

41/1986

#### 1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Licensed Auction Floors) Regulations.

#### 2. Interpretation

In these Regulations, unless the context otherwise requires—

“funked” used with reference to tobacco means that the tobacco has no visible sign of mould, but is known to have been mouldy or has an aroma characteristic of tobacco which has been or is about to become mouldy;

“licensed auction floor” means an auction floor licensed for the purpose of selling tobacco under section 18 of the Act;

“loose leaf” means sound leaf tobacco which is packed without being tied in hands;

“nest” with its grammatical variations means the packing of tobacco into bales in such a manner as to be calculated to deceive the buyer thereof as to the nature and quality of the contents thereof;

“sales supervisor” means the person authorized by the Commission to supervise sales of tobacco on licensed auction floors;

“starter” means the employee of an owner of a licensed auction floor who is authorized to place an approximate value on tobacco offered for sale on such auction floor.

### 3. Duties of owners

Every owner of a licensed auction floor shall ensure that—

(a) reasonable care is used in the handling and storing of tobacco at the licensed auction floor and that bales of tobacco are laid on the floor and placed in such a manner as the Commission may from time to time require;

(b) suitable storage facilities are available for tobacco awaiting sale at all times during the tobacco selling season and that such storage facilities are used exclusively for the storing of tobacco awaiting sale during that season;

(c) fertilizers, insecticides, fungicides and other substances which are liable to contaminate tobacco are not stored or kept in any place where tobacco is, or is to be stored or offered for sale;

(d) covered bays are provided for the loading and unloading of tobacco at the licensed auction floor to the satisfaction of the Commission;

(e) accounts in respect of purchases of tobacco at the licensed auction floor are presented to the buyers thereof not later than 9.30a.m. on the day following the sale of such tobacco at the licensed auction floor;

(f) bales of tobacco are properly sewn up after they have been put up for auction;

(g) coupon tickets are securely attached to each bale showing the amount bid per kilogram of tobacco in any bale, the weight thereof and the name of the buyer; all disputes concerning the weight of any bale of tobacco where the discrepancy amounts to three kilograms or more shall be referred to the Commission by the sales supervisor not later than two o'clock in the afternoon on the day next following the day on which the tobacco which is the subject of the dispute was sold;

(h) all tobacco is weighed not more than 72 hours before the day on which it is sold;

(i) any interest which the auctioneer, any employee of the auctioneer and any buyer (other than in his capacity as a buyer) has in any tobacco which is to be sold at the licensed auction floor is disclosed to every interested person prior to the time of the sale;

(j) such packing materials as the seller may specify are returned to him as soon as is practicable after the same shall have been returned to the owner of the licensed auction floor by the buyer under regulations 16 and 17;

(k) payment after the deduction of authorized charges is made to the seller of any tobacco not later than 24 hours after the same shall have been sold if the seller has previously delivered payment instructions in accordance with regulation 4 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971;

(l) no bid is accepted from a buyer who has failed to settle his amount in accordance with regulation 16 (1) (a) or has not made an arrangement for settlement satisfactory to the seller.

#### 4. Records

(1) Every owner of a licensed auction floor shall keep a book in a form approved by the Commission in which shall be entered the number of bales of tobacco received in each day from each seller for sale on the auction floor together with the name of the seller and the registered number allocated to the seller under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations, 1971. Sub. leg. p. 27

(2) Every entry made in the book referred to in subregulation(1) shall be made in the order in which each bale of tobacco is received and such tobacco shall be sold in that order according to its type.

(3) No tobacco which is received at a licensed auction floor after 5 p.m. on the day preceding a sale shall be sold at the sale on the day next following its receipt except with the permission of the sales supervisor.

(4) No tobacco shall be withdrawn from sale by the seller from the sale to which it has been allocated by the owner of the licensed auction floor except with the permission of the sales supervisor.

#### 5. Liability for loss

The owner of a licensed auction floor shall be liable for any loss occasioned to the seller or the buyer, as the case may be, of any tobacco auctioned by error by himself, his servants or agents and shall make good any loss occasioned thereby.

#### 6. Packing

(1) Every bale of tobacco consigned to a licensed auction floor shall be packed with uncontaminated tobacco in good handling and keeping condition: G.N. 41/1986

Provided that a bale of tobacco may be packed with a majority of leaves of mouldy, carbonized or funky tobacco, if the bale is declared upon consignment and sale to be "mouldy", "carbonized" or "funky", as the case may be.

(2) Every bale of tobacco shall be properly packed so as to facilitate the inspection and storage thereof and, in particular, shall be—



(a) wrapped in hessian or such other material as the Commission may from time to time approve;

(b) sewn with cotton twine or such other material as the Commission may from time to time approve, so that no single stitch exceeds 0.08 metre in length and that no gap between stitches exceeds 0.08 metre in length, which stitches shall be locked on the sides of the bale as near to the corners as is practicable.

## 7. Specifications

(1) Except with the permission of the sales supervisor all tobacco which is intended for sale at a licensed auction floor shall be packed in bales of a size of 0.91 metre by 0.61 metre or 0.76 metre by 0.76 metre with a depth not exceeding 0.61 metre. G.N. 92/1975, 41/1986

(2) No bale of tobacco intended for sale at a licensed auction floor shall weigh more than 108 kilograms or less than 22.5 kilograms.

(3) The size of hands of graded tobacco intended for sale at a licensed auction floor shall be not less than 0.03 metre and not more than 0.04 metre across the butt and the depth of the tie shall be not less than 0.04 metre and not more than 0.05 metre.

(4) The tobacco leaf used in tying a hand of graded tobacco shall be leaf of the same grade as the tobacco contained in the hand.

(5) Sound leaf tobacco of or exceeding 0.20 metre in length shall not be baled as loose leaf tobacco.

(6) Tobacco packed as tied leaf, loose leaf or as tobacco strip shall be straight laid in packing.

(7) Every seller shall cause the registered number allocated to him under regulation 3 of the Control of Tobacco Auction Floors (Delivery Quotas) Regulations 1971 to be stencilled on two sides and on one side end of each bale of tobacco which he delivers for sale to a licensed auction floor in characters not less than 0.08 metre in height. Sub. leg. p. 27

(8) Split bales of tobacco containing not more than two different grades of tobacco may be offered for sale if the minimum weight thereof is not less than 22.50 kilograms and not more than 108 kilograms and the word "split" is clearly printed and prominently displayed on any such bale and it is declared as being a "split" bale at the time it is put up for auction.

(9) "Mixed" bales of tobacco which contain only one type of tobacco may be offered for sale if they do not exceed 67.50 kilograms and not less than 22.50 kilograms net weight and the word "mixed" is clearly printed on the bale and it is declared as "mixed" at the time that it is put up for auction.

(10) In this regulation "split" bales and "mixed" bales shall have the meanings assigned thereto under the Control of Tobacco Auction Floors (Grading) Regulations, 1971. Sub. leg. p. 27

## 8. Notification of intention to sell to Permanent Secretary

(1) Every seller who intends to offer for sale at a licensed auction floor any tobacco grown in a year other than the year in which it is intended to be sold shall notify the Permanent Secretary of his intention so to do not later than the 1st March in the year in which it is intended to offer such tobacco for sale.

(2) No tobacco referred to in subregulation (1) shall be sent to a licensed auction floor for sale unless it is accompanied by a certificate issued by the Permanent Secretary stating that that tobacco has been inspected within 30 days of the day on which that tobacco is intended to be sold and that there is no evidence that the tobacco is infested with stored tobacco beetle (*Iasioderma serricorne* F.) or stored tobacco worm (*ephestia elutella* Hb) or any other pest of stored tobacco declared as such under section 2 of the Plant Protection Act. Cap. 64:01

9. Refusal to sell and repudiation of purchase

(1) A seller may refuse to accept the price bid for any tobacco which he has offered for sale by tearing the coupon attached to a bale containing any such tobacco before accounting data has been extracted from such bale.

(2) A buyer whose bid has not been accepted under subregulation (1) may repudiate the purchase by him of a number of bales of tobacco equivalent to the number in respect of which such bid has been refused in respect of the same registered number or market as that of the tobacco in respect of which his bid has been so refused:

Provided that the accounting data shall not be entered up nearer than four rows behind the tobacco being currently sold.

(3) No seller who has made a bid for any tobacco being sold by him may refuse to accept the final price bid for such tobacco.

10. Discovery of damaged tobacco

When, before the accounting data has passed such tobacco, the buyer thereof discovers that it is badly handled, mixed, funky, damaged or wet he may notify the sales supervisor of his desire to repudiate the purchase of such tobacco.

11. Discovery of nested bale

Where a buyer discovers that a bale of tobacco which has been purchased by him is nested he may report that fact to the sales supervisor, who shall inspect the bale and report his findings to the Commission, and if the Commission is satisfied that such bale is nested it may—

(a) cancel the sale of such bale; and

(b) confiscate the bale; and

(c) order the seller of such bale to make good any loss which has been occasioned to the buyer as a result of the sale of such bale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

12. Discovery of mouldy tobacco

Where a buyer discovers that a bale of tobacco purchased by him contains mouldy tobacco, the presence of which was not apparent at the time of the sale thereof, he may report such fact to the sales supervisor, who shall forthwith inspect the bale and report his findings to the Commission, and the Commission may, if it is satisfied that the bale contained mouldy tobacco, cancel the sale:

Provided that no report by a buyer under this regulation shall be considered unless the same is made to the sales supervisor within 48 hours of the sale to which such report relates.

13. Dispute over ownership

Where two or more buyers claim to be the purchaser of the same bale of tobacco such tobacco shall, if every one of such buyers save one does not abandon his claim, be re-offered for sale.

14. Suspicion of tobacco beetle

The sales supervisor or any employee of an owner of a licensed auction floor may cause any tobacco sent for sale to a licensed auction floor which he suspects of being infested with stored tobacco beetle (*lasioderma serricorne* F.) to be removed from the licensed auction floor at the expense of the seller and shall forthwith report the matter to the Commission and to the Permanent Secretary.

15. Rejection by sales supervisor

(1) The sales supervisor may reject any bale of tobacco which does not conform to the standards laid down by the Minister under these Regulations, or under any other regulations in that behalf made by the Minister, and any bale of tobacco so rejected shall, unless re-offered, be returned to the seller at the expense of the seller.

(2) The decision of the sales supervisor shall be final and not subject to appeal where there is any dispute as to—

- (a) the grade of any tobacco in any bale;
- (b) whether tobacco in any particular bale is of different grades in sufficient proportion to justify the rejection of any such bale;
- (c) whether tobacco in any particular bale is nested or composed of loose leaf.

16. Duties of buyer

(1) Every buyer shall—

- (a) settle his account in respect of all tobacco purchased by him within half an hour of the close of banking hours on the normal business day next following the day of the sale;
- (b) remove all tobacco purchased by him from the licensed auction floor within 5 hours of the close of the sale thereof, after which time the owner of the licensed auction floor shall be

under no responsibility or liability whatsoever in respect of the custody, storage or safe keeping of such tobacco;

(c) give a receipt which shall be clipped with his distinctive mark in respect of all tobacco purchased by him at and removed by him from a licensed auction floor;

(d) make into bundles, containing not more than 25 pieces, the hessian or other specified material in which tobacco purchased by him was wrapped, and return such hessian or other specified material, or an equivalent amount of the same quality and size, to the owner of the licensed auction floor;

(e) mark each bundle made up under paragraph (d) with the registered number or mark, if any, of the seller of the tobacco which was wrapped in the material contained in such bundle together with the number of pieces contained therein:

Provided that a buyer shall not be required to comply with paragraphs (d) and (e) in respect of any hessian or other specified material which is the subject of a special arrangement as to their return made between the buyer and the seller of the tobacco which was wrapped in such hessian or other material.

(2) If any tobacco is not removed from a licensed floor in accordance with subregulation (1) (b) the Minister may suspend the auction floor buyer's licence of the buyer so failing to comply until such time as he is satisfied that proper arrangements have been made by such buyer for the removal of all tobacco purchased by him.

(3) All tobacco shall be cleared within the time fixed by the Minister, commencing with the first row of bales and thereafter in rotation until the last row is cleared.

#### 17. Failure to return wrapping

A buyer who has not made a special arrangement with the seller for the return to the seller of the hessian or other specified material in which the tobacco purchased by him was wrapped, and who fails to comply with regulation 16 (1) (d) shall pay to the owner of the licensed auction floor for and on behalf of the seller the sum of 50 tambala in respect of each piece of hessian or other specified material not returned by him to the seller by the 31st January in the year next following the year of the sale, and in default of so doing he may be sued therefor by the owner of the licensed auction floor in the name, and at the suit, of such owner.

#### 18. Position of buyer

No buyer shall take up his position in the line between the starter, auctioneer or ticket marker.

#### 19. Dispute

In the event of any dispute arising under or as to any of these Regulations, except a dispute as is referred to in regulation 15 (a), the same shall be referred to the Minister through the Commission, whose decision in such matter shall be final and not subject to appeal.

20. Alteration of particulars

No alteration of any particulars recorded on any bale of tobacco shall be made except by a person authorized in that behalf by the Commission:

Provided that—

(i) a buyer of any bale of tobacco may make an alteration in respect of his own grade classification of such bale;

(ii) a buyer who takes over a bale of tobacco from either the house account or from another buyer may make any necessary alteration as to that fact on the bale ticket of such bale.

21. Initialling of alterations

Any person who makes an alteration under regulation 20 shall initial the same and, in the case of an alteration made under proviso (ii) to that regulation, the alteration shall also be initialled by every previous buyer of the bale.

22. Sale of rejected bales

Any bale of tobacco which has been rejected in accordance with regulation 15 (1) at a previous sale may be re-offered for sale once only if such bale be declared at the time of such subsequent sale as being a re-offered bale.

Any bale of tobacco which, when re-offered under this regulation, is rejected or not purchased, shall be returned to the seller at the seller's expense.

23. Disposal of unsold bales

The owner of a licensed auction floor may destroy or dispose of bales which have not been sold at any auction within 14 days of the end of such auction if the owner thereof has not given instructions with regard to the disposal thereof.

CONTROL OF TOBACCO AUCTION FLOORS (GRADERS' LICENSING) REGULATIONS

under s. 38

G.N. 187/1971

43/1986

1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Graders' Licensing) Regulations.

2. Appointment of grading inspectors

(1) The Minister may appoint fit and proper persons to be grading inspectors for the purpose of enforcing and supervising these Regulations.

(2) Any person who obstructs a grading inspector in the execution of his duty shall be guilty of an offence.

### 3. Business of grading tobacco

(1) No person shall carry on the business of grading tobacco for profit or gain unless he is licensed as a grader under these Regulations:

Provided that this subregulation shall not apply to a grower of tobacco who grades his own crop, or any employee or servant of such grower.

(2) Every application for a grader's licence shall be made in writing to the Minister through the Commission, and the Minister may issue or refuse to issue such a licence, at his discretion.

(3) Every applicant for a grader's licence shall furnish to the Minister such information as the Minister may require with respect to his qualifications as a grader and the facilities which he has available for grading tobacco, together with the names and qualifications of the persons who will be in charge of grading tobacco under his supervision.

(4) Any person who, not being a grower of tobacco grading his own crop of tobacco or an employee or servant of such a grower, grades tobacco for profit or gain without being licensed in that behalf under the Act shall be guilty of an offence.

### 4. Licence validity, issuance and fee

(1) Every grader's licence shall, unless the same shall be cancelled under these Regulations or any other regulations made under the Act be valid until the 31st December of the year in respect of which it is issued.

(2) The Minister may issue a grader's licence in the name of an individual, a company or a partnership.

(3) A fee of K50 shall be paid by the licensee in respect of every grader's licence.

(4) No person shall be employed or commissioned to be in charge of grading tobacco unless that person has practical experience of grading tobacco to the satisfaction of the Minister.

(5) No person shall be employed or commissioned as an assistant tobacco grader unless, in the opinion of a grading inspector, the employment of such person is necessary for the proper handling of tobacco being, or having been, graded.

### 5. Method of grading

(1) Every licensed grader shall grade tobacco in accordance with these Regulations and any other regulations, made in that behalf by the Minister under the Act, and any licensed grader who fails to comply with or contravenes this subregulation shall be guilty of an offence.

(2) Every grader's licence shall specify the premises on which tobacco may be graded and no licensed grader shall grade tobacco on any premises not specified in the relevant grader's licence.

(3) Every building in which tobacco is graded shall be properly constructed and suitably lighted.

(4) Adequate storage space shall be provided in a properly constructed enclosed building with floors or floor covering suitable for storing bales of tobacco prior to or after the same being graded.

(5) The floors of grading and storage sheds shall be constructed of suitable material of such construction as to permit of their being kept properly clean, and every such floor shall be covered with suitable material unless the floor be constructed of smooth impervious cement, smooth tarmac or smooth wood.

(6) If the Minister shall so direct, in any particular case, a grading shed shall be equipped with adequate means of maintaining therein a degree of humidity, to the satisfaction of the Minister, suitable for the proper handling of tobacco.

(7) All tobacco which has been, or is to be, graded shall be packed in the manner prescribed by these Regulations or any other regulations in that behalf made by the Minister under the Act.

(8) All tobacco which has been graded shall be properly stored prior to its being baled and despatched to an auction floor.

#### 6. Grading return

As soon as is practicable after any tobacco has been graded, the licensed grader shall send to the owner of such tobacco a grading return in Form I in the Schedule, or in such other form as the Minister may approve. Form I

#### 7. Cancellation of licence

The Minister may, after considering a report of a grading inspector, cancel the licence of any licensed grader if he is of opinion that such grader has not been complying with or has contravened any of the provisions of these Regulations or of any other regulations in that behalf made by the Minister under the Act:

Provided that the Minister shall not cancel the licence of any licensed grader unless he has been afforded an opportunity of making such representations as he may wish to make.

#### 8. Inspection of premises

For the purpose of ascertaining whether these Regulations and any other regulations made by the Minister under the Act are being complied with, a grading inspector may, without previous notice and at any reasonable time of the day, enter upon any premises used by a licensed grader for the purpose of grading or storing tobacco, and also enter upon any premises which such grading inspector may reasonably suspect as being used for the purpose of grading or storing tobacco, and make such examination or enquiry as such grading inspector may deem necessary.

#### 9. Penalty

Any person who is convicted of an offence under these Regulations shall be liable to a fine of K200 and to imprisonment for three months.

SCHEDULE G.N. 43/1986

FORM I

CONTROL OF TOBACCO AUCTION FLOORS ACT

(CAP. 65:03)

GRADING RETURN

Owner's Name: ..... Reg. No: .....

Date graded: .....

Weight received: ..... kg Remnants: ..... kg

Weight graded: ..... kg

Weight for despatch to floors ..... kg leaf

..... kg strips

..... kg scrap

Total weight for despatch to floors ..... kg

Remnants of graded tobacco on hand % ..... kg

Loss in grading

Remarks

.....  
.....  
.....

Date: ..... Signed: .....

CONTROL OF TOBACCO AUCTION FLOORS (REJECTION OF CONTAMINATED TOBACCO) REGULATIONS

under s. 38

G.N. 160/1972

6/2005



1. Citation

These Regulations may be cited as the Control of Tobacco Auction Floors (Rejection of Contaminated Tobacco) Regulations.

2. Power of Commission to reject contaminated tobacco

The Tobacco Control Commission shall have power to reject any tobacco brought to any auction floors—

(a) containing contaminants set out in Column 1 in excess of the quantities respectively set out in Column 2 of the Schedule;

(b) packed in any bale, and mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

3. Owner of rejected tobacco to remove plastic, etc.

(1) Any tobacco rejected pursuant to regulation 2 (b) shall be withdrawn from sale at the auction floors forthwith, and shall not be brought back for sale at any auction floors unless the seller or owner of the tobacco has removed, at his own expense, every piece of plastic or plastic material, synthetic or other non-tobacco-related substance or object found or embedded in every bale of tobacco brought to the auction floors, and the seller or owner of the tobacco has certified in writing to the Tobacco Control Commission that the tobacco is free of any plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

(2) Any tobacco packed in any bale, and found to be mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects after purchased by any buyer and in possession of the buyer before loss of identity of the bale shall be reported to, and the contamination certified by, the Tobacco Control Commission, and shall be rid of plastic or plastic material, synthetics or other non-tobacco-related substances or objects at the expense of the seller or owner of the tobacco in the current or subsequent selling season.

4. Rejected tobacco not to be sold

Any tobacco rejected pursuant to regulation 2 shall not be sold within Malawi or be exported from Malawi without the prior written authority of the Tobacco Control Commission.

5. Auction floors not to accept tobacco from persons whose tobacco is rejected

No person in-charge of any auction floors shall accept tobacco from any person whose tobacco has previously been rejected pursuant to regulation 2 without the prior written approval of the Tobacco Control Commission.

6. Penalties

(1) Any person whose tobacco is rejected at any auction floors pursuant to regulation 2 shall be liable to pay to the Tobacco Control Commission a penalty of K25 per kg of the rejected tobacco.

(2) The Tobacco Control Commission shall cause the person in-charge of any auction floors to deduct the penalty payable under this regulation from the proceeds of the sale of tobacco of the seller or owner of the tobacco, and shall deposit all penalties payable under this regulation into a fund to be administered by the Tobacco Control Commission for the promotion of a tobacco grower information programme, or any other purpose approved by the Tobacco Control Commission.

(3) The Tobacco Control Commission shall have the power to suspend, for such period as the Tobacco Control Commission shall determine, any person from selling tobacco at any auction floors who persistently brings to any auction floors tobacco mixed with plastic or plastic material, synthetics or other non-tobacco-related substances or objects.

SCHEDULE reg. 2 (a)

Column 1	Column 2
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DDT	1.00 ppm
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Lindane	1.00 ppm
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Dieldrin	0.20 ppm
----------	----------

Aldrin	0.20 ppm
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[Chap6504]CHAPTER 65:04

COTTON

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Cotton not to be grown except from approved seed
4. Minister may require delivery of cotton seed
5. Requisition of cotton seed by the Minister
6. Import and export of cotton seed, seed cotton and ginned cotton prohibited without permission
7. Minister may declare closed areas
8. Control of the storage of seed cotton or cotton seed

9. Ginning and baling of cotton to be under licence
10. Holders of ginning licences to render returns
11. Hand-gins and hand-presses not to be used without permission
12. Public officer's powers of entry
13. Minister may order destruction of cotton plants
14. Minister may fix last day for planting cotton seed
15. Where offence committed against section 13 or 14 court to order cotton to be uprooted and destroyed
16. Owner of land to carry out occupier's obligation in latter's absence
17. Penalties
18. Rules
19. Saving

29 of 1951

39 of 1953

37 of 1954

6 of 1955

4 of 1962

1 of 1963

30 of 1963

33 of 1963

25 of 1968

16 of 1971

G.N. 195/1961

92/1962

22/1963

1/1965

166/1967

241/1969

An Act to consolidate the law relating to the production, processing and marketing of cotton and matters incidental thereto

[27TH AUGUST 1951]

[Ch6504s1]1. Short title

This Act may be cited as the Cotton Act.

[Ch6504s2]2. Interpretation

In this Act, unless the context otherwise requires—

“authorized officer” means any public officer appointed by the Minister in that behalf;

“Corporation” means the body corporate established by section 3 of the Agricultural Development and Marketing Corporation Act; Cap. 67:03

“cotton plant” includes the growing plants, cuttings, buds and grafts, seeds, leaves, bolls or any portion of a cotton plant in a natural state;

“Director” means the Deputy Secretary (Agriculture) and includes any Officer of the Department of Agriculture not below the rank of agricultural supervisor; G.N. 241/1969

“ginned cotton” means the fibres removed from cotton seed by mechanical processes;

“owner” includes the agent, manager, overseer or other person in charge of any land;

“public land” means an area of land, other than customary land, the legal right to occupy which is vested in the Government;

“seed cotton” means the fibre and seed of cotton as harvested from the cotton plant before they are separated by ginning, and includes unginned cotton;

“tenant” means any person who is cultivating cotton on his own behalf on land other than customary land or public land;

“uprooting” means the removal of the cotton plant from the soil—

(a) by pulling it out of the ground by its roots;

(b) by cutting its roots at least four inches below ground level in such a manner as will prevent any regrowth from any roots remaining in the ground and then by removing the aerial part of the plant.

[Ch6504s3]3. Cotton not to be grown except from approved seed

(1) No person shall grow cotton except from seed which has been approved by the Minister.

(2) Approved cotton seed for planting may be distributed at such times and places and by such persons as the Minister may appoint.

(3) Any person who—

(a) grows cotton from seed not approved by the Minister;

(b) not being appointed in that behalf by the Minister, distributes cotton seed; or

(c) distributes cotton seed at any time or place other than that appointed by the Minister,

shall be guilty of an offence.

[Ch6504s4]4. Minister may require delivery of cotton seed

(1) The Minister may require any person to deliver to him without payment any cotton seed the property of such person and suitable for planting which may have been produced by cotton grown from seed distributed to such person under section 3 (2) where such cotton seed has been distributed to such person free of charge.

(2) Any person who refuses or neglects to comply with any such requirement shall be guilty of an offence.

[Ch6504s5]5. Requisition of cotton seed by the Minister

(1) The Minister may, by notice in writing, require any cotton ginner to place at the disposal of the Director, by such date as may be specified in such notice, such quantity of cotton seed, being the property of the Corporation, as the Minister may require.

(2) All cotton seed the subject of a notice under subsection (1) shall be handed over to such person and in such manner as shall be specified in such notice.

(3) Any person who fails to comply with any requirement or specification in any notice made under subsection (1) shall be guilty of an offence.

[Ch6504s6]6. Import and export of cotton seed, seed cotton and ginned cotton prohibited without permission

(1) No person shall import into or export from Malawi any cotton seed, seed cotton or ginned cotton without the prior written permission of the Minister and in granting such permission the Minister may impose such conditions as he may think fit.

(2) Any person who contravenes subsection (1) or who, having been granted such permission, fails to comply with any such condition shall be guilty of an offence.

[Ch6504s7]7. Minister may declare closed areas

(1) The Minister may, by order published in the Gazette, for the purpose of increasing the seed supply of any species or variety of cotton, declare any area within Malawi to be a closed area.

(2) No person shall plant, sell or gin cotton in a closed area, without the written permission of the Minister and in granting such permission the Minister may impose such conditions as he may think fit.

(3) Any person who contravenes subsection (2) or who, having been granted such permission, fails to comply with any such condition, shall be guilty of an offence.

[Ch6504s8]8. Control of the storage of seed cotton or cotton seed

(1) If in respect of any area the Minister is of the opinion that such a course is necessary in order to ensure an improvement in the cotton grown in such area, he may, by notice published in the Gazette, order that no seed cotton or cotton seed shall be stored in any place other than a place specified in such notice after the date specified in such notice. Every such notice shall remain in force until the date specified therein as the date of expiry, and, in the absence of such date, shall remain in force until the 1st April next following the date of publication of such notice.

(2) Any person who stores any seed cotton or cotton seed in contravention of a notice published under subsection (1) shall be guilty of an offence.

(3) Any authorized officer may seize any seed cotton or cotton seed stored in contravention of a notice published under subsection (1) and may, if authorized in writing to that effect by the Minister, destroy the same and no compensation shall be payable to any person in respect of such seizure or destruction.

[Ch6504s9]9. Ginning and baling of cotton to be under licence

(1) No person shall gin or bale cotton unless he is the holder of a valid licence in that behalf issued by the Minister in such form as may be prescribed.

(2) The Minister may attach to such licence such conditions as may be prescribed.

(3) Any holder of a licence issued under this section who fails to comply with any of the conditions of this licence shall be guilty of an offence.

[Ch6504s10]10. Holders of ginning licences to render returns

(1) Every holder of a licence to gin cotton issued under section 9 shall, within twenty-one days of completing ginning in every year, forward to the Minister a return in the prescribed form.

(2) Any person who fails to comply with subsection (1) shall be guilty of an offence.

[Ch6504s11]11. Hand-gins and hand-presses not to be used without permission

(1) No person shall use any hand-gin or hand-press for the ginning or baling of cotton except with the written permission of the Minister.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

[Ch6504s12]12. Public officers' powers of entry

(1) Any public officer authorized by the Minister in that behalf in writing, may, between the hours of sunrise and sunset, enter any land or building where cotton of any description is being purchased, stored, ginned or in any way processed, and may inspect any cotton thereon or therein and any machinery used for its ginning or other processing and any accommodation used for its storage and may take reasonable samples of any such cotton for the purpose of—

- (a) ascertaining that this Act is being observed;
- (b) ascertaining that the conditions of any licence or permit issued under this Act are being complied with;
- (c) verifying the accuracy of any application or return required to be made under this Act.

(2) Any such authorized person may require the owner or occupier of any land or building entered under subsection (1), to produce any books or other records kept by, or in the possession of, such owner or occupier and relating to the growing, ginning or other processing, or sale of cotton.

(3) Any person who hinders or obstructs any such authorized person in the exercise of the powers conferred by subsection (1), or who fails or neglects to comply with any requirement of any such person under subsection (2), shall be guilty of an offence.

[Ch6504s13]13. Minister may order destruction of cotton plants

25 of 1968(1) The Minister may, by notice published in the Gazette, fix a date prior to which, in any year, all cotton plants in any area specified in such notice shall be uprooted and also a date prior to which such cotton plants shall be destroyed, and may also in the same notice fix a date in any year (later in point of time than either of the first-mentioned dates) before which no cotton shall be planted in such area.

(2) Upon the publication of any notice under subsection (1), every owner or occupier of land in any area specified therein shall, in each case, prior to the relevant date fixed by such notice, uproot and destroy by fire or by any other method prescribed in such notice, any cotton plants growing at the time of the publication of such notice and shall also uproot and destroy any cotton plants which may grow during the period between such date and the date which may have been fixed as the date before which no cotton shall be planted in such area.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence.

[Ch6504s14]14. Minister may fix last day for planting cotton seed

(1) The Minister may, by notice, specify a period in any year during which no cotton seed shall be planted in any area specified in such notice.

25 of 1968(2) Any person who plants any cotton seed in contravention of a notice made under subsection (1) shall be guilty of an offence.

[Ch6504s15]15. Where offence committed against section 13 or 14 court to order cotton to be uprooted and destroyed

When any person is convicted of an offence against section 13 or 14 the court shall, in addition to any other penalty, order that the cotton in respect of which the offence has been committed shall be uprooted and destroyed, within such time and in such manner as the court shall direct, by such convicted person, or, in default of his so doing, by such other person as the court shall appoint.

[Ch6504s16]16. Owner of land to carry out occupier's obligation in latter's absence

(1) Where under this Act the occupier of any land is required to do anything in respect of cotton plants grown thereon and such occupier has apparently quitted the land, an authorized officer may serve a notice upon the owner of the land or upon the person left in charge by the owner, requiring him to carry out the whole or any part of the obligation imposed upon the occupier, and, on failure to carry out the terms of the notice within the time specified therein, the authorized officer may authorize any person to enter upon the land and there do anything which the occupier was required to do and any expenses thereby incurred shall be recoverable by civil suit from the owner or person left in charge.

(2) In the case of customary land, the Chief within whose jurisdiction the land is situated shall be deemed to be the owner or the person left in charge by the owner.

(3) In the case of public land, the District Council within whose jurisdiction such land is situated shall be deemed to be the owner or the person left in charge by the owner.

[Ch6504s17]17. Penalties

Any person who is guilty of an offence against this Act, or who is guilty of an offence against any rules or orders made thereunder, for which no specific penalty is prescribed, or who commits any breach of the terms or conditions of any licence issued under this Act or any rules made thereunder, shall be liable to a fine of K200 and to imprisonment for three months, and the court may, in addition to any other penalty, order any cotton, cotton seed or other matter or thing in respect of which the offence has been committed, or which has been used in connexion with the offence, to be forfeited or destroyed; and where the court orders that such cotton, cotton seed or other matter or thing be destroyed it shall be destroyed, within such time and in such manner as the court shall direct, by the person convicted or by its owner or by the agent of such owner, or, in default, by such other person as the court shall appoint.

[Ch6504s18]18. Rules

The Minister may make rules or orders—

- (a) prescribing anything which by this Act may be or is to be prescribed;
- (b) for the inspection of cotton estates, ginned cotton, cotton seed or seed cotton;
- (c) regulating and controlling the sale, collection, growing, ginning, packing, baling, handling and storing of ginned cotton, cotton seed and seed cotton;
- (d) for the inspection and control of any buildings or places where cotton in any form is bought, ginned, processed or stored;



(e) regulating and controlling the erection, maintenance, use and inspection of markets for the sale of cotton;

(f) prescribing the conditions to be attached to licences to gin or bale cotton under section 9, and the circumstances in which such licences may be refused, renewed, suspended or cancelled;

(g) fixing the maximum prices which may be charged for ginning and baling seed cotton, either throughout Malawi or in particular Districts or areas thereof;

(h) generally for the better carrying into effect of this Act.

[Ch6504s19]19. Saving

1 of 1949All appointments, authorities, requisitions, notices, sanctions, certificates, licences, permits, proclamations, orders and rules made, given or prescribed under the Cotton Ordinance, 1949 (now repealed) shall, to the extent that they are not inconsistent with the provisions of this Act, be deemed to have been made under this Act, and shall continue in force until replaced by authorities, requisitions, notices, sanctions, certificates, licences, permits, proclamations, orders and rules made, given or prescribed under this Act.

#### SUBSIDIARY LEGISLATION

#### COTTON (AUCTIONS) RULES

deemed to be made under s. 18

[made under s. 82 of the Cotton Ordinance, 1934, No. 16 of 1934 (now repealed)]

G.N. 77/1941

83/1942

8/1951

G.N. 22/1963

74/1963

#### 1. Citation

These Rules may be cited as the Cotton (Auctions) Rules.

#### 2. Raw cotton to be sold by auction

No raw cotton grown by Africans on customary land shall be sold otherwise than by auction, except to the holder of a permit issued by the Minister.

#### 3. Time and place of auction

The time and place at which every such auction shall be held shall be notified at least fourteen days previously in a local newspaper and in the Gazette.

4. Appointment of auctioneer

The auctioneer shall be an officer appointed by the Minister, but such officer shall not, except for the purpose of such auction, be deemed to be an auctioneer within the meaning of section 23 of the Businesses Licensing Act. Cap. 46:01

5. Grading of raw cotton

Raw cotton shall be sold (whether by auction or otherwise) in two grades only, namely—

(a) Grade I, which shall be unstained cotton free from foreign matter in excess of 5 per cent by weight;

(b) Grade II, which shall be any other merchantable cotton.

COTTON (LICENCES AND FEES) RULES

deemed to be made under s. 18

[made under s. 13 of the Cotton Ordinance, 1949, No. 11 of 1949 (now repealed)]

G.N. 146/1949

8/1951

74/1963

122/1985

34/2005

1. Citation

These Rules may be cited as the Cotton (Licences and Fees) Rules.

2. Interpretation

In these Rules, "licensing officer" means any public officer designated by the Minister to grant licences on his behalf for the purpose of these Rules.

3. Form of licences to gin and sale cotton

Licences to gin and bale cotton shall be in Form A in the Schedule.

4. Condition of licences to gin and bale cotton

It shall be a condition of every licence to gin and bale cotton that the licensee shall, within 14 days after the end of every calendar month during which any ginning or baling operations have been carried on under the licence, complete a return in Form B in the Schedule and send the completed return to the Minister.

5. Applications for licences to buy cotton grown on private estates

Applications for licences to buy seed cotton grown by tenants on a private estate shall be made to the licensing officer and shall be in Form C in the Schedule.

6. Form of licences to buy cotton grown on a private estate

Licences to buy seed cotton grown by tenants on a private estate shall be in Form D in the Schedule.

7. Applications for licences to buy cotton grown on customary land

Applications for licences to buy seed cotton grown on customary land shall be made to the licensing officer and shall be in Form E in the Schedule.

8. Form of licences to buy cotton grown on customary land

Licences to buy seed cotton grown on customary land shall be in Form F in the Schedule.

9. Conditions of licences to buy cotton grown on a private estate or on customary land

It shall be a condition of every licence to buy seed cotton grown by tenants on a private estate or grown on customary land that—

(a) the licensee shall render a weekly return of all cotton bought by him under his licence in Form G or H in the Schedule as the case may be;

(b) the licensee shall not buy any cotton in excess of the amount specified in his licence.

10. Failure to observe conditions may entail cancellation of licence

The Minister may cancel any licence if the holder thereof has failed to comply with any condition contained in or relating to such licence.

11. Fees

(1) There shall be paid on the issue of any licence under these Rules a fee of K5,000.

(2) The said fee of K5,000 shall be sent to the licensing officer together with the application for the licence, and shall be refunded by the licensing officer if he refuses to issue the licence to the applicant.

12. Power to refuse licences

The licensing officer may in his discretion refuse to issue to any person a licence under these Rules.

13. Appeals

Any person who is aggrieved—

(a) by the cancellation of a licence under rule 10; or

(b) by the refusal of a licence under rule 12, may appeal to the Minister whose decision shall be final.

SCHEDULE

FORM A reg. 3

THE COTTON ACT

LICENCE TO GIN AND BALE COTTON

Region: ..... District: .....

Name of licensee: .....

Factory at: .....

.....

Licence is hereby given to the abovenamed to gin and bale cotton at the factory stated in this licence.

Dated this ..... day of ....., 20 .....

This licence expires on the ..... Fee K5,000.

.....

Licensing Officer

.....

GOVERNMENT OF MALAWI

THE COTTON ACT

FORM B r. 4, G.N. 122/1985

To Minister of Agriculture

P.O. Box 30134

Capital City

Lilongwe 3

(Address) .....

.....

Date .....

I hereby inform you that the particulars relating to the quantities of seed cotton received and ginned at my factory at ..... in the District of ..... during the month of ....., 19..... are as follows:

	Quantity Received at Ginnery	Quantity Ginned	Quantity	of	Lint	Produced
	Ginning Percentage					
	During the month					
kg	Total to					
Date						
kg	During the month					
kg	Total to					
date						
kg	During the month					
kg	Total to date					
kg	During the month					
kg	Total to					
date						
kg						

First grade cotton from customary land markets

Other cotton from customary land markets

First grade cotton from private estates

Other cotton from private estates

Signature .....

This form must be completed by the holder of a ginning licence and forwarded to the Minister within fourteen days after the end of each calendar month during which his ginnery is in

operation, provided that where no cotton is ginned during the month a NIL return shall be forwarded and when ginning is finished the Minister shall be notified.

THE COTTON ACT

FORM C r. 5, G.N.122/1985

APPLICATION FOR COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON PRIVATE ESTATES

To: The Licensing Officer,

.....

I/We beg to apply for a licence to purchase seed cotton grown on my/our ..... estate.

The place at which purchase will take place is .....

The number of African tenants on my/our estate who are cultivating cotton in the current season is .....

The hectarage of cotton under cultivation by tenants on my/our estate in the current season is ..... hectares.

The estimated production of seed cotton by tenants on my/our estate in the current season is ..... kg.

The hectarage of cotton under cultivation by paid labourers on my/ our estate in the current season is ..... hectares.

The estimated production of seed cotton by paid labourers on my/our estate in the current season is ..... kg.

I/We enclose the licence fee K2.

Signature of Applicant .....

Address .....

Date .....

THE COTTON ACT

FORM D

COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON A PRIVATE ESTATE r. 6, G.N. 122/1985

No. ....

Licence is hereby granted to ..... of ..... to purchase seed cotton grown on the licensee's estate, subject to the Cotton Act, and to the following conditions—\*

(a) the amount of seed cotton to be purchased under this licence shall not exceed ..... kg. This figure is subject to revision at any time during the validity of the licence.

(b) the licence is valid only for the purchase of seed cotton at the following place .....

(c) the prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister.

(d) .....  
.....

This licence expires on the ....., 19.....

Fee K2. Dated this ..... day of ....., 19.....

.....  
Licensing Officer

THE COTTON ACT

FORM E

COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON CUSTOMARY LAND r. 7

To: The Licensing Officer,  
.....

I/We beg to apply for a licence to purchase seed cotton grown on customary land.

The place at which purchase will take place is .....

The following are the reasons which I/we wish to advance in support of this application—

.....  
.....  
.....  
.....

I/We enclose the licence fee of K2.

Signature of Applicant .....

Address .....

.....

Date .....

THE COTTON ACT

FORM F

COTTON BUYING LICENCE IN RESPECT OF COTTON GROWN ON CUSTOMARY LAND r. 8, G.N. 122/1985

No. ....

Licence is hereby granted to ..... of ..... to purchase seed cotton grown on customary land, subject to the Cotton Act and to the following conditions—\*

(a) the amount of seed cotton to be purchased under this licence shall not exceed ..... kg;

(b) the licence is valid only for the purchase of seed cotton at the following place .....

(c) the prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister;

(d) .....

.....

This licence expires on the ....., 19....

Fee K2 Dated this ..... day of ....., 19....

.....

Licensing Officer

(..... Region)

THE COTTON ACT

FORM G

RETURN OF SEED COTTON PURCHASED FROM TENANTS ON PRIVATE ESTATES r. 9, G.N. 122/1985

To: Minister of Agriculture,

P.O. Box 30134,

Capital City, Lilongwe 3



I hereby submit details of seed cotton purchased by me from tenants on ..... estate during the week ended ....., 19.....

During the week

kg Total to date

kg

First grade cotton .....

Other cotton .....

Total .....

Signature .....

Address .....

.....

Date .....

COTTON ACT

( Cap. 65:04)

FORM H

RETURN OF PURCHASES OF SEED COTTON GROWN ON CUSTOMARY LAND r. 9, G.N. 122/1985

To: Minister of Agriculture,

P.O. Box 30134,

Capital City, Lilongwe 3

I hereby submit details of seed cotton grown on customary land purchased by me at the under-mentioned centres during the week ended ....., 19.....

Place of Purchase	District	First Grade Cotton	Other Cotton
-------------------	----------	--------------------	--------------

Weight

(kg) Amount paid to growers

K t Weight (kg) Amount paid to growers

K t

Signature .....

Address .....

.....

Date .....

#### COTTON (GINNING AND BALING) RULES

under s. 18

G.N. 29/1954

74/1963

1. These Rules may be cited as the Cotton (Ginning and Baling) Rules.
2. Gins shall be maintained in proper working order and the condition of all working and fixed parts shall be as recommended by the manufacturers.
3. Seed cotton shall always be in a satisfactorily dry state before being fed to the gins and the rate of feed shall not exceed the maximum advised by the gin manufacturers.
- 4.—(1) All gins shall be so adjusted that whole seeds or pieces of seed do not pass into the ginned lint and that only lint passes over the rollers of roller gins or through the breast bars of saw gins.  
  
(2) Gins shall be maintained in such a manner that oil, grease or any form of lubricant does not come into contact with the seed cotton or the ginned lint.  
  
(3) Gins shall be so fitted that the seed issuing from them contains, as far as possible, no unginning cotton and no avoidable broken seed.
- 5.—(1) Lint shall be baled in such a manner that all hoops are intact and that the lint is completely covered by hessian.  
  
(2) All reasonable steps shall be taken to exclude dirt and any extraneous matter from lint prior to and during baling.

(3) Prior to removal from the ginnery, bales shall be stored in such a manner as to be protected from the weather.

6. All seed cotton delivered for ginning shall be kept separate in the prescribed grades.

7. The holder of every ginning licence shall gin all cotton up to the capacity of the ginnery which may be delivered to him for ginning and shall commence ginning so as to ensure that all the seed required for planting shall be in the hands of those responsible for its distribution to growers by the dates prescribed by the Minister.

8. The Director or any person authorized in writing under section 14 of the Act may prohibit the working of any ginnery unless he is satisfied that ginning is being conducted in accordance with these Rules, and thereafter no person shall once more commence to work such ginnery until the Director or such person grants permission to do so.

9. Any person who contravenes these Rules shall be guilty of an offence.

#### NOTE

Notices under s. 13 of the Act are omitted.

[Chap6505]CHAPTER 65:05

AGRICULTURE (GENERAL PURPOSES)

ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title and commencement
2. Interpretation
3. Regulation of the agriculture industry
4. Incidental and supplementary provisions
5. Application of regulations, etc.

11 of 1987

G.N. 62/1987

An Act to make miscellaneous provisions for the general regulation of the agriculture industry

[1ST JUNE 1987]

[Ch6505s1]1. Short title

This Act may be cited as the Agriculture (General Purposes) Act.

[Ch6505s2]2. Interpretation

In this Act, unless the context otherwise requires—

“agricultural crop” does not include—

- (a) tobacco;
- (b) cotton;
- (c) any crop declared under the Special Crops Act to be a special crop and for which an authority under that Act has been established; and Cap. 65:01
- (d) any other crop which the Minister may, by order published in the Gazette, declare not to be an agricultural crop for the purposes of this Act.

[Ch6505s3]3. Regulation of the agriculture industry

(1) The Minister may by regulations published in the Gazette, make such provisions as he considers appropriate, expedient or necessary for the proper regulation of activities in the agriculture industry not otherwise regulated by or under another written law.

(2) Without prejudice to the generality of the power conferred by subsection (1), such regulations may provide for—

- (a) the licensing of buying, selling or otherwise marketing of agricultural crops, including the exportation thereof;
- (b) the persons or class of persons to whom a licence may be issued;
- (c) the minimum or maximum price payable to producers of agricultural crops;
- (d) the standardization and inspection of assized weighing instruments or equipment for use in buying agricultural crops from producers;
- (e) exportation procedures, including the remittance back to Malawi of export proceeds arising from sale of agricultural crops abroad;
- (f) the form of application for licences and the person to whom an application for a licence shall be made;
- (g) the form of licences;
- (h) the conditions that attach to any licence;
- (i) the form and manner in which records or registers of all applications for a licence and licences shall be kept;

(j) the person who, and the circumstances in which that person, may enter any place, vehicle, aircraft or vessel to ascertain compliance with the terms and conditions of a licence; and

(k) the penalty for contravention of, or failure to comply with, the provisions of the regulations and such penalty shall have effect notwithstanding the provisions of section 21 (e) of the General Interpretation Act. Cap. 1:01

(3) The Minister may, in his discretion and without assigning any reasons therefor, refuse to issue a licence to any person or cancel or suspend a licence issued to any person, and the decision of the Minister to refuse to issue a licence or to cancel or suspend a licence shall be final and shall not be subject to review by, or be questioned in, any court.

[Ch6505s4]4. Incidental and supplementary provisions

Regulations made under section (3) may further—

(a) make provision for empowering such authorities or persons as may be specified in the regulations to make rules or orders for any of the purposes for which the regulations may be made;

(b) make provision for the delegation and transfer of powers conferred, and duties imposed, by or under the regulations; and

(c) contain such other incidental and supplementary provisions as appear to the Minister to be necessary or desirable for the purposes of the regulations.

[Ch6505s5]5. Application of regulations, etc.

Regulations made under this Act and any rules or orders made under such regulations may be made so as to apply generally to the agriculture industry or to any particular agriculture crop or to any particular trade, business, undertaking or enterprise in the agriculture industry and so as to have effect either throughout Malawi or in any particular part of Malawi.

## SUBSIDIARY LEGISLATION

### SMALLHOLDER AGRICULTURAL PRODUCE (MARKETING) REGULATIONS

under s. 3

G.N. 63/1987

45/1989

[Revoked by G.N. 75/1994]

### AGRICULTURAL PRODUCE (MARKETING) REGULATIONS

under s. 3

G.N. 63/1987

45/1989

75/1994

14/2008

1. Citation

These Regulations may be cited as the Agricultural Produce (Marketing) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“authorized officer” means an officer in the public service designated as such by the Minister under regulation 7;

“licensing officer” means the Secretary for Agriculture or such other officer in the public service as he may authorize to act on his behalf;

“Malawi national” means—

(a) in the case of an individual, a citizen of Malawi;

(b) in the case of a company or other body of persons, whether corporate or unincorporate, a company or body of persons wholly owned or majority controlled by citizens of Malawi;

“agricultural produce” means the produce of any agricultural crop specified in the Second Schedule.

3. Buying of agricultural produce

No person shall, for profit or gain, engage in the business of buying any agricultural produce from producers unless he is a holder of a valid licence issued under these Regulations.

4. Application for licence

(1) Any person who is a Malawi national may apply to the licensing officer to engage in the business of buying agricultural produce from producers.

(2) Every application for a licence shall be in Form APMR I set out in the First Schedule, and shall be accompanied by the application fee prescribed in the Third Schedule.

(3) Any application fee paid under subregulation (2) shall not be refundable, whether or not a licence is granted.

5. Issuing of licence

If a licensing officer is satisfied that the applicant for a licence is a fit and proper person and is a Malawi national, he may issue to that person a licence in Form APMR II set out in the First Schedule.

## 6. Conditions of licence

A licence issued under these Regulations shall be—

(a) issued upon payment by the applicant of the licence fee prescribed in the Third Schedule;

(b) valid from the date of issue to the following 31st March;

(c) subject to the following conditions, that is to say—

(i) that the licensee shall buy the agricultural produce by means of approved weights and measures made available at his own expense and shall ensure that such instruments are at all times properly assized;

(ii) that the licensee shall buy the agricultural produce between the hours of sunrise and sunset only;

(iii) that the licensee shall at all reasonable times allow authorized officers free access to examine the instruments of weights and measures used by him and generally for the purposes of Regulation 6;

(iv) that the licensee shall not export any agricultural produce bought by him, except upon an export licence issued to him under the Control of Goods Act or any other written law. Cap. 18:08

## 7. Authorized officer

(1) The Minister may designate officers in the public service to be authorized officers for the purpose of ensuring that a licensee complies with the conditions of his licence and generally with the provisions of these Regulations.

(2) In the performance of his duties under subregulation (1), an authorized officer may at any reasonable time enter upon any place, vehicle, aircraft or vessel.

## 8. Offences

Any person who—

(a) contravenes regulation 3;

(b) fails to comply with the conditions of the licence set out in regulation 6 (c); or

(c) wilfully obstructs or hinders an authorized officer in the performance of his duties,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for three months.

FIRST SCHEDULE reg. 4 and 5

PART I

FORM OF APPLICATION FORM APMR I

NOTE: This application is to be completed in triplicate and submitted to the Secretary for Agriculture at such address as shall be notified in the Gazette and shall be accompanied by a non-refundable application fee of K10.

I/We (name in full): .....

of (address): .....

Previous Licence No. (if any): .....

Nationality: .....

hereby apply for a licence to buy the following produce during the licence period ending on the 31st March, 20 .....

Produce	Estimated quantities
1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....
5. ....	.....

Date: ..... Signature: .....

Name: .....

Designation (if any): .....

## PART II

### FORM OF LICENCE FORM APMR II

#### LICENCE TO BUY AND SELL AGRICULTURAL PRODUCE

Licence No. ....

Name of Licencee: .....

of (address): .....

is hereby licensed to buy and sell agricultural produce.



This licence is valid from the date of issue to the 31st March, 20 ....., and is subject to the provisions of the Agriculture (General Purposes) Act, the Agricultural Produce (Marketing) Regulations, 1994, and to any special provisions endorsed overleaf.

Date of issue: .....

Signed: .....

Issuing Officer

Licence fee paid K .....

for Secretary for Agriculture  
General Receipt No.: .....

(Official Stamp)

Date: .....

SECOND SCHEDULE reg. 3, G.N. 14/2008

AGRICULTURAL PRODUCE

Sesame

Paddy Rice Cassava

Groundnuts Sorghum

Beans Wheat

Peas Bullrush millet

Grams Chillies

Sunflower seed Ginger

Castor seed Cardamom

THIRD SCHEDULE reg. 4

FEES

1. Upon application K10.00

2. Upon issue of licence K50.00

## AGRICULTURAL PRODUCE (MAIZE MARKETING) REGULATIONS

under s. 3

G.N. 15/2008

### 1. Citation

These Regulations may be cited as the Agricultural Produce (Maize Marketing) Regulations.

### 2. Designation of ADM ARC as sole buyer of maize from smallholder farmers and seller of maize

(1) The Agricultural Development and Marketing Corporation (hereinafter referred to as "ADMARC") is hereby designated as the sole buyer of maize from smallholder farmers and seller of maize in Malawi.

(2) ADMARC shall—

(a) buy maize at a price which shall not be below the price; and

(b) sell maize at a price which shall not be above the price,

specified in the Schedule.

### 3. Application of Cap. 65:05

The Agricultural Produce (Marketing) Regulations shall apply, mutatis mutandis, to the buying and selling of maize.

SCHEDULE reg. 2 (2)

MAIZE PRICES

BUYING PRICE

K45.00 per kilogram, or

K2,250.00 per 50 kilogram bag

SELLING PRICE

K52.00 per kilogram, or

K2,600.00 per 50 kilogram bag