

VOLUME V

[Chap3101] CHAPTER 31:01

NATIONAL LIBRARY SERVICE

ARRANGEMENT OF SECTIONS

SECTION

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Schedule

31 of 1967

30 of 1969

9 of 1986

G.N. 15/1979

An Act to provide for the control and regulation of the National Library Service, to establish the National Library Service Board and to provide for matters incidental thereto and connected therewith

[23RD FEBRUARY 1968]

[Ch3101s1]1. Short title

This Act may be cited as the National Library Service Act.

[Ch3101s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Board” means the National Library Service Board established by section 3;

9 of 1986 “Executive Secretary” means the Executive Secretary of the National Library Service appointed under section 6;

30 of 1969 “financial year” means such year or other period as the Minister may from time to time, by notice published in the Gazette, determine to be the financial year of the Board.

[Ch3101s3]3. Establishment of Board

(1) There is hereby established a Board, which shall—

(a) be a body corporate by the name of the National Library Service Board, with perpetual succession and a common seal;

(b) in its corporate name be capable of suing and being sued; and

(c) be capable of holding, purchasing and otherwise acquiring, and disposing of any property, moveable or immovable, for the purposes of, or in the course of, the carrying out of its functions.

(2) The Schedule shall have effect as to the constitution and proceedings of, and otherwise in relation to, the Board.

(3) The Minister may, on the advice of the Board, by Order amend the Schedule.

[Ch3101s4]4. Functions of Board

(1) The functions of the Board shall be to promote, establish, equip, manage, maintain and develop libraries in Malawi.

(2) The Board shall have power for the purpose of carrying out its functions to do all such acts as appear to it to be necessary, desirable, advantageous or convenient for or in connexion with the carrying out of its functions or to be incidental or conducive to their proper discharge, and may carry on any activities in that behalf either alone or in association with any other person or body (including the Government or a local authority).

(3) For the avoidance of doubt it is hereby declared that the powers of the Board referred to in subsection (2) relate only to its capacity as a body corporate and nothing in that subsection shall authorize the disregard by the Board of any written law.

[Ch3101s5]5. Report by Board

The Board shall, within six months after the end of each financial year, make a full report to the Minister on the conduct of its business during that year, and the Minister shall lay a copy thereof before the National Assembly.

[Ch3101s6]6. Appointment of Executive Secretary and other staff

9 of 1986(1) Subject to subsection (2), the Board may appoint an Executive Secretary of the National Library Service who shall be the chief executive officer of the Board and who shall be entitled to be present and to speak, but not to vote, at meetings of the Board.

(2) The appointment of the Executive Secretary and his terms and conditions of service shall be subject to the approval of the Minister.

(3) The Board may from time to time appoint, on such terms and conditions as it thinks fit, such officers, clerks and servants as it considers necessary for carrying out its functions under this Act.

(4) The Board may appoint from among its members a working committee, of such composition and with such powers as the Board may determine, for the purpose of assisting or advising the Executive Secretary in his day to day administration of the National Library Service.

[Ch3101s7]7. Funds of the Board

The funds and resources of the Board shall consist of—

- (a) such sums as may be provided by Parliament for the purposes of this Act;
- (b) any sums or property which may in any manner become payable to or vested in the Board in respect of any matter incidental to the carrying out of its functions;
- (c) any sums or property which may be donated to the Board:

Provided that the Board shall not be obliged to accept a donation for a particular purpose unless it approves of the terms and conditions attached to such donation.

[Ch3101s8]8. Investment

(1) The Board may, with the approval of the Minister and subject to such conditions as he may impose, invest such part of its funds as are not for the time being required for the purposes of its business.

(2) The powers of the Minister under this section shall be exercised with the concurrence of the Minister for the time being responsible for Finance and shall extend to the amount which may be invested, the nature of the investment and the terms and conditions thereof, and the Minister's approval may be either general or limited to a particular investment.

[Ch3101s9]9. Accounts and audit

(1) The Board shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year of the Board a statement of accounts in a form approved by the Minister, being a form which conforms with the best commercial standards.

(2) Subject to any direction made by the Minister for the time being responsible for Finance under section 45 of the Finance and Audit Act the accounts of the Board shall be audited by auditors appointed annually by the Minister. Cap. 37:01

(3) As soon as the accounts of the Board for a financial year have been audited, the Board shall cause to be sent to the Minister a copy of the statement of accounts prepared in respect of that year together with a copy of any report made by the auditors on the statement or on the accounts.

(4) The Minister shall, within a period of six months (or such longer period as the National Assembly may, by resolution, appoint) after the end of the financial year to which the accounts relate, lay a copy of every such statement and report before the National Assembly.

[Ch3101s10]10. Execution of documents

(1) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Board—

(a) if sealed with the common seal of the Board and signed by two members thereof; or

9 of 1986(b) if executed in that behalf by one member of the Board appointed by the Board for that purpose and by the Executive Secretary or any member of the staff of the Board acting in that office.

(2) A deed, instrument, contract or other document executed in accordance with subsection (1) shall, subject to any exception that may be taken thereto on any ground other than that of the competence of the party executing the same on behalf of the Board, be effectual in law to bind the Board and its successors thereto and may be varied or discharged in like manner as that in which it was executed.

[Ch3101s11]11. Regulations

The Minister, acting on the advice of the Board, may make regulations—

(a) for the better management and control of any library managed by the Board;

(b) for protecting any such library, and fittings, furniture and contents thereof, from damage;

(c) requiring the giving of a guarantee or security by any person using any such library;

(d) prescribing any fees and penalties to be paid by any person borrowing books from any such library; and

(e) generally for the better carrying out of the purposes of this Act.

SCHEDULE

CONSTITUTION AND PROCEEDINGS OF THE BOARD s. 3 (2), G.N. 15/1979

1. Constitution

(1) The Board shall consist of the following members appointed by the Minister—

- (a) a Chairman;
- (b) a representative of the Ministry for the time being responsible for Education;
- (c) a representative of the Ministry for the time being responsible for Local Government;
- (d) a representative of the Ministry for the time being responsible for Development and Planning;
- (e) a representative of the Lilongwe City Council;
- (f) a representative of the Mzuzu City Council;
- (g) a representative of the Blantyre City Council;
- (h) a representative of the University of Malawi;
- (i) a representative of the British Council;
- (j) a representative of the Department of Information;
- (k) a representative of each of the three Regions;
- (l) a representative of the Education Secretary General, Catholic Schools;
- (m) a representative of the Education Secretary General, Christian Council.

(2) A member of the Board shall, subject to the power of the Minister at his discretion sooner to terminate his appointment, or unless he otherwise ceases to be a member, hold office for such period as the Minister may specify in his appointment or, if no such period is specified, for a period of three years from the date of his appointment, and shall be eligible for re-appointment.

(3) Any member of the Board may at any time resign 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.

(4) If any member of the Board is, without the permission of the Board, absent from more than four consecutive meetings of the Board or, without such permission, is absent from Malawi for a period exceeding one year he shall cease to be a member of the Board.

2. Casual vacancies

Where any member of the Board ceases to be a member before the normal expiration of his term of office, the Minister, after consulting the Board, may appoint another person in his stead to hold office until such first-named person's term of office would have expired had he not ceased to be a member as aforesaid.

3. Quorum and procedure

(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business.

(2) At any meeting of the Board seven members thereof shall constitute a quorum.

(3) The Board may elect any member thereof to be Vice-Chairman of the Board.

(4) At any meeting of the Board the Chairman shall preside or, in the absence of the Chairman, if a Vice-Chairman has been elected the Vice-Chairman shall preside or, if no Vice-Chairman has been elected or if the Vice-Chairman is also absent, the members present at the meeting shall elect one of their number to be Chairman for that meeting.

(5) In the event of an equality of votes, the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.

(6) Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at the next meeting and signed by the Chairman of that meeting.

(7) Subject to this paragraph and to any directions given by the Minister, the Board may regulate its own procedure.

(8) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman of the meeting, speak but shall have no power to vote at that meeting.

4. Vacancies, etc., not to invalidate proceedings

Subject to the provisions of paragraph 3 relating to a quorum, the Board may act notwithstanding any vacancy in the membership thereof and no act or proceeding of the Board shall be invalid by reason only of some defect in the appointment of a person who purports to be a member thereof.

5. Remuneration and expenses

The members of the Board shall be paid out of the funds thereof such expenses as the Minister may from time to time determine.

SUBSIDIARY LEGISLATION

NOTICE

under s. 2

G.N. 272/1969

The Minister has determined to be the financial year of the Board in respect of the financial year commencing on the 1st day of January, 1969, the fifteen month period so commencing and ending on the 31st day of March, 1970, and that thereafter the financial year of the Board shall be the twelve month period commencing on the 1st day of April in each year.

[Chap3102]CHAPTER 31:02

BOY SCOUTS AND GIRL GUIDES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Restriction on use of uniform, etc., of the Boy Scouts Association
4. Restriction on sale of badges, etc., of Association
5. Boy Scout not to pass himself off as police officer, etc.
6. No person falsely to claim connexion with Boy Scouts Association
7. Penalties
8. Application of Act to Girl Guides Association

44 of 1946

An Act to further and protect the Activities and Interests of the Boy Scouts Association and the Girl Guides Association in Malawi

[28TH DECEMBER 1946]

[Ch3102s1]1. Short title

This Act may be cited as the Boy Scouts and Girl Guides Act.

[Ch3102s2]2. Interpretation

In this Act unless the context otherwise requires—

“the Association” means the Boy Scouts Association incorporated in England under the Royal Charter granted on the 4th January, 1912;

“boy scout” means a boy scout recognized as such under the constitution, by-laws, or rules of the Association, and includes also all officers of the Association;

“Commissioner” means the person holding or acting in the office of Chief Commissioner of Boy Scouts for Malawi.

[Ch3102s3]3. Restriction on use of uniform, etc., of the Boy Scouts Association

It shall not be lawful for any person, not being under the by-laws or rules of the Association duly authorized and entitled so to do, publicly to wear, carry, or bear any uniform, badge, token, or emblem which under the said by-laws or rules are specifically adopted for use under the authority of the Association or which could reasonably be held to be an imitation of the same in such style or manner as to convey an impression that such person is under the said by-laws or rules entitled so to wear, carry, or bear such uniform, badge, token or emblem.

[Ch3102s4]4. Restriction on sale of badges, etc., of Association

No person shall sell or offer for sale any article bearing a badge, token, or emblem specifically adopted for use under the authority of the Association, or which could reasonably be held to be an imitation of the same, unless he shall have first submitted such article to the inspection of the Commissioner and shall have obtained authority from him in writing so to do.

[Ch3102s5]5. Boy scout not to pass himself off as police officer, etc.

(1) It shall not be lawful for any boy scout not being otherwise thereunto lawfully entitled and authorized, to pretend to be, or to pass himself off as, or to arrogate to himself the authority, position, or powers of, or to claim to be or to act as—

- (a) a member of any police or armed force; or
- (b) an officer exercising police functions in the service of any Chief; or
- (c) an agent or officer of the Government or of any Chief or tribunal.

(2) No boy scout shall seek or attempt by virtue of his wearing any uniform, badge, token, or emblem of the Association, or uniform, badge, token, or emblem purporting or appearing to be such, to enforce or exercise authority otherwise than in accordance with and as authorized by the by-laws or rules of the Association.

[Ch3102s6]6. No person falsely to claim connexion with Boy Scouts Association

It shall not be lawful for any person to form, organize, or work in connexion with, or to be concerned in forming, organizing, or in work in connexion with any corps or body which without due authority granted under the Royal Charter of the Association claim or purport to be boy scouts or otherwise to be connected with the Association, or which hold themselves out as, or pass themselves off as, boy scouts, or as otherwise connected with the Association.

[Ch3102s7]7. Penalties

Any person wilfully contravening any of the provisions of this Act shall be liable to a fine of £10 and to imprisonment for one month, and it shall be lawful for the court to order the forfeiture of any such uniform, badge, token or emblem, as mentioned in sections 3 and 4, in respect of which an offence has been committed and a conviction recorded.

[Ch3102s8]8. Application of Act to Girl Guides Association

This Act shall apply, mutatis mutandis, to the Girl Guides Association incorporated in England under Royal Charter.

[Chap3104]CHAPTER 31:04

NATIONAL YOUTH COUNCIL OF MALAWI

ARRANGEMENT OF SECTIONS

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22 of 1996

G.N. 2/1997

An Act to make provision for the promotion, co-ordination and implementation of youth development programmes in Malawi; the establishment of a National Youth Council of Malawi; and further to provide for matters incidental thereto or connected therewith

[19TH JANUARY 1997]

PART I

PRELIMINARY

[Ch3104s1]1. Short title

This Act may be cited as the National Youth Council of Malawi Act.

[Ch3104s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Chairman” means the person appointed as Chairman of the Council under section 8;

“Council” means the National Youth Council of Malawi established under section 3;

“Member” means a member of the Council;

“Executive Secretary” means the person appointed Executive Secretary of the Council under section 16.

PART II

THE NATIONAL YOUTH COUNCIL OF MALAWI

[Ch3104s3]3. Establishment of the Council

There is hereby established a body to be known as the National Youth Council of Malawi (in this Act otherwise referred to as the "Council") which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and of being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, movable or immovable, for the purposes, or in the course, of carrying out its functions; and
- (d) capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

[Ch3104s4]4. Composition of the Council

- (1) The Council shall consist of—
- (a) the following members appointed by the Minister—
 - (i) seven persons representing registered youth organizations in Malawi
 - (ii) a representative of the Episcopal Conference of Malawi;
 - (iii) a representative of the Christian Council of Malawi;
 - (iv) a representative of the Muslim Association of Malawi;
 - (v) a representative of Women's Organizations; and
 - (vi) three Councillors.
 - (b) the following ex officio members—
 - (i) the Secretary for Education or his representative;
 - (ii) the Secretary for Youth, Sports and Culture or his representative;
 - (iii) the Secretary for Health or his representative;
 - (iv) the Secretary for Women and Children Affairs and Community Development and Social Welfare or his representative;
 - (v) the Secretary for Labour and Manpower Development or his representative;
 - (vi) the Secretary for Local Government and Rural Development or his representative;
 - (vii) the Secretary for Justice or his representative; and
 - (viii) the Secretary for Home Affairs or his representative.

(2) A representative of an ex officio member referred to in subsection (1) (b) shall be designated by, or on behalf of, the ex officio by a notice in writing to the Council to attend the meetings of the Council, and upon such designation such representative shall not attend to the business of the Council by representation.

(3) A member of the Council appointed under subsection (1) (a) shall hold office for a period of two years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) A member of the Council appointed under subsection (1) (a) may resign his office upon giving one month's written notice to the Minister.

(5) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the Gazette.

[Ch3104s5]5. Vacation of office of members

The office of a member, other than an ex officio member, shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without the permission of the Chairman;
- (c) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;
- (d) if in the opinion of the Minister he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and
- (e) if the Minister, upon the recommendation of the Council, so directs.

[Ch3104s6]6. Filling of vacancies on the Council

(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 4 (1) (a) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch3104s7]7. Co-opted persons

The Council may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate any officer in the public service to attend any meeting of the

Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

[Ch3104s8]8. Chairman and Vice-Chairman

(1) The Minister shall, appoint a Chairman of the Council from amongst members appointed under section 4 (1) (a).

(2) Subject to subsection (3), the Chairman shall hold office for the duration of his membership on the Council.

(3) The office of the Chairman shall become vacant—

- (a) if the holder resigns his office by notice to the Minister;
- (b) if the holder of the office ceases to be a member of the Council;
- (c) if the Minister, upon the recommendation of the Council, so directs.

(4) The Minister shall appoint a Vice-Chairman from amongst members of the Council who shall, subject to subsection (5), hold office for the duration of his membership on the Council.

(5) The office of the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Council;
- (b) if the holder of the office ceases to be a member of the Council;
- (c) if the Minister, upon the recommendation of the Council, so directs.

(6) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the ViceChairman shall discharge the functions of the Chairman.

[Ch3104s9]9. Remuneration of members of the Council

A member of the Council other than an ex officio member, shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

[Ch3104s10]10. Meetings of the Council

(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least twice a year.

(2) An extraordinary meeting of the Council—

- (a) may be convened by the Chairman at any time;
- (b) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

- (a) the Chairman or, in his absence, the Vice-Chairman, shall preside;
- (b) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of them to preside;
- (c) the quorum shall be formed by eight members.
- (4) An ex officio member of the Council shall attend any meeting of the Council in person.
- (5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.
- (6) The Council shall have power to regulate its own procedure.
- (7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

[Ch3104s11]11. Non-liability of members of the Council or of committees

No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in the exercise in good faith of the functions or powers of the Council.

PART III

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch3104s12]12. Functions of the Council

The functions of the Council shall be—

- (a) to develop, promote, encourage and control all forms of youth activities in Malawi on a national basis;
- (b) to facilitate and encourage cooperation among registered youth organizations in Malawi;
- (c) to initiate operation and management of non-profit making or profit making projects in support of youth development;
- (d) to organize and promote scholarships for youth workers, members of youth organizations and officials;
- (e) to foster the promotion of training courses;
- (f) to register youth organizations;
- (g) to advise Government and any authority either specifically or generally, on matters relating to sport and physical recreation; and

(h) to develop and institute guidelines for cooperation, for the purposes of this Act, between the Government and other organizations and agencies operating in Malawi.

[Ch3104s13]13. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

- (a) to employ professional, technical and administrative personnel as it may deem requisite and lay down conditions of service for such employees;
- (b) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;
- (c) to enter into any contract or agreement;
- (d) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its objects;
- (e) subject to the Finance and Audit Act, to raise moneys by way of loans or overdrafts;
Cap. 37:01
- (f) to invest or deal with any of the moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;
- (g) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may deem necessary or expedient;
- (h) to receive donations or gifts of money or other property from any person or body of persons for the furtherance of its objects;
- (i) to receive such donations or gifts beneficially or as trustee of any trust established for the furtherance of such objects;
- (j) to publish, from time to time, such professional or other information as it deems necessary or expedient for the promotion of the objects of the Council; and
- (k) to do all such acts, matters and things as it deems necessary for fulfilling the functions of the Council.

[Ch3104s14]14. Committees of the Council

(1) The Council may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman shall, by reason of his office, be a member of every committee established under subsection (1).

(3) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the Committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) At all meetings of a committee the quorum shall be formed by a majority of members.

(8) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(9) Every committee shall have the power to regulate its own procedure.

(10) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(11) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, with the approval of the Minister, determine.

[Ch3104s15]15. Disclosure of interest

If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, 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 the matter.

PART IV

MANAGEMENT OF THE COUNCIL

[Ch3104s16]16. Appointment of an Executive Secretary

(1) Subject to the provisions of this section, the Council—

(a) shall appoint a person to be designated as the Executive Secretary of the Council upon such terms and conditions as the Council shall determine with the approval of the Minister;

(b) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Executive Secretary, after consultation with the Chairman, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as

he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Executive Secretary shall be the secretary to the Council and shall, on the instructions of the Chairman, convene meetings of the Council.

(4) An officer of the Council duly appointed Executive Secretary shall be secretary to a committee of the Council and shall, on the instructions of the Chairman of the committee, convene meetings of the committee.

PART V

FINANCIAL PROVISIONS

[Ch3104s17]17. Funds, accounts and audit

(1) The funds of the Council shall consist of—

- (a) such sums as may be appropriated by Parliament for the purpose of the Council;
- (b) any fees payable under this Act;
- (c) such other moneys and assets as may vest in or accrue to the Council in the course of its functions;
- (d) such moneys or other assets as may accrue to or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from any other persons.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provision of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council in the General Assembly and approved by the Minister.

[Ch3104s18]18. Remuneration and expenses of members of the Council

A member of the Council or of a committee shall be paid from the funds of the Council such allowances as the Minister may prescribe and in prescribing the allowances, the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the Council or the committee.

[Ch3104s19]19. Investment of surplus sums

The Council may invest any sums which are not immediately required for its objectives in such manner as the Minister may approve.

[Ch3104s20]20. Borrowing powers

Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Council may, with the approval of the Minister, borrow either temporarily, by way of overdraft or otherwise, such

sums as it may require, for meeting its obligations or discharging its functions under this Act. Cap. 37:01

[Ch3104s21]21. Financial year of the Council

The financial year of the Council shall be the period commencing on the date of commencement of this Act and ending on the following 31st March and thereafter it shall be a period of twelve months ending on 31st March every year.

PART VI

REGISTRATION OF YOUTH ORGANIZATIONS

[Ch3104s22]22. Register of youth organizations

(1) The Executive Secretary shall keep and maintain in the prescribed form a register wherein shall be registered every youth organization in Malawi.

(2) No youth organization shall operate in Malawi unless it is registered under this Act.

[Ch3104s23]23. Application for registration

(1) An application for registration of a youth organization shall be submitted to the Executive Secretary in such form as may be prescribed.

(2) Every application for registration of a youth organization shall be accompanied by—

(a) a registration fee to be prescribed by the Minister;

(b) a copy of the constitution of the youth organization and, unless the constitution itself contains such particulars, a memorandum containing the following particulars—

(i) the objectives and functions of the youth organization;

(ii) the name and addresses of the office bearers of the youth organization; and

(iii) the place of operation.

(3) On receipt of an application under subsection (1), the Executive Secretary may carry out such investigation or require such further information to be submitted to him as he considers necessary.

(4) Upon registration, a youth organization shall be issued with a certificate of registration.

[Ch3104s24]24. Grounds for refusing to register a youth organization

The Executive Secretary shall refuse to register an organization as a youth organization if he is satisfied that—

(a) the name under which the organization wishes to be registered is identical or similar to the name of an existing youth organization;

(b) the youth organization does not exist; and

(c) the youth organization does not have the same objectives as those contained in the National Youth Policy Document.

[Ch3104s25]25. Cancellation of registration

The Executive Secretary may at any time cancel the registration of any youth organization if he is satisfied that—

(a) the constitution of such youth organization is in any respect repugnant to or inconsistent with the provisions of any law for the time being in force in Malawi;

(b) the organization has ceased to exist in Malawi as a youth organization; or

(c) the organization has changed its name and the new name it has adopted—

(i) is identical with that of any other existing youth organization;

(ii) so nearly resembles the name of another youth organization and that it is likely to deceive the public or the members of either youth organization; or

(iii) is repugnant to or inconsistent with the provisions of any law in force in Malawi.

[Ch3104s26]26. Notification of grounds

Where an application for registration as a youth organization is refused or the registration of a youth organization is cancelled, the Executive Secretary shall make and furnish to the youth organization concerned a notice giving therein the reasons for such refusal or cancellation, as the case may be.

[Ch3104s27]27. Appeal to the Minister

(1) An appeal against a decision to cancel or to refuse the registration of a youth organization may be made to the Minister within thirty days of the receipt of the notice.

(2) Where any appeal is made under subsection (1), the Minister may, to enable him determine the appeal, give such directions to the Executive Secretary as he may consider necessary.

(3) After hearing an appeal made under subsection (1), the Minister may confirm, set aside or vary the decision of the Council.

(4) Any person aggrieved with the decision of the Minister may apply to the High Court for a review of such decision.

PART VII

GENERAL ASSEMBLY

[Ch3104s28]28. General Assembly

(1) There shall be a General Assembly of the Council which shall be attended by the following—

- (a) all members of the Council;
- (b) the Chairman, Secretary and Treasurer of each registered youth organization;
- (c) three members from the youth wing of each registered political party;
- (d) representatives of youth wings of religious organizations; and
- (e) the Chief Youth Officer.

(2) The General Assembly of the Council shall be held once in every year to transact the following business—

- (a) to receive and to adopt a statement of the Council accounts to the end of the preceding year;
- (b) to appoint an auditor or auditors;
- (c) to deal with any special matter which the Council desires to bring before it and any other matter or suggestion which the general membership may bring before it:

Provided that no such suggestions shall be considered by the General Assembly unless two weeks prior notice in writing is served on the members before the meeting is held.

(3) A notice convening the General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied with the agenda for the meeting.

(4) At the General Assembly the quorum shall be formed by fifty per cent of the membership.

(5) At the General Assembly voting shall be by show of hands and in the event of equality of votes the Chairman or other person presiding shall have a casting vote as well as a deliberative vote.

[Ch3104s29]29. Extraordinary General Assembly

(1) An Extraordinary General Assembly may be convened at any time by the Council and shall be convened within twenty-one days from the receipt of a requisition in writing signed by not less than one fifth of the members specifying objects of the meeting for any of the following purposes—

- (a) to deal with matters which the Council deems fit to place before the meeting;
- (b) to receive a report on the activities of the Council;
- (c) to deal with any special matters which the members requesting for the meeting may desire to place before the Council.

(2) A notice convening the Extraordinary General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied with the agenda for the meeting.

(3) At an Extraordinary General Assembly the quorum shall be formed by fifty per cent of the membership.

(4) At the Extraordinary General Assembly voting shall be by show of hands and in the event of equality of votes the Chairman or other person presiding shall have a casting vote as well as a deliberative vote.

PART VIII

MISCELLANEOUS PROVISIONS

[Ch3104s30]30. Independence of youth organizations

Save as otherwise provided in this Act, the Council shall not interfere with the day-to-day administration or internal affairs of a youth organization or of any branch of such organization.

[Ch3104s31]31. Appeals to the Minister

(1) Any youth organization, branch of such organization or any person aggrieved by a decision of the Council, may, not later than thirty days from the receipt of such decision, appeal to the Minister.

(2) Any youth organization, branch of a youth organization or person aggrieved by the decision of the Minister may apply to the High Court for a review of such decision.

[Ch3104s32]32. Dissolution of youth organization

Subject to the constitution of a youth organization, where a youth organization is dissolved, the assets and liabilities of such organization shall be disposed of in accordance with directions given by the Minister:

Provided that the assets, if any, left over, after meeting all the liabilities of such organization shall not be utilized for any purpose other than for the purpose of other youth organizations as the Council may direct.

[Ch3104s33]33. Regulations

The Minister may make regulations for the better carrying into effect of the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

- (a) the fees, allowances or remuneration to be paid under this Act;
- (b) the books, registers and other records to be kept by a youth organization and for the inspection thereof;
- (c) the forms to be used for the purposes of this Act;

- (d) the process to be followed in—
 - (i) registering youth organizations; and
 - (ii) cancelling youth organizations from the register.

[Chap3201]CHAPTER 32:01

BUILDING SOCIETIES

ARRANGEMENT OF SECTIONS

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2 of 1967

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39 of 1968

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39 of 1981

9 of 1985

22 of 1989

9 of 1998

G.N. 219/1964(N)

121/1981

44/1992

An Act to amend and consolidate the law relating to building societies and to amend the law relating to the investment of trust moneys by trustees and for matters incidental thereto and connected therewith

[1ST FEBRUARY 1964]

PART I

PRELIMINARY

[Ch3201s1]1. Short title

This Act may be cited as the Building Societies Act.

[Ch3201s2]2. Interpretation

In this Act, unless the context otherwise requires—

“additional advance” means a sum of money lent by a society under section 30 (3) (b);

“advance” means a sum of money lent by a society under section 30 (3) (a);

“approved investment” means an investment by a society, other than an investment in another society, being an investment for the time being authorized by law in Malawi for investment of trust moneys;

“Board of directors”, in relation to a society, means the managing body thereof by whatever name called;

“building society” means a society formed for the purpose of raising a stock or fund from which to make advances upon security by way of mortgage of lands or buildings and which is registered in accordance with section 8;

“deposit” means an amount accepted as an investment by a society either as a fixed deposit, an investment deposit or a savings deposit;

“depositor” means a person who is entered in the books of a society as the owner of, or person beneficially entitled to, a fixed deposit, an investment deposit or a savings deposit;

33 of 1952 “existing society” means any society, association, partnership or company, whether incorporated or registered in or outside Malawi, which was registered under section 5 of the Building Societies Ordinance, 1952 (now repealed) immediately before the date of the coming into operation of this Act;

“fixed deposit” means a deposit for a stated period which is not less than six months;

“general reserve fund” means any reserve fund established by a society out of profits and not set aside for any specific purpose;

“investment deposit” means an amount accepted as an investment by a society and which is repayable after a period of notice;

“land” includes buildings, whether the same were erected before, or are erected during, the period for which any mortgage on such land in favour of a society subsists; “loan” means an amount borrowed by a society under section 42;

“member”, in relation to a society, means a person who holds permanent shares therein which participate in the profits thereof whether or not such shares are held by the society as security for an advance;

“mortgage commitment” means the amount of money authorized by a board of directors to be advanced on the security of mortgages, which moneys have not been taken up by the persons to whom the advances have been approved;

“officer”, in relation to a society, means any director, manager, secretary, clerk, agent or other employee of the society but does not include an auditor of the society;

“permanent share” means a fully paid up share of which the owner shall not be entitled at any time to demand redemption, except on dissolution of the society, but which may be transferred to another person or member, provided that the number of members is not thereby reduced below four;

“permanent-share capital” means the total nominal value of permanent shares issued by a society;

“person” includes the Government;

“reducible advance” means an advance made by a society on terms and conditions which provide for the reduction of the capital amount advanced by periodical payments;

“Registrar” means the Registrar of Building Societies appointed under section 5;

“savings deposit” means a deposit other than a fixed deposit or an investment deposit;

“secretary”, in relation to a society, includes any executive officer of the society acting in the capacity of secretary;

“society” means a building society;

“terminating society” means an association which by its rules, is bound to terminate on the expiry of a fixed period or upon the occurrence of an event specified, or the rules of which provide for the organization of its members in sections, for the separate administration of the affairs of each section or the joint administration of the affairs of all sections and for the termination of each section upon expiry of a fixed period or upon the occurrence of an event specified in the rules;

“shareholder” means the owner of a permanent share.

[Ch3201s3]3. Application

(1) This Act shall apply to every society.

(2) No person shall use the name or style of “building society” unless such person is a society registered under section 8.

(3) Every person who contravenes subsection (2) shall be liable to a fine of £500 and £50 for each day for which such contravention continues.

[Ch3201s4]4. Prohibition of terminating societies

(1) No terminating society shall carry on business in Malawi.

(2) Any society which contravenes subsection (1) shall be liable to a fine of £500, and £50 for each day for which such contravention continues.

[Ch3201s5]5. Appointment of Registrar

The Minister shall appoint a public officer to be Registrar of Building Societies to perform the duties and exercise the powers imposed and conferred upon the Registrar by this Act.

[Ch3201s6]6. Indemnity of the Registrar and other persons

The Registrar shall not, nor shall any person acting under the authority of the Registrar, be personally liable for or in respect of any act or matter done in good faith in the exercise of the powers conferred by this Act.

PART II

FORMATION AND REGISTRATION

[Ch3201s7]7. Prohibition of unregistered society

(1) No person shall carry on business in Malawi as a society unless it is registered under this Act:

Provided that an existing society may carry on business in Malawi for a period of three months from the date of the coming into operation of this Act notwithstanding that it is not registered under this Act.

(2) An existing society shall not, after the date of coming into operation of the Act, pay or repay, or agree to pay or repay, outside Malawi any sums of money received by it in Malawi, whether such sums were received before or after such date.

(3) Any person who contravenes subsections (1) and (2) shall be liable to a fine of £500, and £50 for each day for which such contravention continues.

[Ch3201s8]8. Formation of societies

(1) Any four or more persons who agree jointly to subscribe to permanent shares of the society to an amount of not less than £20,000 may form a society by subscribing their names and

addresses to rules agreed by them for the government of such society and by obtaining registration under this Act.

(2) Subject to this section, persons intending to form a society shall apply to the Registrar for registration in the prescribed form, accompanied by two copies of such rules.

(3) Every application for registration under subsection (2) shall be accompanied by such registration fee as may be prescribed.

(4) If the Registrar is satisfied that the application and such rules are in compliance with this Act, he shall enter the prescribed particulars relating thereto in the register:

Provided that the Minister may, if he is satisfied that it is in the public interest so to do—

(a) by order published in the Gazette suspend the registration of new societies either indefinitely or for a stated period and during such period the Registrar shall not register any new society;

(b) in any particular case direct the Registrar that registration of a proposed society shall be refused.

(5) The Registrar shall issue a certificate of registration in the prescribed form to every society under this section.

[Ch3201s9]9. Certificates, etc., to be evidence

(1) A certificate of registration of a society issued by the Registrar shall, upon its mere production, be conclusive evidence, unless the contrary be proved, that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the society is duly registered.

(2) Any other document relating to a building society and purporting to be signed by the Registrar shall, in the absence of any evidence to the contrary, be admissible as evidence in any court without proof of the signature.

[Ch3201s10]10. Maintenance of register

The Registrar shall keep and maintain a register of societies in which he shall record, in respect of all societies registered under section 8, the following particulars, that is to say—

- (a) the name of the society;
- (b) the situation and postal address of the head office in Malawi of the society;
- (c) the permanent-share capital of the society;
- (d) the names and addresses of members and their holdings of permanent shares;
- (e) such other information as may be prescribed.

[Ch3201s11]11. Effect of registration

From the date of registration of a society under this Act, such society shall be a body corporate by its registered name with perpetual succession and, subject to this Act, shall be capable of doing all such acts as a body corporate may by law perform.

[Ch3201s12]12. Names of societies

(1) No society shall be registered by a name which is identical with that of any other society previously registered, or by a name which so nearly resembles the same as to be likely to deceive, unless such other society is in course of being dissolved and consents to such registration.

(2) The name of every society shall end with the words "Building Society".

(3) A society shall not use any name or title other than its registered name.

(4) The Registrar may, with the approval of the Minister, refuse to register a society by a name which in his opinion is likely to deceive or to cause offence to any person or class of persons.

[Ch3201s13]13. Registration of existing societies

Every existing society shall, if it intends to carry on business after the expiration of a period of three months from the date of coming into operation of this Act, within that period apply to the Registrar for registration in like manner as a society making application under section 8.

[Ch3201s14]14. Application by Registrar for winding up

Where the Registrar has reasonable grounds for believing—

(a) that a certificate of registration has been obtained for a society by fraud or granted by mistake;

(b) that a society exists for an illegal purpose;

(c) that a society has wilfully and after notice from the Registrar contravened any of the provisions of this Act;

(d) that a society has ceased to conduct business as a building society; or

(e) that a society has commenced operations as a building society outside Malawi,

he may, with the approval of the Minister, and in accordance with rules made by the Chief Justice, apply to the High Court for an order for the dissolution of the society.

[Ch3201s15]15. Contents of rules of societies

The rules of every society shall set forth—

(a) the name of the society and the location and postal address of the head office of the society;

(b) the objects of the society;

- (c) the manner in which a person may become a member, and may cease to be a member, of the society;
- (d) the manner in which permanent shares may be issued or transferred;
- (e) the manner in which the funds of the society are to be raised, the purposes to which they are to be applied and the manner in which surplus funds are to be invested;
- (f) the terms upon which the society will accept and repay deposits;
- (g) the manner in which and the conditions upon which advances upon the security of a mortgage or otherwise are to be made and repaid, and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made;
- (h) the manner in which profits or losses are to be ascertained and dealt with or provided for;
- (i) the borrowing powers of the society within this Act;
- (j) the limits, if any, on the amount of deposits which may be held or made by any one person;
- (k) the manner of altering the rules of the society;
- (l) the manner of appointing, remunerating and removing the directors, their qualifications, powers and duties, and the manner of appointing, remunerating and removing auditors and officers of the society;
- (m) the manner of calling meetings of the members, the quorum for such meetings and the right to attend and the manner of voting thereat;
- (n) the provision for an annual or more frequent audit of the accounts and the inspection by the auditors of the mortgages and other securities held by the society;
- (o) the manner of settling disputes between the society and any persons;
- (p) the device, custody and use of the common seal of the society;
- (q) provision for the custody of mortgages, and other securities held by the society;
- (r) the charges, fees, fines and forfeitures which may be demanded from or imposed on depositors with and borrowers from the society;
- (s) the manner in which the society may be dissolved;
- (t) such other matters as may be prescribed.

[Ch3201s16]16. Rules to be open

Every society shall make a copy of its rules available for inspection by such persons as have dealings with the society during the normal business hours of the society.

[Ch3201s17]17. Common seal

Every society shall have a common seal which shall bear the registered name of the society.

PART III

MANAGEMENT OF SOCIETIES

[Ch3201s18]18. Directors

(1) Every society shall have a board of directors consisting of three or more persons.

(2) The remuneration payable to the directors in any financial year shall not exceed in total 10 per centum of the permanent share capital of the society, or one half of one per centum of the mortgage assets at the end of the previous financial year, whichever is the less: Provided that the remuneration payable to each director shall not be reduced below £300 per annum by the operation of this provision.

(3) The duties of every director of a society shall include the duty of satisfying himself that the arrangements made for valuing the adequacy of any security to be taken in respect of any advance to be made by the society are such as may be reasonably expected to ensure that the adequacy of any security to be so taken will be valued by a competent and prudent person experienced in the matters relevant to the determination of the value of that security.

[Ch3201s19]19. Election of directors

(1) The directors shall be elected by the members for a period not exceeding three years, and shall be eligible for re-election.

(2) Whenever a casual vacancy occurs, a person may be appointed by the remaining directors to fill the vacancy until the next annual general meeting.

(3) Vacancies in the board of directors shall be filled at the annual general meeting by election by a majority of the members.

(4) No person shall become a director until after he has given his consent in writing to his being elected or appointed as such.

[Ch3201s20]20. Validity of acts of directors

The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his election or appointment or qualification, but shall not be valid after the date of the discovery of such defect.

[Ch3201s21]21. Disqualification for appointment as director

The following persons shall be disqualified from being appointed a director of a society—

- (a) a person who is not a member of the society;
- (b) a member who holds permanent shares in the society to a value of less than £500;

- (c) a body corporate;
- (d) a minor or any other person under legal disability;
- (e) any person who at any time has been adjudged bankrupt by a competent court, whether in Malawi or elsewhere, or who, whether in Malawi or elsewhere, has made an arrangement or composition with his creditors;
- (f) any person who has at any time been convicted (whether in Malawi or elsewhere) of theft, any offence involving an element of fraud, forgery, uttering a forged document, or perjury or any similar offence, by whatever name called, and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding £50;
- (g) any person removed by a competent court, whether in Malawi or elsewhere, from an office of trust on account of misconduct.

[Ch3201s22]22. Duty of director to disclose interest

(1) Any director of a society who has any direct or indirect pecuniary interest in any contract which the society proposes to enter into, or in the granting of an advance shall declare the nature and extent of such interest at any meeting of the Board of Directors of the society at which the proposed contract or the granting of such advance or the valuation of property offered as security for such advance is considered, and shall not vote on any such matter in which he has such interest.

(2) Any person who contravenes any of the provisions of this section shall be liable to a fine of £500.

[Ch3201s23]23. Auditors

Every society shall have one or more auditors, who shall be a person or persons approved for that purpose by the Registrar.

[Ch3201s24]24. Disqualifications for appointment as auditor

(1) The following persons shall be disqualified from being appointed an auditor of a society—

- (a) an officer or servant of the society;
- (b) a person who is a partner of an officer or servant of the society;
- (c) a person who is an employer or an employee of an officer or servant of the society;
- (d) a body corporate.

(2) Any person who acts as auditor of a society when disqualified as aforesaid shall be liable to a fine of £100 and to imprisonment for six months.

[Ch3201s25]25. Officers, etc., not to accept gifts

(1) No director, secretary or other officer of a society, nor any surveyor or valuer or legal practitioner retained by it, shall, in addition to the remuneration prescribed or authorized by the rules of the society, receive from any other person any gift, bonus, commission or benefit for or in connexion with any transaction whatsoever relating to the business of the society.

(2) Any person who pays or accepts any such gift, bonus, commission or benefit shall be liable to imprisonment for two years, and the person accepting any such gift, bonus, commission or benefit shall, if ordered so to do by the court by whom he is convicted, pay over to the society the amount or value of such gift, bonus, commission or benefit, and in default of so doing shall be guilty of a further offence and shall be liable to imprisonment for a further six months.

(3) This section shall not apply to the payment of a bonus gratuity or other award in appreciation of long, good or special services rendered to the society where such payment is authorized by the rules of the society.

[Ch3201s26]26. Restriction of payment of commissions

(1) It shall not be lawful—

(a) for any person to receive or to agree to receive any commission or gift from a building society or from any officer, servant or agent of a building society, in consideration of the introduction of mortgage business to the society or in consideration of a promise to introduce such business to the society; or

(b) for a building society, or any officer, servant or agent of a building society, to offer to give or agree to give any commission or gift to any person for any such consideration as is mentioned in paragraph (a).

(2) Any person who contravenes this section shall be liable to a fine of £500 and to imprisonment for twelve months.

[Ch3201s27]27. Provisions excluding liability of officers forbidden

Any provision, whether contained in the rules of a building society or in any contract with a building society, for exempting any director, manager or officer of a building society, or any person (whether an officer of the society or not) employed by the society as an auditor, from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, shall be void.

PART IV

POWERS OF SOCIETIES

[Ch3201s28]28. Power to borrow

39 of 1981, 30 of 1991(1) Subject to this Act, and without prejudice to any other powers of the society, a society may accept deposits to be applied to the purposes of the society.

(2) A society may allow any person to—

- (a) maintain a credit balance in his savings deposit account not exceeding K1,000,000;
- (b) hold investment deposits to a value not exceeding K2,000,000; and
- (c) hold fixed deposits to a value not exceeding K3,000,000:

Provided that the Registrar may, subject to such conditions as he may determine, consent in writing to a society allowing a person to maintain a credit balance in his savings deposit and to hold investment deposits and fixed deposits in excess of the amounts set forth in this subsection.

(3) Notwithstanding subsection (2) a society may accept deposits from a trustee for different trusts which exceed in the aggregate the limits specified in that section if the amount deposited in respect of each individual trust does not exceed such limits.

(4) The Minister may, if he considers it in the public interest so to do, by notice published in the Gazette, prohibit a society from accepting any or any further deposits.

(5) If a society contravenes this section or section 42, the society and every director, secretary or other officer of the society who is a party to the contravention shall be liable to a fine of K200.

(6) If any society receives deposits in excess of the limits prescribed by this section or borrows money by way of loan contrary to section 42 every director of the society shall, if the society is unable to meet its obligations, be personally liable for the amount so received in excess or contrary to section 42, as the case may be.

[Ch3201s29]29. Restriction on acquiring land, etc.

No society shall, without the consent in writing of the Registrar, acquire or retain land or erect buildings for the administration of the society's affairs or for the housing of its employees to a value exceeding, at the time that the acquisition is made or the buildings are erected, an amount equal to 20 per centum of its permanent-share capital together with the amount standing to the credit of a reserve fund appropriated out of profits for that purpose, or three per centum of the society's total assets, whichever is the less.

[Ch3201s30]30. Power to make advances

(1) A society may, subject to this section and section 34, make advances or special advances out of its funds upon the security of lands or buildings:

9 of 1985 Provided that no society shall advance money on the security of any lands or buildings which are subject to a prior mortgage, unless the society making the advance is the mortgagee under such prior mortgage.

(2) If any advance is made in contravention of subsection (1), the directors of the society who authorized the advance shall be jointly and severally liable for any loss on the advance occasioned to the society.

(3)(a) Subject to paragraph (b) no society shall, on the security of a mortgage, make an advance in excess of such amount as may from time to time be determined by the Minister or 75 per

centum of the value of the lands or buildings mortgaged as determined at the time of making the advance, whichever is the less:

9 of 1985 Provided that where a society exercises its right of foreclosure, or exercises its power of sale, in respect of lands or buildings mortgaged to it such society may make a reducible advance, secured by a further mortgage, to the purchaser of such lands or buildings in an amount not exceeding the amount owing to the society at the date of such foreclosure or sale, as the case may be, or the amount determined by the Minister or 75 per centum of the value of the lands or buildings mortgaged by such further mortgage, whichever is the greater.

39 of 1968(b) A society may, in conjunction with an advance made on the security of lands or buildings, make an additional advance—

(i) against additional security as specified in the Schedule, in an amount not exceeding the value of the additional security, or 15 per centum of the value of the lands or buildings mortgaged, whichever is the less; or

(ii) against a guarantee given by the Minister for and in the name of the Government in respect of the additional advance, in an amount not exceeding 20 per centum of the value of the lands or buildings mortgaged.

9 of 1985 (4) Where a charge upon a policy of life assurance is taken as additional security for an advance, the value of the policy shall be assessed at an amount not exceeding the surrender value thereof at the time when the advance is made.

(5) A society may, in accordance with any general or special directions of the Minister, lend money—

(a) to members and depositors on the security of their deposits; and

(b) to members on the security of their shares.

[Ch3201s31]31. Special advance

(1) A special advance is an advance made by a society on the security of lands or buildings being an advance of one of the following descriptions, that is to say: G.N. 134/1968, 121/1981, 44/1992

(a) an advance of any amount to a body corporate;

(b) an advance of a sum exceeding K150,000, or such other sum as may be prescribed by the Minister, to a person other than a body corporate;

(c) an advance of any amount to a person other than a body corporate being a person who after the advance is made to him is indebted to the society in an amount exceeding K150,000, or such other sum as may be prescribed by the Minister. G.N. 121/1981, 44/1992

(2) An advance made jointly to two or more persons shall be deemed to be a special advance if an advance of the same amount under like conditions to any one of those persons would be a special advance.

[Ch3201s32]32. Advances to be reducible advances

(1) No society shall make any advance other than a reducible advance.

(2) The terms of a reducible advance shall provide for the annual reduction of the capital amount outstanding and for the repayment of the total capital amount within a period of not more than 30 years. If any portion of the capital amount advanced has been repaid to the society and the society has readvanced an amount equal to the portion so repaid to the person who repaid it, the capital amount of the original advance still outstanding and the amount so readvanced shall be repaid within a period of not more than 30 years calculated from the date of the original advance.

[Ch3201s33]33. Society may make further advances for certain purposes

Notwithstanding section 30, a society may for the purpose of protecting lands and buildings mortgaged to it or for the purpose of maintaining the security held by it for the repayment of an advance, make further advances in respect of—

- (a) premiums on insurance policies designed to provide further security for the repayment of an advance;
- (b) rates, taxes and other charges on the property;
- (c) the maintenance and repair of the property,

and such further advances shall be a charge on the property and shall form part of the moneys secured by the mortgage.

[Ch3201s34]34. Limitation on making advances

25 of 1968, 9 of 1985(1) No advance or special advance shall be authorized by the Board of Directors of a society unless, at the close of business on the business day immediately preceding the day on which such advance or special advance is considered by the Board for authorization, the society held securities equivalent to the aggregate value of 15 per centum of the liability of the society in respect of deposits and 50 per centum of the society's mortgage commitments:

Provided that the liability of the society calculated for the purpose of this subsection shall be reduced by the amount owing on the loans, together with interest accrued thereon, made by the society under section 30 (5).

(2) For the purpose of subsection (1) "securities" mean—

- (a) cash;
- (b) deposits in any commercial bank registered in Malawi;
- (c) Malawi Government Treasury Bills;
- (d) any trustee securities issued by the Government of Malawi or any securities for which the Government of Malawi is responsible, due for payment or maturing within the next ensuing five years; and

(e) any other trustee securities which have been approved for the purpose by the Minister,

and the value of such securities shall be the cost thereof to the society or the market value thereof, whichever is the lower, and for the purpose of determining the aggregate value of such securities there shall be deducted from the aggregate thereof the amount of any loan owing by the society.

(3) No society may make a special advance during the 12 months subsequent to the society's registration under this Act.

(4) No society may make special advances during its second or subsequent financial year if the total value of special advances at the end of the preceding financial year exceeded 25 per centum of the mortgage assets of the society.

(5) No society may make special advances during a financial year to an amount exceeding 5 per centum of the total amount of all advances made during that financial year if the total value of special advances at the end of the preceding financial year exceeded 10 per centum of the mortgage assets of the society.

(6) No society may make special advances during a financial year to an amount exceeding 10 per centum of the total amount of all advances made during that financial year.

(7) A society which accepts a transfer of engagements from an existing society under section 74 may do so notwithstanding that the total of special advances included in those engagements exceeds 25 per centum of the total advances taken over but the society shall not then make any special advances until the total special advances of the society falls below 25 per centum of the society's total advances.

(8) A society may make an advance or a special advance notwithstanding this section if it is authorized so to do in writing by the Registrar.

[Ch3201s35]35. Special advances on default of debtor

(1) Where a special advance has been made on the security of lands or buildings mortgaged to a society and the society exercises its right of foreclosure in respect of such lands or buildings or where such lands or buildings have been sold in execution or upon insolvency or under the authority of the debtor granted subsequent to his default on the mortgage, the society may make a special advance to a purchaser, notwithstanding section 34 if the permission of the Registrar is first obtained in writing.

(2) The Registrar may, in his discretion, authorize in writing any special advance permitted by him under subsection (1) to be left out of account when determining the limits provided in section 34 (3), (4), (5) and (6).

[Ch3201s36]36. Valuation of property for purposes of advance

(1) No society shall make any advance or special advance unless it is based upon a valuation made by a person (hereinafter called a valuer) appointed by the society for the purpose of making such a valuation.

(2) Every valuer shall make a personal inspection of the lands or buildings offered as security for an advance and in the case of an uncompleted building, shall also examine the building plans and specifications.

(3) Every valuer shall record his valuation and the date of his inspection on the prescribed form and shall sign such form.

(4) If an advance is authorized on the security of a building to be completed and such advance is to be paid by instalments to be paid during the period of construction of such building the valuer shall make a personal inspection of such building prior to the payment of each instalment, and the amount of such instalment shall be based on his valuation at such inspection.

[Ch3201s37]37. Valuer must have no pecuniary interest in advance

(1) No society shall appoint as a valuer, under section 36 (1), any person who has any direct or indirect pecuniary interest, other than the payment of fees for professional services, in the granting of an advance.

(2) No person shall make any valuation for the purposes of section 36 (1) if he has any direct or indirect pecuniary interest, other than the receipt of fees for professional services, in the granting of an advance.

(3) Any society which, or person who, contravenes this section shall be liable to a fine of £500.

[Ch3201s38]38. Minister may guarantee repayment of advances

39 of 1968The Minister may, for and in the name of the Government, on such terms and conditions as he may determine, guarantee the repayment of advances made by a society on the security of lands or buildings.

[Ch3201s39]39. Limit of amount of advance when Minister has guaranteed repayment

39 of 1968The total amount of any advance and of any additional advance of which the Minister has guaranteed repayment under section 30 (3) (b) (ii) shall not exceed in any individual case 95 per centum of the value of the property mortgaged as determined at the time of making the advance.

[Ch3201s40]40. Notice to be given where security is taken from a third party

Where a society makes an advance, an additional advance or a special advance for the purpose of its being used in defraying the purchase price of land or buildings and takes any security for the advance from another person, then, before any contract requiring the borrower to repay the advance is entered into, the society shall give to the borrower and to that other person a notice in writing in the prescribed form.

[Ch3201s41]41. Power to invest

(1) A society may, from time to time and subject to its rules, invest its funds in approved investments.

(2) No society shall invest any part of its funds in any investment other than an approved investment.

(3) Notwithstanding subsection (2) a society may keep money on current account and deposit account at one or more commercial banks or with the Post Office Savings Bank.

(4) Notwithstanding subsection (1) the Minister may by order published in the Gazette prohibit the investment of funds by a society in any security or securities which would, but for the Order, be an approved investment:

Provided that a society which, at the time such Order comes into operation, has funds invested in a security which by virtue of such Order is not an approved investment may, with the written approval of the Registrar, retain such investment, and the Registrar shall give his approval to such retention for so long as he is satisfied that the realization of the investment would be detrimental to the interest of the society.

[Ch3201s42]42. Restrictions on borrowing

(1) Subject to section 28, a society may only obtain money by way of a loan on terms and conditions approved in writing by the Registrar with the prior consent of the Minister and may, if authorized in writing to do so by the Registrar with the prior consent of the Minister, borrow such money on the security of all or any of its assets.

(2) In this section the word "loan" includes an overdraft with a bank.

[Ch3201s43]43. General reserve fund

(1) Every society may establish a fund to be known as the general reserve fund, appropriations to which fund shall only be made out of the realized profits of the society.

(2) No dividend, bonus or donation shall be paid out of the general reserve fund.

(3) Moneys standing to the credit of the general reserve fund shall be invested in approved investments or in advances on the security of lands or buildings.

(4) A society may charge against the general reserve fund any net loss remaining to the society in any year after applying to such loss any undistributed profits brought forward from previous years.

[Ch3201s44]44. Restriction on payment of dividends

(1) Notwithstanding anything to the contrary contained in its rules, no society shall pay any dividend or interest on any of its permanent shares otherwise than out of profits earned by the society during the current financial year, and undistributed profits.

9 of 1998(2) Notwithstanding anything to the contrary contained in its rules, no society shall pay any dividend, interest or bonus on any of its permanent shares in excess of 65 per centum of profits after tax per annum.

PART V

MEETINGS AND PERIODICAL RETURNS

[Ch3201s45]45. Annual general meeting

Every society shall within five months of the end of each financial year hold a general meeting as its annual general meeting in addition to other meetings in that year and shall specify the meeting as such in the notices calling it.

[Ch3201s46]46. Other meetings

The board of directors of a society shall call such other general meetings as may be required by the rules of the society or as they may consider desirable, and shall, notwithstanding anything contained in the rules of the society, call a general meeting on the application of not less than one-half of the total number of members.

[Ch3201s47]47. Annual account and statement

(1)(a) Every society shall, as soon as is practicable and not more than four months after the expiration of each financial year, cause to be prepared an account of all the income and expenditure of the society during such financial year and a general statement of its funds and effects, liabilities and assets as at the end of the financial year.

(b) Every such account and statement shall be signed by the auditors of the society and shall be countersigned by at least two directors thereof.

(2) Every such account and statement shall be in such form and shall contain such particulars as may be prescribed, and, without prejudice to the generality of the foregoing, shall show—

(a) the amounts due to depositors;

(b) the balance due or outstanding on the security of mortgages (not including prospective interest); and

(c) the amount invested by the society in other securities, showing separately investments in and investments outside Malawi.

(3) Every auditor in signing such annual account or statement shall either certify that it is correct, duly vouched and in accordance with law or specially report to the society in what respect he finds it incorrect, unvouched or not in accordance with law, and shall also certify that he has at that audit actually inspected the securities belonging to the society, and shall state the number of properties with respect to which evidence of title has been produced to and actually inspected by him.

(4) A copy of such account and statement shall be sent to every member of the society together with the notice convening the annual general meeting at which they are to be presented and copies thereof shall also be available at the offices of the society not less than 14 days before such annual general meeting.

(5) A copy of every such annual account and statement, certified in such manner as may be prescribed, shall be sent to the Registrar within 14 days after the annual general meeting at which it

was presented or within five months after the expiration of the financial year to which it relates, whichever period expires first.

(6) If any society fails to comply with this section, the society and every director, secretary or other officer of the society shall be liable to a fine of £250.

[Ch3201s48]48. Returns of sales and transfers

Every society shall, in respect of each financial year, cause to be prepared and sent to the Registrar at the same time as its annual account and statement is sent a return in such form as may be prescribed with respect to—

- (a) every property which has, during the period to which the return relates, been sold by the society in the exercise of its powers as mortgagee thereof;
- (b) every mortgage which, during the said period, has been transferred by the society.
- (c) every mortgage which, during the said period, has been transferred by the society.

PART VI

MISCELLANEOUS PROVISIONS

[Ch3201s49]49. Books and records to be kept by societies

(1) Every society shall keep the following books, that is to say—

- (a) a minute book recording all proceedings of general meetings;
- (b) a minute book recording all proceedings of the board of directors;
- (c) a register of directors, showing the full names of every director, his postal and residential address, the date of his appointment and the date of his ceasing to hold office as such director; and
- (d) such books of account as may be necessary to show the receipts and expenditure of the society, the amounts due to depositors, the balance due or outstanding on the security of mortgages and the amount invested by the society.

(2) Every society shall cause to be kept records showing with respect to every advance made by the society on the security of any lands or buildings—

- (a) the amount at which the lands or buildings were valued and the name of the person by whom the assessment was made; and
- (b) particulars of any additional security taken by the society, including the amount at which it was valued and the name of the person by whom the valuation was made.

(3) Every society registered under section 8 shall keep all registers, minute books, books of account and other records, which it is required by this Act to keep, in English.

(4) If any building society fails to comply with this section, the society and every director, secretary or other officer of the society shall be liable to a fine of £500.

[Ch3201s50]50. Rules to be binding on members and others

The rules of a society registered under section 8 shall be binding on the members and officers of the society, its shareholders and depositors and all persons to whom the society has made advances under the rules, all of whom shall be deemed to have full notice thereof.

[Ch3201s51]51. Duty to supply copy of rules

Every society shall supply to any person requiring the same a complete printed copy of its rules, with a copy of the certificate of registration appended thereto, and shall be entitled to charge for the same a sum not exceeding such amount as the Minister may prescribe.

[Ch3201s52]52. Evidence of rules

A copy of the rules of a building society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of evidence to the contrary, be prima facie evidence of such rules.

[Ch3201s53]53. Persons under 21

(1) Any person who is under the age of 21 years may become a member, shareholder or depositor of or in any society if its rules do not prohibit such admission.

(2) A member, shareholder or depositor of or in a society while under the age of 21 years may, subject to its rules—

- (a) give all necessary acquittances;
- (b) in the case of a member, consent to the dissolution of the society; and
- (c) by his guardian ad litem, present a petition for the dissolution of the society,

but may not—

- (i) vote at any meeting of the society; or
- (ii) execute a mortgage to secure advances made to him by the society.

[Ch3201s54]54. Deposits may be made jointly

Two or more persons may jointly make a deposit or deposits in a building society.

[Ch3201s55]55. Prohibition of balloting

No society shall cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance depend on any chance or lot.

[Ch3201s56]56. Implied warranty

Where a society makes an advance for the purpose of its being used in defraying the purchase price of lands or buildings, the society shall be deemed to warrant to the borrower that the purchase price is reasonable unless, before any contract requiring the borrower to repay the advance is entered into, the society gives to the borrower a notice in writing in such form as may be prescribed stating that the making of the advance implies no such warranty.

[Ch3201s57]57. Exercise of power of sale

(1) If a society acquires by foreclosure or surrender any lands or buildings mortgaged to it, such lands or buildings shall be sold and converted into money within two years of the date of such foreclosure or surrender, or such longer period as the Registrar may from time to time, in any particular case, authorize in writing.

(2) A society exercising its power of sale of any land mortgaged to it shall take reasonable care to ensure that in the exercise of such power the price at which the land is sold is the best price which can reasonably be obtained; and any agreement if and so far as it relieves or may have the effect of relieving a society from the obligations imposed by this section shall be of no effect.

(3) Where a society has exercised its powers of sale of any lands or buildings mortgaged to it, it shall, within 28 days from the completion of the sale, send by registered post to the person who immediately before the sale was the owner of the land at his last known address a notice containing such particulars relating to the sale as may be prescribed.

(4) Nothing in subsection (3) shall affect the operation of any rule or law relating to the duty of a mortgagee to account to a mortgagor.

(5) If a society contravenes subsection (3) the society and every director, secretary or other officer of the society, who is a party to such contravention, shall be liable to a fine of £500.

[Ch3201s58]58. Lost or destroyed permanent share certificate, etc.

(1) If any permanent share certificate, savings deposits pass-book, investment book, fixed deposit receipt or any statement or other form of receipt, issued by a society is lost or destroyed, the society, upon such evidence, and subject to such terms and conditions as the directors think fit, and after the loss or destruction thereof has been duly advertised once in the Gazette and once in a newspaper circulating in the town or District in which the shareholder or depositor, as the case may be, resides, may issue a certified copy of such certificate, pass-book, book, receipt or statement:

Provided that the directors may in their discretion authorize the issue of such a certified copy without requiring the loss or destruction to be advertised.

(2) Such certified copy shall thereafter for all purposes take the place of the certificate, pass-book, book, receipt or statement so lost or destroyed and be the sole evidence thereof.

[Ch3201s59]59. Inspection of documents by public

On payment of the prescribed fees, any person may inspect at the office of the Registrar the documents relating to any society and required to be lodged with the Registrar in terms of this Act

or obtain from the Registrar a copy or extract of any such document or part of any such document kept by the Registrar.

[Ch3201s60]60. Exemptions from stamp duty

Notwithstanding any other law for the time being in force, no stamp duty or stamp duties whatsoever shall be payable in respect of the following documents or payments—

- (a) a society's fixed deposit receipts;
- (b) repayments of an advance made by a society on the security of a mortgage;
- (c) deposits for credit of a savings deposit account held with a society;
- (d) paid-up permanent share certificates issued by a society;
- (e) a receipt given to a society on the repayment by the society of any deposit;
- (f) deposits for credit of an investment deposit account held with a society.

[Ch3201s61]61. Financial year of society

The financial year of every society shall end on the 31st day of January in each year.

[Ch3201s62]62. Conditions relating to deposits and permanent shares

(1) No society shall—

- (a) issue any form of application to make a deposit unless such form of application is accompanied by a notice printed in English and in the vernacular language in use in the area in which the form of application is issued, stating the types of deposits accepted by the society, the conditions of repayment thereof, and the preferential and other special rights attaching thereto;
- (b) accept any person as a member unless he has signed a form of application for permanent shares in the society;
- (c) accept any investment deposit repayable after a period of notice of less than two months;
- (d) issue any permanent share unless it is paid for in full when the application for such share is accepted;
- (e) issue any permanent share at a value other than its nominal or face value.

39 of 1968(2) Notwithstanding the provisions of subsection (1), but subject to the provisions of sections 44 and 63, a society may capitalize its reserves by the issue of bonus permanent shares to the current holders of permanent shares.

[Ch3201s63]63. Conditions relating to the issue and transfer of permanent shares

(1) No society shall issue permanent shares in addition to the permanent shares for which members have subscribed in accordance with section 8 or section 13 unless the Registrar has given his consent in writing to the issue of such additional permanent shares.

(2) No society shall transfer permanent shares to a person or member unless the Registrar has given his consent in writing to the transfer.

(3) An application by a society to the Registrar for his consent to the issue or transfer of permanent shares must be signed by all existing holders of permanent shares.

(4) The Minister may, if he considers it in the public interest so to do, direct the Registrar to withhold his consent to the issue or transfer of the permanent shares of any society.

[Ch3201s64]64. Conditions relating to savings deposits

Every savings deposit account in a society shall be subject to the condition that no depositor in such a deposit account may withdraw more than K100 in any one day from the account on giving less than one month's notice.

[Ch3201s64A]64A Waiver of condition or limitation

51 of 1971The requirement of notice for the repayment of any sum on investment deposit as provided by section 62 (1) (c), and the condition limiting withdrawals from any savings deposit account to not more than K100 in any one day as provided by section 64, may be waived by any building society in any particular case where it is satisfied that it is necessary so to do in order to relieve personal hardship or for any other humanitarian purpose.

[Ch3201s65]65. Repayment of deposits at maturity

Deposits in a society accepted on terms specifying maturity on a fixed date shall be repaid to the depositor on that date, unless the society has obtained such depositor's consent to convert the maturing deposits into new deposits accepted by the society under its current terms at the date of maturity.

[Ch3201s66]66. Misleading advertisements

(1) No society shall publish or cause to be published any advertisement which is likely to mislead the public in any way as to the affairs of the society, including its assets and financial position.

(2) The Registrar shall by notice in writing draw the attention of any society to the terms of any advertisement published by it which in his opinion is an advertisement likely to mislead the public within the meaning of subsection (1).

(3) A society which receives a notice under subsection (2) shall forthwith discontinue publication of the advertisement to which the notice refers or cause it to be discontinued, as the circumstances may require:

Provided that the society may within a period of 14 days, calculated from the date on which the notice is received, make representations in the matter to the Minister, and the Minister may direct that the prohibition against further publication of the advertisement be removed.

(4) No society or agent of a society shall publish or cause to be published any advertisement or issue or cause to be issued any prospectus or circular in connexion with the affairs of such society, unless the name of such society is clearly stated in such advertisement, prospectus or circular.

(5) Any person, other than a society or an agent of a society, who publishes any advertisement or issues any prospectus or circular inviting members of the public to invest funds shall, if such advertisement, prospectus or circular states or suggests in any manner whatsoever that such person is carrying on business as a building society on such person's own behalf or in association with a building society, be liable to a fine of K2,000 and to imprisonment for two years.

(6) Any society which publishes or causes to be published such an advertisement as is mentioned in subsection (1) shall be liable to a fine of K2,000 and any society which fails to comply with a notice issued under subsection (2) in the manner provided in subsection (3) shall be guilty of a further offence and shall be liable to a like penalty.

PART VII

CHANGE OF NAME, ADDRESS, OFFICERS AND CONSTITUTION

[Ch3201s67]67. Change of name

(1) A society may, by resolution of all its members, change its name.

(2) A society which changes its name in accordance with subsection (1) shall, within 14 days from the date of the meeting at which the resolution was passed, send to the Registrar a copy of the resolution certified in such manner as may be prescribed.

(3) Subject to section 12 the Registrar shall register the change of name and forward to the society a new certificate of registration, and such change of name shall have effect from the date of issue of such new certificate.

(4) Upon receipt of the new certificate of registration mentioned in subsection (3) the society shall within 14 days of the date of such receipt publish in the Gazette and in one newspaper circulating in Malawi a notice specifying both its former name and its new name together with the date on which such change of name was registered.

(5) A change of name by a society in accordance with this section shall not affect any right or obligation of the society or any member thereof, or other person concerned, or render defective any legal proceedings by or against the society, and any legal proceedings that may have been continued or commenced against it by its former name may be continued against it by its new name.

[Ch3201s68]68. Change of address

Every society which changes the situation of its registered office or its postal address shall, within 14 days after such change, send to the Registrar notice thereof in the prescribed form, and the Registrar shall register such change.

[Ch3201s69]69. Change of directors

Whenever any person is appointed a director of a society or ceases for any reason to be a director of a society the society shall within 14 days after such happening send to the Registrar notice thereof in the prescribed form.

[Ch3201s70]70. Alteration of rules

(1) A society may, by resolution, alter its rules:

Provided that no such resolution shall have effect until approved under subsection (3).

(2) Where a society has altered its rules, it shall, within 14 days from the date of the meeting at which the resolution was adopted, apply to the Registrar for his approval of such alteration and send to him two copies of the resolution, certified in such manner as may be prescribed.

(3) If the Registrar is satisfied that the alteration is in conformity with this Act, he shall approve it and return to the society one copy of the resolution endorsed with his approval.

[Ch3201s71]71. Penalties

If any society fails to comply with section 67 (2), section 68, section 69 or section 70 (2), the society and every director, secretary and other officer of the society shall be liable to a fine of £250.

PART VIII

AMALGAMATION OF SOCIETIES AND TRANSFER OF ENGAGEMENTS

[Ch3201s72]72. Amalgamation of building societies

(1) Two or more societies may, with the prior approval of the Minister, unite and become one society, with or without any dissolution or division of the funds of such societies, or either of them, upon such terms as are agreed by resolution of all the members of each of such societies.

(2) Notice of any such union shall be sent to the Registrar in the prescribed form.

(3) Upon completion of the union under this section, the societies so united shall be deemed to be dissolved and their registrations cancelled, and the Registrar shall thereupon register the new society under section 8.

[Ch3201s73]73. Transfer of engagements

(1) A society may, with the prior approval of the Minister, by a resolution of all its members, transfer all or part of its engagements to any other society which may undertake to fulfil those engagements, and a society may undertake to fulfil the engagements of any other society by resolution of all its members.

(2) Notice of any such transfer shall be sent to the Registrar by the transferee society in the prescribed form and shall be registered by the Registrar.

[Ch3201s74]74. Transfer of engagements by an existing society

(1) An existing society may, with the approval of the Minister, by resolution of its board of directors transfer with or without a balancing consideration all or any of its engagements in Malawi to any other society registered under this Act which may undertake to fulfil the transferred engagements and the society registered under this Act may, with the approval of the Minister, by resolution of all its members, undertake to fulfil the engagements in Malawi of such transferor society.

(2) Notice of any such transfer shall be sent to the Registrar by the transferee society in the prescribed form and shall be registered by the Registrar.

(3) The transfer of engagements from an existing society may be accepted by a society registered under this Act notwithstanding that the terms and conditions applicable to the shares and deposits of the existing society do not comply with this Act. The terms of withdrawal formerly applied by the transferor society shall continue to apply to those shares and deposits for a period of six months from the date of transfer of engagements.

[Ch3201s75]75. Registration of transfers etc., to operate as conveyance

Upon the registration by the Registrar, under section 8, of a new society formed under section 72 and upon the registration of a transfer of all or part of the engagements of a society or of an existing society under section 73 or 74, there shall, notwithstanding any other Act or law, vest without further or other assurance—

(a) in the case of a new society in such new society all the funds, liabilities, assets and property vested or held in the name of each of the societies dissolved under section 72;

(b) in the case of a transfer of engagements in the transferee society so much of the funds, liabilities, assets and property vested or held in the name of the transferor society, as the case may be, as is comprised in such transfer of engagements.

[Ch3201s76]76. Registration of certificates under Deeds Registration Act

A certificate of registration of a new society, formed under section 72, and a certificate of registration of a transfer of all or part of the engagements of a society or an existing society under section 73 or 74, shall, for the purposes of the Deeds Registration Act, be an effective conveyance and assignment of each and every document registered under that Act by each of the societies dissolved or by a society, or an existing society, transferring its engagements, as the case may be, and a copy of such certificate, duly certified by the Registrar, shall be registered under that Act as if it complied with all the provisions thereof, and no fee shall be payable under that Act in respect of the registration of such a copy. Cap. 58:02

[Ch3201s77]77. Exemption from stamp duty, etc.

Notwithstanding any other Act or law, no instrument or document which is required or authorized to be given, issued, signed, made or produced under section 72, 73, 74 or 76 shall be subject or liable to be charged with any stamp duty or stamp duties whatsoever.

[Ch3201s78]78. Creditors not prejudiced

No union of building societies and no transfer of engagements from one society or from an existing society to another society shall affect the rights of any creditor of either or any of the societies concerned.

PART IX

DETERMINATION OF DISPUTES

[Ch3201s79]79. Determination of disputes

(1) Where the rules of a society direct that any dispute shall be referred to arbitration by an arbitrator or arbitrators, an arbitrator or arbitrators shall be nominated in the manner provided by those rules.

(2) For the purpose of the determination of any dispute there may be either a single arbitrator or an uneven number of arbitrators.

(3) In the case of the death or refusal or neglect of any arbitrator to act, an arbitrator shall be nominated in the manner provided by the rules of the society to act in the place of the arbitrator dying or refusing or neglecting to act.

(4) The names of every arbitrator nominated in the manner provided by the rules of the society shall be entered in the minute book of the society.

(5) Any award made by an arbitrator or by a majority of the arbitrators shall determine the dispute.

(6) Where the parties to any dispute arising in a society agree to refer the dispute to the Registrar, or where the rules of the society so provide, the Registrar may act as an arbitrator.

(7) The arbitrator or arbitrators shall, at the request of any party to the arbitration or any person claiming under him, and upon payment of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the High Court; and notice of the filing shall be given to the parties by the arbitrator or arbitrators.

(8) An award in an arbitration under this section, on being filed in the High Court in accordance with subsection (7), shall be enforceable as if it were a decree of the Court.

[Ch3201s80]80. Determination of disputes by the High Court

The High Court may hear and determine any dispute—

(a) if it appears to the Court upon the petition of any person concerned that application has been made by either party to the dispute to the other party for the purpose of having the

dispute settled by arbitration under the rules of the society and that such application has not within 40 days been complied with or that the arbitrator or arbitrators have refused or, for a period of 21 days, have neglected to make any award; or

(b) where the rules of the society do not make provision for the referring of disputes to arbitration or direct that any dispute shall be referred to the High Court.

[Ch3201s81]81. Determination of disputes by arbitrators to be final

Every determination by an arbitrator or arbitrators under this Act of a dispute shall be binding and conclusive on all parties and shall be final to all intents and purposes and shall not be subject to appeal and shall not be removed or removable into any court or restrained or restrainable by the injunction of any court:

Provided that the arbitrator or arbitrators may, at the request of either party, state a case for the opinion of the High Court on any question of law (but shall not be compelled to do so), and shall have power to grant to either party in the dispute such discovery as to documents and otherwise as might be granted by the High Court, such discovery to be made on behalf of the society as the arbitrator or arbitrators may determine.

PART X

POWERS OF THE REGISTRAR

[Ch3201s82]82. Power to require production of books, etc.

(1) The Registrar may at any time, by notice in writing served on a society or on an existing society or on any person who is or has been an officer of such a society, require the society or person to produce to the Registrar such books, accounts, deeds and other documents relating to the business of the society and to furnish to him such other information relating to that business as he considers necessary for the exercise of the powers conferred upon him by this Act and any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified by a statutory declaration.

(2) If any society or other person fails to comply with the requirements of a notice under this section, the society and every director, secretary or other officer of the society or such other person, as the case may be, shall be liable to a fine of £250.

[Ch3201s83]83. Inspection

(1) The Registrar may, on his own motion or, if he thinks fit, upon application by any member, shareholder, depositor or creditor of any society, appoint an inspector to examine into and report on the affairs of the society.

(2) The Registrar may require any person making application under subsection (1) to give security for the costs of the proposed inspection.

(3) All expenses of or incidental to any such inspection shall be defrayed by the society or by the members, shareholders, depositors, creditors making application under subsection (1) or by former members or officers of the society in such proportions as the Registrar may direct.

(4) An inspector appointed under subsection (1) may require the production of all or any of the books, accounts, securities and documents of the society and take extracts therefrom at all reasonable hours at the head office of the society or at any place where the books are kept, and may examine on oath its officers, members, agents and servants in relation to its business, and may administer an oath accordingly.

(5) The Registrar shall communicate the results of any such inspection to the Minister, to the society and to any person making application under subsection (1).

(6) Any person who in any examination into the affairs of a society under this section having been duly sworn under subsection (4) knowingly gives false testimony touching any matter which is material to such examination shall be guilty of an offence.

[Ch3201s84]84. Power of Registrar to call a meeting

(1) The Registrar may, with the consent of the Minister, call a meeting of a society, and may, on his own motion, exercise this power in the following circumstances—

- (a) where a society has failed to make any return required by this Act;
- (b) where a society has, after notice in writing served upon it in that behalf, failed to correct or complete any such return;
- (c) where evidence is furnished by statutory declaration of facts which in the opinion of the Registrar call for investigation.

(2) The Registrar may direct at what time and place a meeting under this section is to be held, and what matters are to be discussed and determined at the meeting, and the meeting shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, any rule to the contrary notwithstanding; and no provision in the rules of the society for a quorum shall apply to such a meeting.

PART XI

DISSOLUTION

[Ch3201s85]85. Dissolution

- (1) A society or an existing society may be dissolved—
- (a) with the prior approval of the Minister and with the consent of all its members, testified by their signature to an instrument of dissolution; or
 - (b) voluntarily under the supervision of the High Court; or
 - (c) by the High Court.

(2) Notice of the commencement and completion of any dissolution shall be sent to the Registrar and registered by him.

[Ch3201s86]86. Instruments of dissolution

(1) Every instrument of dissolution of a society shall set forth—

- (a) the liabilities and assets of the society in detail;
- (b) the number of members and the amount standing to their credit in the books of the society;
- (c) the claims of shareholders, depositors and other creditors and the provision to be made for their payment;
- (d) the intended appropriation or division of the funds and property of the society; and
- (e) the names of one or more persons to be appointed trustee for the purpose of the dissolution, and their remuneration.

(2) The provisions of an instrument of dissolution may be varied with the like consent, testified in the same manner, as is required for an instrument of dissolution.

(3) Every instrument of dissolution, and every instrument varying the provisions of an instrument of dissolution, shall be made and signed in duplicate by the trustee and sent to the Registrar within 14 days of signature, whereupon the Registrar shall register one copy of the instrument and return the other to the society endorsed by the Registrar.

(4) An instrument of dissolution, and any instrument varying the provisions of an instrument of dissolution, shall, when registered, be binding upon all members of the society.

[Ch3201s87]87. Dissolution by the High Court

(1) The High Court may, on the petition of—

- (a) the Registrar with the prior approval of the Minister;
- (b) any member authorized to present the same on behalf of the society by all members present at a meeting of the society specially called for the purpose; or
- (c) any judgment creditor for not less than £50, but not otherwise, order that a society be dissolved either voluntarily under the supervision of the Court or by the Court.

(2) The law for the time being in force in regard to the winding up of a company shall *mutatis mutandis* apply to the dissolution of a society, subject to such adaptations or modifications as may be prescribed.

[Ch3201s88]88. Powers of liquidators and trustees

When a society is being dissolved in accordance with section 85 (1), this Act shall continue to apply as if the liquidators or other persons conducting the dissolution of the society, or the trustees appointed under the instrument of dissolution, were the board of directors of the society.

[Ch3201s89]89. Liability of members and others on dissolution

(1) When a society is being dissolved, the liability of any member of such society in respect of any permanent share upon which no advance has been made shall be limited to the amount actually paid and in respect of any permanent share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society.

(2) When a society is being dissolved, a borrower to whom an advance has been made under any mortgage or other security or under the rules of the society shall not be liable to pay the amount payable under the mortgage or other security, or under the rules, except at the time or times and subject to the conditions therein expressed.

[Ch3201s90]90. Account and balance sheet on dissolution

If a society is dissolved in accordance with section 85 (1), the liquidators, trustees and other persons having the conduct of the dissolution shall, within 28 days from the end of each six month period subsequent to the commencement of the dissolution and finally within 28 days from the termination of the dissolution, send to the Registrar an account and balance sheet, signed and certified by them as correct and showing the assets and liabilities of the society and the way in which those assets and liabilities have been applied and discharged since the commencement of the dissolution.

[Ch3201s91]91. Dissolution by order of Registrar

(1) On the application in writing by 50 or more shareholders or depositors of any society, setting forth that the society is unable to meet the claims of its depositors, and that it would be for their benefit that it should be dissolved, and requesting an investigation into the affairs of the society with a view to the dissolution thereof, the Registrar may investigate the affairs of the society, but shall before doing so give not less than two months' previous notice in writing to the society at its head office.

(2) If on such investigation it appears that the society is unable to meet the claims of its depositors, and that it would be for their benefit that it should be dissolved, the Registrar may, with the approval of the Minister, order that the society be dissolved, and shall direct in what manner the society is to be dissolved:

Provided that the Registrar may suspend his order for such period as he may deem necessary to enable the society to make such alterations of its rules as will, in his opinion, prevent the necessity of the order being made.

PART XII

OFFENCES

[Ch3201s92]92. Withholding or misapplying property of a society an offence

(1) If any person by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of a society, or having the same in his possession withholds or misapplies the same or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by this Act, he shall be liable to a fine of £1,000 and to imprisonment for two years, and to be ordered to deliver up to the society all such moneys, securities, books, papers or other effects and to repay the amount of money applied improperly, and in default of such delivery of effects or repayment of such amount of money shall be liable to a fine of £250 and to imprisonment for six months.

(2) Proceedings under subsection (1) may be taken at the instance of—

- (a) the society; or
 - (b) any person authorized by the society or by the board of directors or by the Registrar;
- or
- (c) the Registrar.

[Ch3201s93]93. False statements

Any person who makes any false statement or orders or allows any false statement to be made in any document which is required by this Act to be sent to the Registrar, or which such person expects will be published, knowing such statement to be false, or who by addition, alteration, erasure or omission falsifies any such document, knowing that the addition, alteration, erasure or omission will cause a falsification of the document, shall be liable to imprisonment for six months.

[Ch3201s94]94. General penalty

(1) If any society neglects or refuses—

- (a) to give any notice, send any return or document or do or allow to be done anything which the society is by this Act required to give, send, do or allow to be done; or
- (b) to do any act or furnish any information required for the purposes of this Act by the Registrar or by an inspector,

the society, and every officer thereof bound by the rules of the society to fulfil the duty whereof a breach has been so committed, and, if there is no such officer, then every director, unless it appears that he was ignorant of or attempted to prevent the breach, shall be guilty of an offence and, unless a special penalty is provided by this Act, liable to a fine of £100.

(2) This section and sections 3, 7, 25 (2), 26 (2), 66 (5) and (6), 92 (1) and 93 shall be in addition to and not in derogation of Chapters XXVI, XXVII, XXXI, XXXIII, XXXV and XXXVI of the Penal Code. Cap. 7:01

PART XIII

GENERAL

[Ch3201s95]95. Rules of court

The Chief Justice may make rules of court for regulating proceedings before the High Court, and applications and appeals thereto, under this Act, and for the fees to be paid in respect thereof.

[Ch3201s96]96. Regulations

The Minister may make regulations prescribing anything required to be prescribed under this Act, and, for the better carrying into effect of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for the procedure in the office of the Registrar, the hours in which that office is to be open for business the forms to be used and the fees to be paid in respect of any matter which is required or permitted to be done under this Act.

[Ch3201s97]97. Non-compliance not to invalidate advance

(1) No advance made by the society shall be invalidated by reason only of the fact that the society or any officer of the society has, in connexion with such advance or loan, contravened or failed to comply with any provision of this Act.

(2) Every director of a society who makes or authorizes the making of any advance or payment on behalf of the society which authorization contravenes or fails to comply with this Act shall be personally liable to make good to the society any loss occasioned to the society by reason of the making of such an advance or payment.

(3) Every officer of a society who makes any advance or payment on behalf of the society without the authorization of the board of directors shall be personally liable to the society for any loss occasioned to the society by reason of the making of such advance or payment.

[Ch3201s98]98. Investments in societies to be trustee securities

Notwithstanding any other Act or law, a trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in fixed deposits in a society designated for that purpose by the Minister by notice published in the Gazette, but the Minister shall not designate a society for that purpose until he has guaranteed the liquidity of the society in accordance with section 99. G.N. 84/1964(N)

[Ch3201s99]99. Minister may guarantee liquidity of a society

Where the Minister considers it in the public interest so to do, he may, on behalf of the Government, guarantee the liquidity of a society in which the Government is the owner of permanent shares.

[Ch3201s100]100. Power of Minister to permit act by less than all members

Where any act or thing is required or authorized to be done under this Act by all the members of a society, the Minister may, where he considers it in the public interest so to do, permit any such act or thing to be done by a lesser number of members.

[Ch3201s101]101. Delegation of certain of the Minister's powers and duties to the Reserve Bank

22 of 1989(1) The Minister may, by Order published in the Gazette, delegate to the Reserve Bank of Malawi such of the powers and duties conferred under this Act as relate to the conduct of banking business by a society, including powers and duties relating to the registration of societies.

(2) In this section “banking business” has the meaning ascribed thereto in the Banking Act. Act No. 19 of 1989

39 of 1968 SCHEDULE

Classes of additional security which may be taken into account in determining the amount of an additional advance under section 30 (3) (b) (i)

1. A charge upon a policy of life assurance.
2. A charge upon any stocks, shares or securities for the time being authorized by law in Malawi for the investment of trust moneys.
3. A guarantee given by an insurance company or any other person approved by the Minister.
4. A guarantee accepted by the society with the written consent of the borrower and supported by a charge upon stocks, shares or securities for the time being authorized by law in Malawi for the investment of trust moneys.

SUBSIDIARY LEGISLATION

APPOINTMENT OF REGISTRAR

under s. 5

G.N. 111/1965

The Minister has appointed the Secretary to the Treasury to be Registrar of Building Societies.

BUILDING SOCIETIES REGULATIONS

under s. 96

G.N. 49/1964(N)

1/1969

1 Citation

These Regulations may be cited as the Building Societies Regulations.

2. Application for registration

Every application for the registration of a society under section 8 or section 13 of the Act shall be made in Form B.S.1 in the First Schedule.

3. Registration certificate

Upon the registration of a society, the Registrar shall issue a certificate of registration in Form B.S.2 in the First Schedule.

4. Application for approval of auditor

Every application under section 23 of the Act for the approval of a person as an auditor of a society shall be in Form B.S.3 in the First Schedule.

5. Application to exceed investor's limits

Every application under section 28 of the Act for the consent of the Registrar to any one person holding deposits in excess of the limits prescribed by that section shall be in Form B.S.4 in the First Schedule. G.N. 1/1969

6. Application to acquire additional land or buildings

Every application under section 29 of the Act for the consent of the Registrar to a society holding land or buildings in excess of the limits prescribed by that section shall be in Form B.S.5 in the First Schedule.

7. Application for authority to make certain advances

Every application under section 34 or 35 (1) of the Act for the authority of the Registrar to make an advance or special advance in excess of the limits prescribed by those sections shall be in Form B.S.6 in the First Schedule.

8. Application to leave certain special advances out of account

Every application under section 35 (2) of the Act for the permission of the Registrar to leave a special advance out of account in accordance with that section shall be in Form B.S.7 in the First Schedule.

9. Notice to borrower and third party

Every notice to a borrower and to another person providing additional security which is required under section 40 of the Act shall be in Form B.S.8 in the First Schedule.

10. Application to retain unauthorized investments

Every application under section 41 of the Act for the authority of the Registrar to retain unauthorized investments shall be in Form B.S.9 in the First Schedule.

11. Application to borrow on loan

Every application under section 42 of the Act to enable a society to borrow by way of a loan shall be in Form B.S.10 in the First Schedule.

12. Statement and accounts

Every account and statement of a society prepared in accordance with section 47 of the Act shall relate to and concern all the business of that society and shall be in the form and shall contain the particulars set out in Form B.S.11 in the First Schedule.

13. Return of sales and transfers

Every return of sales and transfers prepared in accordance with section 48 of the Act shall be in Form B.S.12 in the First Schedule.

14. Notice as to warranty

Every notice given to a prospective borrower in accordance with section 56 of the Act shall be in Form B.S.13 in the First Schedule.

15. Notice on sale of property

Every notice sent to a member in accordance with section 57 of the Act shall be in Form B.S.14 in the First Schedule and shall state—

- (a) the particulars of the land sold;
- (b) the amount of money realized by such sale;
- (c) the expenses and costs incidental to the sale;
- (d) the name of the purchaser of the land.

16. Change of name

(1) Every notification to the Registrar under section 67 of the Act shall be in Form B.S.15 in the First Schedule and shall have attached thereto a copy of the resolution to which such notification relates certified by at least four members of the society.

(2) Upon the registration by the Registrar of a change in the name of a society, the Registrar shall issue a new certificate of registration in Form B.S.16 in the First Schedule.

17. Change of address

Every notification to the Registrar under section 68 of the Act shall be in Form B.S.17 in the First Schedule.

18. Appointment, etc., of directors

Every notification to the Registrar under section 69 of the Act shall be in Form B.S.18 in the First Schedule.

19. Alteration of rules

Every application under section 70 of the Act for the approval of the Registrar of an alteration in the rules of a society shall be in Form B.S.19 in the First Schedule.

20. Notice of union

Every notice of union under section 72 of the Act shall be in Form B.S.20 in the First Schedule.

21. Notice of transfer of engagements

(1) Every notice of transfer under section 73 of the Act shall be in Form B.S.21 in the First Schedule.

(2) Every notice of transfer under section 74 of the Act shall be in Form B.S.22 in the First Schedule.

22. Form of documents

(1) All applications, notices, returns and other documents required to be sent to the Registrar shall be clearly and legibly printed or typewritten in the English language on paper of durable quality.

(2) The forms prescribed in the First Schedule shall be used in all matters for which they are prescribed, being adapted with such alterations or additions as may be necessary and as the Registrar may, in his discretion, permit.

(3) Where any document is sent to the Registrar or tendered for registration which, in the opinion of the Registrar, substantially complies with the Act and these Regulations, the Registrar may accept and, where requisite, register the same:

Provided that nothing in this paragraph shall prevent the Registrar from refusing to accept or register any document not in the prescribed form, or in the prescribed form but unnecessarily long or containing unnecessary or irrelevant matter.

23. Registrar's authentication of documents

Every document bearing the signature and, where usual, the seal or other device of the Registrar shall be deemed, until the contrary is shown, to be duly authenticated for the purposes of the Act or these Regulations.

24. Record of names, etc., of directors

The Registrar shall record, in addition to the particulars prescribed by section 10 of the Act, the name and address of every director of every society and his holding of permanent shares in the society in the register required to be kept and maintained under that section.

25. Fees

There shall be payable in the manner and for the several matters set out in the first column of the Second Schedule the appropriate fees as set out in the second column of the said Schedule.

FIRST SCHEDULE

FORM B.S.1

BUILDING SOCIETIES ACT

APPLICATION FOR REGISTRATION OF A BUILDING SOCIETY

We the undersigned having agreed jointly to subscribe to the permanent shares of a building society to be known as the Building Society and having subscribed our names and addresses to rules agreed by us for the government of the said society hereby apply for registration of the said Building Society by that name under the provisions of the Building Societies Act.

Names, addresses and signatures of permanent shareholders and amount of permanent shares held.

	Name of shareholder	Address of Shareholder	Amount of permanent shares held
(1)
(2)
(3)
(4)
(5)
(6)
(7)
(8)
(9)
	TOTAL £.....		

This application is accompanied by—

- (1) Two printed /typed* copies of the rules of the society.
- (2) £..... in payment of the registration fee.

BUILDING SOCIETIES ACT

CERTIFICATE OF REGISTRATION

I hereby certify that

Building Society has this day been registered under the Building Societies Act.

Dated this day of 19

Registrar of Building Societies

FORM B.S.3

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPROVAL OF AUDITOR

In accordance with section 23 of the Building Societies Act, I hereby apply on behalf of the Building Society for your approval to the appointment of Mr. as auditor of the society. His qualifications are and his business address is

Date

.....(Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

The appointment of the above named person as auditor is hereby approved.

Dated this day of 19

Registrar of Building Societies

FORM B.S.4

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPROVAL OF EXCESS HOLDING OF DEPOSITS

In accordance with section 28 of the Building Societies Act, I hereby apply for your consent to the acceptance of £..... as an additional holding of fixed deposits/investment deposits/savings deposits from, whose existing holdings are—

fixed deposits £..... repayable

investment deposits £.....

savings deposits £.....

Total £

I confirm that the proposed additional holding is not in excess of the amount permitted by the rules of the society, and that acceptance of the offer was approved by a resolution of the board at a meeting on on condition that the terms of repayment are to be

Date

..... (Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

I consent to the acceptance of the additional holding from the above named person* on the conditions approved by the Board/subject to compliance with the following conditions

.....
.....
.....
.....

Dated this day of 19

Registrar of Building Societies

FORM B.S.5

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPROVAL OF ACQUISITION OF ADDITIONAL LAND, ETC.

In accordance with section 29 of the Building Societies Act, I hereby apply for your consent to acquire or retain land or erect buildings for the following purpose

.....

The property is

The total cost to the society will not exceed £..... and the purchase was approved by a resolution of the board at a meeting held on

.....

I hereby declare that the book value of land or buildings previously acquired by the society is £....., that the permanent-share capital of the society is £....., that the balance of the reserve fund available for this purpose now stands at £..... in the society's books, and that the society's total assets are valued at £..... in the society's books.

Date

..... (Signature of director)

.....(Name of society)

ENDORSEMENT

(for official use only)

I consent to the acquisition of the above property provided that the total cost to the society does not exceed the price stated.

Dated this day of 19

Registrar of Building Societies

FORM B.S.6

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPLICATION FOR REGISTRAR'S AUTHORITY TO AN ADVANCE

In accordance with section *34/35 (1) of the Building Societies Act, I hereby apply for authority to approve* an advance/a special advance of £..... to on the security of property situate at in accordance with a resolution of the Board passed at a meeting held on

I hereby declare that—

- (1) the property has been valued at £.....
- (2) the liability of the society in respect of fixed-period shares, shares and deposits at the close of business on 19 was £.....
- (3) the society's mortgage commitments on 19 were £.....
- (4) the value of the society's securities on 19 was £.....
- (5) the total value of special advances at the end of the preceding financial year was £.....
- (6) the total value of special advances authorized by the Registrar to be left out of account is £.....

(7) the total value of special advances included in a transfer of engagements from an existing society during the current financial year was £.....

and I recommend approval be given for the following reasons

.....

.....

Date

..... (Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

I hereby authorize the making of the * advance/special advance to which this application refers.

Dated this day of 19

Registrar of Building Societies

FORM B.S.7

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPLICATION TO LEAVE A SPECIAL ADVANCE OUT OF ACCOUNT

In accordance with section 35 (2) of the Building Societies Act, I hereby apply for permission to leave the reducing balance of a special advance of £..... out of account when determining the limits provided in section 34 (3), (4), (5) and (6). This special advance was made on the security of the property which had been acquired by the society through, and for which your authority was given on 19 I recommend that permission should be given for the following reasons

Date

..... (Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

I hereby permit the society to leave the reducing balance of this special advance out of account when determining the limits provided in section 34 (3), (4), (5) and (6) of the Building Societies Act.

Dated this day of 19

Registrar of Building Societies

FORM B.S.8

BUILDING SOCIETIES ACT

NOTICE OF INTENTION TO TAKE SECURITY FROM THIRD PARTY

(Section 40 of the Building Societies Act)

TO AND TO

.....

.....

(Name and address of prospective borrower) (Name and address of third party providing the security)

With reference to the application of for an advance upon mortgage from the Building Society to assist in the purchase of

(Description, particulars and address of property)

.....

.....

the maximum amount which the society may advance upon the security of the property if no other security were taken by the society is £....

In view of the provisions of additional security, the society is prepared to consider making an additional advance of £..... upon such property, the additional security being—

(Type)

(Value)

(Provided by)

Dated this day of 19

.....

(Signature of officer of the building society)

FORM B.S.9

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPLICATION TO RETAIN UNAUTHORIZED INVESTMENTS

In accordance with section 41 of the Building Societies Act, I hereby apply for your approval to the retention by this Society of the following investments—

.....

.....

The book value of these investments is £..... and I hereby declare that the investments were approved investments at the time of their purchase by the society. They ceased to be approved investments on 19 by virtue of the order published in the Gazette on the day of 19 as Government Notice No and I recommend approval be given for the following reasons—

.....

Date

..... (Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

I hereby authorize retention by the society of the investments listed above.

Dated this day of 19

Registrar of Building Societies

FORM B.S.10

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPLICATION FOR AUTHORITY TO BORROW

In accordance with section 42 of the Building Societies Act, I hereby apply for authority to enable this society to borrow by way of a loan an amount not exceeding K..... from on the following terms and conditions—

.....

This amount is within the borrowing powers laid down in the rules of the society and the borrowing of it was approved by a resolution of the Board at a meeting held on 19 The loan is required for

.....

Date

..... (Signature of director)

..... (Name of society)

ENDORSEMENT

(for official use only)

I hereby authorize, with the prior consent of the Minister, the Building Society to borrow an amount not exceeding K..... on the terms and conditions stated above.

Dated this day of 19

Registrar of Building Societies

FORM B.S.11

BUILDING SOCIETIES ACT G.N. 1/1991, 114/1991

ANNUAL STATEMENT AND ACCOUNT

For the twelve month period ending 31st January, 19

Name of Society

Registered Office

Postal Address

Names and addresses of the members and their holdings of permanent shares:

.....
.....
.....
.....
.....
.....
.....
.....
.....

.....

.....

Names and addresses of the directors and their holdings of permanent shares:

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

THE SOCIETY

BALANCE SHEET

31st January, 19

Notes	19	19
	K	K

FUNDS EMPLOYED

Share Capital

Reserves

TOTAL SHAREHOLDERS' EQUITY

DEPOSITS

Fixed

Tax-Free

Investment

Savings

TOTAL DEPOSITS

LONG-TERM LIABILITIES

Loans

CURRENT LIABILITIES

Creditors

Dividends

TOTAL CURRENT LIABILITIES

TOTAL FUNDS EMPLOYED

EMPLOYMENT OF FUNDS

ADVANCES

Secured by mortgages

Secured by pledge of deposits

TOTAL ADVANCES

INVESTMENTS

INVESTMENT PROPERTIES

FIXED ASSETS

CURRENT ASSETS

Stock of consumables

Other debtors and prepaid expenses

Funds at call and on deposit

Bank balances and cash

TOTAL CURRENT ASSETS

TOTAL EMPLOYMENT OF FUNDS

.....

DIRECTORS

.....

THE SOCIETY

INCOME STATEMENT

For the year ended 31st January, 19

Notes 19 19

K K

INCOME

INTEREST RECEIVED:

Mortgage Advances

Short-term Loans

TOTAL INCOME FROM LENDING

INVESTMENT INCOME

Rent Receivable

Fines levied and mortgages in arrears

Other income

TOTAL INCOME

EXPENDITURE

Operating Costs

Interest Payable

TOTAL EXPENDITURE

OPERATING SURPLUS/(DEFICIT) for the year

DIVIDENDS

NET SURPLUS/(DEFICIT) for the year

RETAINED EARNINGS at beginning of the year

TRANSFERS TO RESERVES

RETAINED EARNINGS at the end of the year

THE SOCIETY

STATEMENT OF SOURCE AND APPLICATION OF FUNDS

For the year ended 31st January, 19

19 19

K K

SOURCE OF FUNDS

Net surplus/(Deficit) for the year

Adjustment for items not involving the movement of funds:

Depreciation

(Profit)/Loss on sale of fixed assets

TOTAL FUNDS GENERATED FROM OPERATIONS

Net movement in deposits:

Fixed deposits

Tax free deposits

Investment deposits

Savings deposits

Movement in Loan

Proceeds from disposal of fixed assets

TOTAL SOURCE OF FUNDS

APPLICATION OF FUNDS

Movement in investment deposits

Movement in investments

Movement in mortgage advances

Movement in short-term loans

Purchase of fixed assets

Dividends paid

TOTAL APPLICATION OF FUNDS

INCREASE/(DECREASE) IN THE NET WORKING CAPITAL

MOVEMENT IN NET WORKING CAPITAL analysed as:

Stock

Other debtors and prepaid expenses

Loans Unrealized profit accrued on investments

Creditors

MOVEMENT IN LIQUID FUNDS:

Funds at call and on deposit

Bank balances and cash

INCREASE/(DECREASE) IN THE NET WORKING CAPITAL

THE SOCIETY

Notes to the accounts

The notes to the accounts shall include details of—

1. Principal accounting policies.
2. Permanent share capital:
 Number and nominal value of issued and fully paid shares.
 Number of shares and nominal value of authorized share capital.
3. Loans, showing repayment terms, security and interest rates.
4. Reserves, showing movement thereof and distinguishing capital from revenue reserves.
5. Deposits, showing the range of repayment dates for fixed deposits and the terms of repayment for other deposits.
6. Investments, giving description and cost of each investment and the total market value of all investments held.
7. Movement in investment properties and fixed assets.
8. Movement in mortgage advances, in number and values, distinguishing ordinary from special advances.
9. Interest payable on deposits.
10. Operating costs, with auditors fees, directors fees and depreciation shown separately.
11. Investment income.

REPORT OF THE AUDITORS

We have examined the books, accounts and vouchers of the Society and have obtained all the information and explanation that we have considered necessary for the purpose of our audit. During the course of our audit we physically verified the existence of mortgage deeds in respect of of the properties in mortgage to the Society and other securities belonging to the Society.

In our opinion, the foregoing Annual Statement and Account, set out on pages 1 to, which is in agreement with the books of account, gives a true and fair view of the state of the Society's affairs at 31st January, 19 and its results for the year then ended, in compliance with the Building Societies Act (Cap. 32:01).

Date

.....

PART II — MORTGAGES TRANSFERRED

Roll number	If leasehold or right of occupancy state term at date of advance	Valuation of property for purpose of advance	Date of advance	Amount of advance	Date of transfer	Debt at date of transfer	Consideration for transfer	Name and address of transferee	Observations
1	2	3	4	5	6	7	8	9	10
	Years	£		£		£			

Dated this day of 19

Signature of director

FORM B.S.13

BUILDING SOCIETIES ACT

NOTICE AS TO ABSENCE OF WARRANTY

TO

.....

.....

(Name and address of prospective borrower)

NOTICE is hereby given that, in the event of the Building Society making an advance to assist you in the purchase of

(Description and address of property)

.....

the making of the advance will not imply any warranty by the society that the purchase price of the property is reasonable.

Dated this day of 19

.....

(Signature of officer of the building society)

ACKNOWLEDGMENT

I hereby acknowledge receipt of this notice.

Dated this day of19

.....

(Signature of borrower)

(The borrower's acknowledgment of receipt is to be endorsed on the duplicate hereof and returned to the society.)

FORM B.S.14

BUILDING SOCIETIES ACT

NOTICE TO MORTGAGOR OF SALE OF PROPERTY

TO

.....

.....

NOTICE is hereby given that in exercise of the power of sale by virtue of a mortgage dated the day of 19 the

..... Building Society on the day of 19, agreed to sell the property described in the Schedule hereto to for the sum of and that the said sale was completed on the day of

..... 19 and the said sum of was paid to the society. The expenses and costs incidental to the sale are

Dated this day of 19

.....

(Signature of officer of the building society)

SCHEDULE OF PROPERTY

.....
.....
.....
.....
.....
.....
.....

FORM B.S.15

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

CHANGE OF NAME

We enclose a copy of a resolution passed at a meeting of the members of the Building Society held on 19 at which the members declared that the name of the society is thereby changed to the Building Society. We declare that the resolution was approved by all the members of the society.

Date

.....

(Signature of director)

.....

(Name of society)

FORM B.S.16

BUILDING SOCIETIES ACT

CERTIFICATE OF REGISTRATION OF CHANGE OF NAME

I HEREBY CERTIFY that the resolution of the members dated has been registered in accordance with section 67 of the Building Societies Act, and that the society formerly known as Building Society has now changed its name to Building Society.

Dated this day of 19

Registrar of Building Societies

FORM B.S.17

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

NOTICE OF CHANGE OF OFFICE OR ADDRESS

NOTICE is hereby given that the situation of the registered office and postal address of the building society known as the Building Society was on the day of19 changed from to

Dated this day of 19

.....

(Signature of director)

ENDORSEMENT

(for official use only)

The above-mentioned change of office or address has been noted in the Register of Building Societies.

Dated this day of 19

Registrar of Building Societies

FORM B.S.18

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

NOTICE OF CHANGE OF DIRECTORS

..... Building Society

(Name of society)

1. The following persons have ceased to be directors

Full name Postal and residential addresses Date of appointment

.....
.....
.....

2. The following persons have been appointed as directors

Full name Postal and residential addresses Date of appointment

.....
.....
.....

3. The following persons are the present directors

Full name Postal and residential addresses Date of appointment

.....
.....
.....

Dated this day of 19

.....

(Signature of director)

ENDORSEMENT

(for official use only)

The above-mentioned cessations and appointments have this day been noted in the Register of Building Societies.

Dated this day of 19

Registrar of Building Societies

FORM B.S.19

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

APPLICATION TO ALTER RULES

We enclose two copies of a resolution passed at a meeting of Building Society on 19 at which it was agreed that the rules of the society should be altered in accordance with the resolution. I hereby declare that the meeting was properly

constituted and that the resolution was passed by the required majority as stated in the existing rules. I therefore request your approval of the proposed alteration.

Date

.....(Signature of director)

.....(Name of society)

ENDORSEMENT

(for official use only)

CERTIFICATE OF APPROVAL OF AMENDMENT OF RULES

I HEREBY CERTIFY that the resolution dated the day of and endorsed by me on a copy thereof by which the Building Society amended its rules, has been this day approved by me.

Dated this day of 19

Registrar of Building Societies

FORM B.S.20

(To be submitted in quadruplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

NOTICE OF UNION

NOTICE is hereby given that at a general meeting of the members of the Building Society convened for the purpose and held pursuant to the Building Societies Act on the day of 19, a resolution was passed by all the members of the Society that the said society should unite with the Building Society in accordance with the instrument of union containing the whole of the terms and conditions of the said union, a copy of which, signed by a director of each society, is annexed to this notice:

AND at a general meeting of the said Building Society convened for the purpose and held pursuant to the Building Societies Act on the day of 19

a resolution was passed by all members of the society that that society should unite with the said Building Society in accordance with the terms of the said instrument of union:

AND it is intended that the united society shall be called Building Society.

AND the approval of the Minister was given to this union by his letter dated19

Dated this day of 19

(Seal of each building society)

THE permanent-share capital of the first-named society is £..... and of the second-named society is £..... and the consent in writing of the holders of such permanent shares is testified by their signatures hereunder.

Signatures of permanent share holders of the Building Society:—

Name	Amount of permanent shares	Signature
.....
.....
.....

Signatures of permanent share holders of the Building Society:—

Name	Amount of permanent shares	Signature
.....
.....
.....

ENDORSEMENT

(for official use only)

I certify that I have registered this notice of union and that a certificate of registration of the new society has been issued.

Dated this day of19

Registrar of Building Societies

FORM B.S.21

(To be submitted in duplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA.

NOTICE OF TRANSFER OF ENGAGEMENTS

NOTICE is hereby given that at a meeting of the Building Society convened for the purpose and held pursuant to the Building Societies Act on the day of 19, a resolution was passed by all the members of the society that the said society should transfer its engagements to the Building Society in accordance with the instrument of transfer containing the whole of the terms and conditions of the said transfer, a copy of which, signed by a director of each society, is annexed to this notice:

AND at a meeting of the said Building Society convened for the purpose and held pursuant to the Building Societies Act on the day of 19, a resolution was passed by all the members of that society that that society should undertake to fulfil the engagements of the said Building Society in accordance with the terms of the said instrument of transfer:

AND the approval of the Minister was given to this transfer by his letter dated 19

Dated this day of 19

(Seal of each building society)

THE permanent-share capital of the first-named society is £..... and the consent in writing of all the members is testified by their signatures hereunder.

Signature of permanent share holders of the Building Society:—

Name Amount of permanent shares Signature

.....

.....

.....

ENDORSEMENT

(for official use only)

CERTIFICATE OF REGISTRATION OF TRANSFER

I certify that I have this day registered this notice of transfer of engagements.

Date 19

Registrar of Building Societies

FORM B.S.22

(To be submitted in quadruplicate)

BUILDING SOCIETIES ACT

TO: THE REGISTRAR OF BUILDING SOCIETIES, ZOMBA

NOTICE OF TRANSFER OF ENGAGEMENTS BY AN EXISTING SOCIETY

Notice is hereby given that a meeting of the Board of Directors of the Building Society held at on 19 resolved that the said society should transfer its engagements in Malawi to the Building Society in accordance with the instrument of transfer containing the whole of the terms and the conditions of the said transfer. A

copy of the resolution and of the instrument of transfer, signed by the chairman of the Board of Directors, is annexed to this notice:

And at a meeting of the said Building Society convened for the purpose and held on19 a resolution was passed by all the members of that society that that society should undertake to fulfil the engagements of the said Building Society in accordance with the terms of the said instrument of transfer:

And the approval of the Minister was given to this transfer by his letter dated

Dated this day of 19

(Seal of transferee society)

ENDORSEMENT

(for official use only)

CERTIFICATE OF REGISTRATION OF TRANSFER

certificate of registration of the new society has been issued. engagements.

Dated 19

Registrar of Building Societies

SECOND SCHEDULE

BUILDING SOCIETIES ACT

FEES

	Subject matter and manner fee payable £	s.	d.
1.	For the registration of a society; payable on application therefor	50	0 0
2.	On application to the Minister for his approval to a union or to a transfer of engagements; payable on application therefor	25	0 0
3.	On application for the approval of the appointment of an accountant, actuary or inspector under section 83 or section 91 of the Act payable on application therefor	25	0 0

4. On application for the Registrar to order the dissolution of a society; payable on application therefor 25 0 0

5. On application to refer dispute to the Registrar under section 79—

(a) payable on application therefor 10 0 0

(b) payable thereafter such fee, not exceeding £100, as the Registrar may consider proper having regard to the complexity of the dispute, the time involved, and the expenses incurred.

6. On application to the Registrar for any authority or approval under any section of the Act, not otherwise provided for in this Schedule; payable on application therefor 2 0 0

K t

7. For the filing of an annual statement and account, together with the return of sales and transfers; payable on the filing thereof 10 00

8. For the filing of a notice of change of name, change of office or address, or change of directors; payable on the filing thereof 2 00

9. For filing a notice of the commencement or completion or termination of dissolution; payable on the filing thereof 10 00

10. For the filing or registration of any document not specified in this Schedule payable on the filing or registration thereof 2 00

11. For a copy or extract of any document in the custody of the Registrar payable per folio of one hundred words 75

12. For the inspection of documents in the custody of the Registrar; payable on inspection 1 00

DESIGNATION OF BUILDING SOCIETY FOR THE PURPOSE OF THE INVESTMENT OF TRUST FUNDS

under s. 98

G.N. 88/1964(N)

The Minister, having guaranteed the liquidity of The New Building Society, has designated that society for the purpose of the investment of trust funds in terms of section 98 of the Act.

MALAWI HOUSING CORPORATION

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Establishment of the Corporation and powers thereof
4. Status of the Corporation
5. Constitution of the Corporation
6. Disqualification of members of the Corporation
7. Financial policy of the Corporation
8. Advances by Government
9. Repayment of, and interest on, advances
10. Borrowing powers
11. Consequential provisions on transfer of functions
12. Acquisition of land
13. Employees of the Corporation
14. Power of Minister to give directions
15. Accounts, audit and reports
16. By-laws

21 of 1963

20 of 1966

16 of 1970

21 of 1970

5 of 1971

24 of 1972

8 of 1980

26 of 1988

G.N. 16/1964(M)

137/1966

An Act to provide for the establishment of a Malawi Housing Corporation and for purposes connected therewith

[1ST JANUARY 1964]*

[Ch3202s1]1. Short title

This Act may be cited as the Malawi Housing Corporation Act.

[Ch3202s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Corporation” means the Malawi Housing Corporation established under section 3.

“member” includes the Chairman of the Corporation.

[Ch3202s3]3. Establishment of the Corporation and powers thereof

26 of 1988(1) There shall be established in accordance with this Act a body to be called the Malawi Housing Corporation.

(2) The Corporation shall have power—

(a) to undertake the management of such houses, classes of houses and housing estates as the Minister may entrust to the Corporation;

(b) to undertake the development and construction of houses and housing estates:

26 of 1988 Provided that in respect of the development of housing estates the Corporation shall consult with the Planning Committee appointed under the Town and Country Planning Act for the area in which the housing estates are situated or, where there is no such Planning Committee, the Commissioner for Town and Country Planning, on the design and layout of the housing estates;

(c) to enter into agreements with contractors or agents for the development, construction, maintenance or supervision of houses or housing estates;

(d) to build or to permit or to assist the building, on any land owned, leased or controlled by the Corporation, of premises other than dwelling houses, where such premises are considered by the Corporation to contribute to the improvement or development of a housing estate;

(e) to acquire and dispose of interests in movable property;

(f) to purchase, hold, manage, lease or otherwise dispose of any interests in or attaching to land: Provided that a lease to the Corporation under section 5 of the Land Act shall not be disposed of by assignment; Cap. 57:01

(g) to make loans to persons for the construction of dwelling houses upon such terms and conditions as may be provided for in by-laws made under section 16;

(h) to do all such things as are necessary, incidental or conducive to the performance of the foregoing powers.

[Ch3202s4]4. Status of the Corporation

The Corporation shall be a body corporate with perpetual succession and a common seal, and may in its corporate name sue and be sued.

[Ch3202s5]5. Constitution of the Corporation

16 of 1970(1) The Corporation shall consist of a Chairman, a Deputy Chairman, and four other members all of whom shall be appointed by the Minister. The Deputy Chairman shall preside at the meetings of the Corporation in the absence or inability to act of the Chairman. The Chairman, or, in his absence or inability to act, the Deputy Chairman, and any three other members shall form a quorum.

8 of 1980(2) Subject to this section, each member of the Corporation shall hold office for two years:

Provided that—

(a) any person so appointed shall, on ceasing to be a member, be eligible for reappointment;

(b) any person so appointed may at any time by notice in writing to the Minister resign his office.

(3) Decisions of the Corporation shall be taken by a majority of votes of members present and voting:

Provided that—

(a) the person lawfully acting as Chairman at any meeting of the Corporation shall have a casting as well as an original vote;

(b) no member of the Corporation shall take part in the consideration or discussion of or vote on any decision of the Corporation in respect of any matter in which he has any pecuniary interest, direct or indirect.

(4) The validity of any proceedings of the Corporation shall not be affected by any vacancy amongst the members thereof, or by any defect in the appointment of a member thereof.

(5) The members of the Corporation shall not be paid any remuneration except such allowances as may be prescribed by any by-laws made under section 16.

(6) The Corporation may, subject to this Act, make Standing Orders providing for the proper conduct of the business and of the meetings of the Corporation.

(7) The Minister shall have power at any time to terminate the appointment of any member of the Corporation.

[Ch3202s6]6. Disqualification of members of the Corporation

No person shall be eligible for appointment as a member of the Corporation who—

(a) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in the Commonwealth;

(b) is of unsound mind;

(c) is serving a sentence of imprisonment;

(d) has been convicted of any offence involving dishonesty and been sentenced to imprisonment (by whatever name called) therefor in any part of the Commonwealth and has not received a free pardon; or

(e) being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in any part of the Commonwealth from practising his profession by the order of any competent authority made in respect of him personally.

[Ch3202s7]7. Financial policy of the Corporation

(1) The Corporation shall be self-accounting and shall so manage its business that, taking one year with another—

(a) its revenue is sufficient for meeting all expenditure properly chargeable to revenue;

(b) sufficient provision is made for depreciation of assets.

(2) Except in so far as is required by subsection (1) the making of profits shall not be an object of the activities of the Corporation.

[Ch3202s8]8. Advances by Government

The Government may from time to time make to the Corporation advances of moneys required for the proper carrying out of this Act. The moneys so advanced and any interest thereon shall constitute a liability of the Corporation and shall be charged on the property and annual revenues of the Corporation present and future.

[Ch3202s9]9. Repayment of, and interest on, advances

(1) The Corporation shall make to the Government, at such times and in such manner as the Minister may direct, payments of such amounts as he may so direct in or towards repayment of

advances made to the Corporation under section 8 and payment of interest on what is outstanding for the time being in respect of such advances at such rate as he may so direct, and different rates may be directed as respects different advances and as respects interest for different periods.

(2) The Minister shall lay before the National Assembly a statement of any payment due from the Corporation under this section which is not duly paid.

[Ch3202s10]10. Borrowing powers

(1) Subject to this section, and any law generally regulating the borrowing powers of the Government and statutory corporations constituted under any law of Malawi, the Corporation may raise loans whether by bank overdraft or otherwise for meeting any of its obligations or discharging any of its functions.

(2) The power of the Corporation to raise loans shall be exercisable only with the approval of the Minister.

(3) Where any such loan shall be raised by means of stock, the provisions of any borrowing powers Act that may be applicable and in force in Malawi with regard to the issuing of stock, the provisions to be made for the payment of interest thereon, and for the redemption thereof at the time or times fixed for repayment, and the proceedings to be taken in case of default, shall apply.

[Ch3202s11]11. Consequential provisions on transfer of functions

The Minister may by Regulation make provision consequential on the assumption by the Corporation of any functions under this Act for—

- (a) the transfer to the Corporation of property and liabilities held or incurred for the purposes of the said functions;
- (b) enabling any proceedings pending with respect to any such functions, property or liabilities to be carried on by or against the Corporation;
- (c) for continuing in force anything done by the Minister in relation to such functions;
- (d) such other matters supplementary to the foregoing as appear to the Minister necessary or expedient.

[Ch3202s12]12. Acquisition of land

21 of 1970 If the Corporation requires any customary land for the purposes of carrying into effect any of the provisions of this Act, it may apply for a grant, lease or other disposition in accordance with section 5 of the Land Act. Cap. 57:01

[Ch3202s13]13. Employees of the Corporation

5 of 1971, 24 of 1972 (1) For the purposes of carrying out its functions under this Act, the Corporation may, subject in each case to the directions of the Minister, appoint a General Manager and such other officers or servants as the Minister considers necessary.

(2) The General Manager and all other officers and servants employed for the purpose of the discharge of the functions of the Corporation shall be employees of the Corporation and the employment of all such employees, in respect of remuneration and conditions of service, shall be in accordance with regulations made by the Minister and not otherwise.

(3) The Corporation may employ any public officer on such terms and conditions as may be approved by the Minister responsible for the Ministry in which such officer is serving.

(4) The Corporation may, in its absolute discretion, advance money, by way of repayable loan, to any employee thereof for the purchase, or acquisition, by such employee, of a motor car, bicycle, or other like vehicle, for the private use of such employee.

(5) Any advance made pursuant to subsection (4) shall be in accordance with and subject to such general terms and conditions as the Minister may approve and, in particular, subject to any such approved terms and conditions as to the repayment of such advance, or the possession or use of such vehicle by such employee.

[Ch3202s14]14. Power of Minister to give directions

In exercise of any function conferred upon the Corporation by any of the provisions of this Act the Corporation shall be subject at all times to the general or special directions of the Minister.

[Ch3202s15]15. Accounts, audit and reports

(1) The Corporation shall—

- (a) keep proper accounts;
- (b) keep proper records relating to the accounts; and
- (c) prepare, in respect of each financial year, a statement of accounts in a form prescribed by the Minister.

(2) The accounts of the Corporation shall be audited annually by auditors appointed by the Corporation with the approval of the Minister.

(3) Within three months after the end of the financial year, the Corporation shall—

- (a) prepare a general report of its proceedings during the financial year; and
- (b) transmit to the Minister—
 - (i) that report, together with
 - (ii) a certified copy of the audited accounts of the Corporation,

and the Minister shall lay on the table of the National Assembly copies of that report and a certified copy.

[Ch3202s16]16. By-laws

The Corporation may, subject to the prior approval of the Minister, make by-laws regulating any of the following matters—

- (a) the procedure governing the allocation of the Corporation's houses to applicants and the assessment of rents to be paid;
- (b) the rates of interest, charges and conditions to be contained in agreements made by the Corporation in respect of premises sold upon deferred terms of payment;
- (c) the rates of interest, charges and conditions attaching to loans to persons for the construction of dwelling houses;
- (d) the allowances to be paid to members of the Corporation.

SUBSIDIARY LEGISLATION

MALAWI HOUSING CORPORATION (LOANS FOR INSTALLATION FOR PRIVATE WATER SUPPLIES) BY-LAWS

under ss. 3 (2) (g) and (h) and 16 (c)

G.N. 69/1965

1 Citation

These By-laws may be cited as the Malawi Housing Corporation (Loans for Installation of Private Water Supplies) By-laws.

2 Interpretation

In these By-laws "plot holder" means any person occupying a plot in a housing area or estate administered by the Malawi Housing Corporation.

3 Loan for Installation

The Corporation may grant a loan to a plot holder covering, in whole or in part, the cost of installing an individual water supply to his plot:

Provided that—

- (a) the plot holder pays to the Corporation a sum of not less than K10 towards the cost of installing the water supply;
- (b) the amount of the loan does not exceed K 30;
- (c) the plot holder pays interest on the loan at such rate as may be prescribed by the Corporation with the prior approval of the Minister;
- (d) the loan is repaid over a period not exceeding five years.

4 Discontinuance of Water Supply

The Corporation may disconnect, or may instruct the Water Board for the area concerned to disconnect, an individual water supply in the event of failure on the part of the plot holder to pay either—

- (a) any instalment of the loan repayment and interest when it becomes due; or
- (b) the charge for water consumed.

The supply may be reconnected on payment by the plot holder of all charges outstanding, together with such reconnexion fee as the Corporation or the Water Board, as the case may be, may prescribe.

5 Application for a Loan

An application for a loan shall be made in such form or in such manner as the Corporation may prescribe.

[Chap3301]CHAPTER 33:01

AFRICANS ON PRIVATE ESTATES

ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title
- 2. Application of the Act
- 3. Interpretation
- 4. Registers to be kept
- 5. Who may apply for registration
- 6. Trespassers
- 7. Applications to Tribunal
- 8. Additions to register
- 9. Right of Minister to enter and obtain information
- 10. Allocation of land
- 11. Liability to pay rent

12. When rent is due and recoverable
13. Receipts for rent paid or certificates
14. Resident Africans may work for wages
15. Owner to deduct rent from wages
16. Economic crops
17. Disputes between resident Africans and owners
18. Establishment of the Tribunal
19. Resident Africans not to quit estate except on lawful order
20. Order to quit
21. Power to make orders
22. Compensation for disturbance
23. Offence to disobey order
24. Resettlement of evicted resident Africans
25. Special agreement
26. Minister may make schemes
27. Effect of Act
28. Penalty
29. Regulations and rules

12 of 1962

26 of 1971

26 of 1988

G.N. 43/1963

1/1965

137/1966

166/1967

An Act to regulate the conditions on which Africans may reside on Private Estates, the Orderly Development of Agricultural Land and Matters connected therewith

[17TH AUGUST 1962]

[Ch3301s1]1. Short title

This Act may be cited as the Africans on Private Estates Act.

[Ch3301s2]2. Application of the Act

(1) This Act shall apply to such part or parts of Malawi as the Minister may, by notice published in the Gazette, direct.

(2) This Act shall not apply to any African who is in occupation of land on an estate by virtue of a valid lease or tenancy agreement for a period of not less than two years.

(3) The Minister may by notice published in the Gazette suspend or rescind the application of this Act to any part or parts of Malawi to which it has been applied.

[Ch3301s3]3. Interpretation

In this Act, unless the context otherwise requires—

“African” means any person who is a member of an African community indigenous to Malawi, Tanzania, Zambia or Mozambique;

“economic crops” means such crops as are grown for sale and not for the consumption of the grower or his family;

“estate” means an undivided area of land, the legal right to occupy which is vested in some person other than the Government;

“exempted African” in relation to an estate means any African employee serving the owner of such estate otherwise than under this Act and living in a dwelling constructed at the expense of the owner and, during the registration period referred to in section 5, includes an African residing on an estate in pursuance of a contract which was a special agreement under the Africans on Private Estates Ordinance, 1952 (now repealed);

“operative date” means the date upon which this Act comes into operation in relation to any estate by reason of its application to such estate under section 2 (1);

“owner” means any person, other than the Government, having a legal right, otherwise than under this Act, to occupy the estate in respect of which such term is used;

“resident African” means any African who is entitled to be registered as such under this Act;

“Tribunal” means the Africans on Private Estates Tribunal established under section 18;

“special agreement” means a written agreement made in accordance with section 25;

“unmarried woman” means a woman who has not married and includes—

(a) a widow who has not remarried;

- (b) a divorced woman who has not remarried;
- (c) a woman whose husband has been absent from Malawi for a continuous period of two years or upwards and is still absent;
- (d) a woman the whereabouts of whose husband have been unknown for a continuous period of two years or upwards and whose whereabouts are still unknown.

[Ch3301s4]4. Registers to be kept

(1) Every owner shall register all resident Africans on his estate in a register which shall be in such form and contain such particulars as the Minister may prescribe.

(2) Every resident African registered under subsection (1) shall be supplied by the owner with a document in the form prescribed by the Minister certifying his registration.

(3) Every owner shall keep a separate register, which shall be in such form and contain such particulars as the Minister may prescribe, of all Africans who enter his estate under a special agreement.

(4) Every owner who contravenes this section shall be guilty of an offence.

[Ch3301s5]5. Who may apply for registration

(1) Every male African over the apparent age of 18 years and every unmarried African woman over the apparent age of 18 years who, on the operative date, was resident on an estate, shall be entitled, on application to the owner of the estate, to be registered as a resident African. Every application for registration shall, subject as hereinafter provided, be made within the period (hereinafter referred to as the registration period) of six months after the operative date:

Provided that—

- (a) an exempted African shall not be entitled to apply for registration;
- (b) an African, who was party to an agreement, in force on the operative date, for which approval was applied under section 25 but which was not approved before the expiration of the registration period, may apply, within one month after such expiration, for registration as a resident African.

(2) No African shall be deemed to be resident on any estate for the purposes of subsection (1) unless he was, on the operative date, residing in a dwelling on the estate constructed by him while he was not employed by the owner, or was residing on the estate with the knowledge of the owner.

(3) Any African who satisfies the Tribunal that he has resided on an estate continuously since the 1st day of January, 1962, shall be deemed to have been residing on that estate with the knowledge of the owner on the operative date.

(4) Any person applying for registration shall supply full particulars of the members of his family residing with him on the estate, including wives, children and any other dependants and the

approximate ages of such children and dependants and of the dwellings and other buildings occupied or used by him.

[Ch3301s6]6. Newcomers and trespassers

(1) Any owner who consents to any African, other than an exempted African, residing, after the expiration of the registration period, on his estate, for the purpose of growing any economic crop for sale to, or performing any agricultural work for, that owner shall be guilty of an offence, unless such African is a person in respect of whom particulars have been registered under this Act, or in respect of whom application for registration or for approval of a special agreement is pending.

(2) After the operative date, any African who resides on or cultivates any estate or part thereof or exercises any rights conferred by section 10 (2) on resident Africans over or in relation to any estate shall be a trespasser, and guilty of an offence, unless he is a person of whom particulars have been registered under this Act or in respect of whom application for registration or for approval of a special agreement is pending.

[Ch3301s7]7. Applications to Tribunal

(1) Any African who has applied unsuccessfully to an owner for registration may, within one month after refusal of registration, apply to the Tribunal for an order that the owner grant his application.

(2) An application for registration shall, for the purposes of section 6, be deemed to be pending from the time when it is made until it is granted or refused by the owner and, if refused, until the time for application to the Tribunal under subsection (1) has expired and, if application is so made to the Tribunal, until the Tribunal has given its decision on such application.

[Ch3301s8]8. Additions to register

Any African who, after the operative date, comes to reside on an estate, in pursuance of a valid marriage to an unmarried woman who is registered as a resident African, shall apply to the owner for and shall be entitled to registration as a resident African. No other person shall be entitled to registration as a resident African after the expiration of the registration period except in pursuance of an order of the Tribunal, or in accordance with proviso (b) to section 5 (1). A child, or other dependant brought up as a child, of a registered resident African may on attaining the age of 18 years apply to the owner for the occupation of land on the estate under a special agreement and such application shall be granted.

[Ch3301s9]9. Right of Minister to enter and obtain information

(1) The Minister or any other person duly authorized by him in that behalf shall have the right to enter upon any estate at all reasonable times for the purpose of inspecting the registers and enforcing this Act, and investigating the conditions of Africans residing or working on the estate.

(2) The owner of every estate shall furnish, on demand, to the Minister or any person duly authorized by him, full information regarding entries in the registers maintained by him and regarding matters which are required to be entered in such registers.

(3) Any owner who fails to comply with the requirements of this section shall be guilty of an offence.

[Ch3301s10]10. Allocation of land

(1) Every registered resident African shall be entitled to the continuous use, on the estate in respect of which he is registered, of a suitable site for a dwelling and reasonable outbuildings for himself and each registered wife and, if practicable, of an area of land for cultivation adequate for growing the usual food crops for the sustenance of himself and those of his wives and dependants whose particulars have been registered, and at a reasonable distance from his dwelling.

(2) Every registered resident African and every member of his family or other dependant of whom particulars have been registered shall be entitled to cut or remove grass, firewood (if available) and other materials necessary for his domestic purposes (including the erection and maintenance of buildings) from land allocated to him for cultivation and from any part of the estate which has not been set aside by the owner for the protection of streams and water supplies or for the protection of land from soil erosion, and which has not been cultivated, re-afforested or set aside for controlled cutting under a silvicultural management scheme.

(3) The operation of this section shall be subject to any other written law for the time being in force in Malawi.

[Ch3301s11]11. Liability to pay rent

(1) Subject to subsections (2), (3) and (4), every registered resident African shall be liable to pay to the owner of the estate, in respect of which he is registered, a rent of £1 per annum in respect of each dwelling occupied by him on the estate. For the purposes of this section a dwelling shall be deemed to include a group of buildings occupied by a wife.

(2) The following persons shall be exempt from the payment of rent under the provisions of subsection (1)—

- (a) an unmarried woman;
- (b) a married woman whose husband is registered as a resident African in respect of the same estate;
- (c) a person exempt from payment of tax by virtue of the Taxation Act; Cap. 41:01
15 of 1928(d) a person who on the 30th day of June, 1942, was a resident native on the estate under the Natives on Private Estates Ordinance, 1928 (now repealed) or is a descendant according to customary law, of such a person;
- (e) a resident African who, in the opinion of the Tribunal, is without the means to pay rent and is unable to acquire the means due to sickness, age, infirmity or preoccupation with the care of infant children.

(3) A male resident African who has two wives who live in separate dwellings on the same estate shall be liable to pay rent in respect only of one dwelling:

Provided that—

(a) any male resident African who has more than two but not more than three wives who live in separate dwellings on the same estate shall be liable to pay rent in respect of the third dwelling at the rate of six shillings and eightpence per annum;

(b) a resident African who has more than three wives living in separate dwellings on the same estate shall be liable to pay additional rent in respect of each dwelling after the first two at the rate of ten shillings per annum.

(4) Every male resident African, who has wives living on separate estates belonging to different owners, shall be liable to pay rent in respect of the dwellings on each separate estate in accordance with subsections (1), (2) and (3).

[Ch3301s12]12. When rent is due and recoverable

Rent shall be due in advance on the 1st day of January in each year and shall become recoverable from the 1st day of July next after it becomes due:

Provided that no rent shall be payable in respect of the period from the 1st day of July until the 31st day of December, 1962.

[Ch3301s13]13. Receipts for rent paid or certificates

(1) Every owner who receives rent from a resident African shall give to such resident African a written receipt therefor specifying the period in respect of which rent was received.

(2) Every owner for whom any resident African has worked for wages in accordance with this Act shall give to such resident African a certificate specifying the period of work and stating the amount deducted from his wages in respect of rent payable under this Act.

[Ch3301s14]14. Resident Africans may work for wages

(1) Notwithstanding anything hereinbefore contained, a resident African may elect to work for wages for the owner of the estate upon which he resides.

(2) Every resident African who is liable to pay rent under this Act shall before the 30th day of September in each year inform the owner of the estate whether he desires to pay his rent or whether he desires to offer to work for such owner for any and, if so, what period during the next year.

(3) Where such resident African has elected to offer to work for wages for the owner of the estate, the owner shall offer such resident African suitable work on the estate within a reasonable distance from his dwelling for a period sufficient to enable such resident African to pay his rent in accordance with section 15, or such lesser period as the resident African may elect, or shall provide such resident African with such reasonable facilities for growing economic crops in accordance with section 16 as may be expected to produce sufficient cash return to pay the rent.

(4) Where a resident African has elected to work for wages for the owner of the estate upon which he resides, he shall not be liable to pay the rent if the owner has failed or is unwilling to offer

such resident African suitable work within a reasonable distance of his dwelling during the months in which he has elected to work or to provide facilities for growing economic crops.

(5) Every resident African who works for the owner of the estate in accordance with this Act shall be entitled to be paid wages at not less than the rate prescribed by any law for the time being in force in Malawi regulating the payment of wages.

[Ch3301s15]15. Owner to deduct rent from wages

(1) There shall be deducted from the wages payable to any resident African who works for the owner of the estate on which he resides an amount in respect of rent payable under this Act not exceeding one-third of such wages in any month; but a resident African may pay rent from his wages to an extent greater than one-third thereof if he so desires.

(2) Save in accordance with section 25 (2), it shall be unlawful for the owner of an estate to demand work or exact services from any resident African on any estate.

(3) Every owner who contravenes this section shall be guilty of an offence.

[Ch3301s16]16. Economic crops

(1) No resident African shall grow economic crops on the estate on which he resides without the written consent of the owner and the approval of the Minister or other person approved by him in that behalf.

(2) Where the owner has consented and given reasonable facilities to a resident African, who is liable to pay rent under this Act, to grow economic crops for the purchase of the owner of the estate, the owner of the estate shall be entitled to deduct from the purchase price an amount equal to the rent payable to the owner of the estate under this Act.

(3) The conditions upon which resident Africans may grow economic crops on any estate shall be subject on each estate to the approval of the Minister or other person authorized by him in that behalf.

(4) The Minister may make regulations under this section prescribing the conditions on which economic crops may be grown on any estate by resident Africans.

(5) The Minister or any other person authorized by him in that behalf shall be entitled to enter upon any estate where resident Africans are permitted to grow economic crops, for the purpose of inquiring into the conditions under which such economic crops are grown, and he may appoint a public officer to supervise the grading or purchase of such crops. Any expense of such supervision shall be borne by the owner:

Provided that notwithstanding that this Act has not been applied to any estate or part of Malawi the Minister may by notice published in the Gazette apply to any such estate or part of Malawi this subsection so modified as though the subsection applied to crops grown on any estate by any African and, if this subsection is so applied, section 28 (6) and (7) shall also apply, and the owner shall not refuse to purchase, at a fair price, any crop so grown and remaining for sale after this subsection has been so applied.

(6) Where there is a dispute between resident Africans and any owner of the estate as to any conditions in respect to the growing of economic crops, marketing, price or grading or any other matter, the Minister may himself inquire into the dispute or refer it to the Tribunal. The Tribunal shall report the result of such inquiry to the Minister who shall have power to make such order as he deems fit.

(7) Any person who wilfully ignores or neglects or disobeys the order of the Minister made under subsection (6) shall be guilty of an offence.

[Ch3301s17]17. Disputes between resident Africans and owners

If any other dispute shall arise as to the liability or rights of resident Africans or liability and rights of the owners of any estate under this Act, such dispute shall be referred to the Tribunal for its determination.

[Ch3301s18]18. Establishment of the Tribunal

(1) There shall be established by the Minister a Tribunal, to be known as the Africans on Private Estates Tribunal, whose function it shall be—

(a) to determine any matter which, under this Act is to be, or may be, determined by such Tribunal;

(b) to determine any other matter or dispute which under this Act the Minister may refer to such Tribunal;

(c) to determine whether it is practicable for a special agreement to be given to the child or other dependant of a registered resident African under section 8;

(d) to make and enforce orders for ejection and any other orders in accordance with this Act;

(e) subject to the approval of the Minister, to employ and remunerate suitable officers to enforce the orders of the Tribunal.

(2) The Tribunal shall consist of a Chairman and four other members to be appointed by the Minister.

The Minister shall appoint a public officer to be the secretary of the Tribunal, who shall be entitled to speak at the meetings of the Tribunal, but not to vote thereat.

(3) The Tribunal may, with the approval of the Minister, make rules governing the manner of making applications, the conduct of its own proceedings, the convention of its meetings, the quorum thereof and the allowances payable to its members:

Provided that rules governing the allowances payable to its members shall require approval by the Minister.

(4) The Chairman shall preside at all meetings of the Tribunal unless incapacitated by sickness or absent from some other cause, and in the event of the absence of the Chairman from any meeting, the members present shall choose one of their number to act as Chairman at the meeting.

(5) Before any determination of the Tribunal is made, opportunity shall be given to every person having an interest therein, or his representative, to be heard.

(6) Except where under this Act it is otherwise provided, any person aggrieved by a decision or determination of the Tribunal, and having an interest therein, may, within forty-five days of notification of such a decision or determination, appeal to the Minister who may refer such appeal to an Appeal Advisory Board.

(7) The Appeal Advisory Board shall consist of such members as may from time to time be appointed by the Minister and shall advise the Minister in respect of any appeal referred to it. The Minister, whose decision in any appeal shall be final, shall not be bound by any advice given to him by the Appeal Advisory Board.

(8) The appointment of any member to the Tribunal may be revoked by the Minister.

[Ch3301s19]19. Resident Africans not to quit estate except on lawful order

(1) Subject to this Act, no resident African shall be required to quit the estate on which he resides except in accordance with the order of the Tribunal lawfully made under this Act.

(2) No order of the Tribunal requiring any resident African to quit the estate on which he resides shall have any effect unless and until it has been approved by the Minister.

[Ch3301s20]20. Order to quit

(1) Any owner may apply to the Tribunal for an order requiring a resident African, or any African, to quit the estate on which he resides on the ground—

(a) that the owner has not received the rent for one year since it became due and that the resident African has not offered to work for him for wages during the same period, or, having offered to work, has failed to do so;

(b) that the resident African has been convicted or guilty of an offence of such gravity as to render him undesirable as a resident African;

(c) that the African is a trespasser;

(d) that the African is a member of the family or other dependant of a registered resident African, who has attained the age of 18 years and who has been offered land for occupation on the terms of an agreement in a form approved by the Minister, but has been unwilling to enter into such an agreement, or who, having entered into such an agreement, has not acted in accordance therewith.

(2) Any owner may apply to the Tribunal for a declaration that any resident African is liable to pay rent or to do anything which, under this Act, he is liable to do.

(3) Any resident African may apply to the Tribunal for—

(a) an order that the owner of an estate shall register him as a resident African, or to restrain the owner of the estate on which he resides or works from in any way interfering with his rights under this Act;

(b) a declaration that he is not liable to pay rent under this Act, or that he is entitled to any other right thereunder;

(c) a declaration regarding the amount and situation of land which he is entitled to use under this Act.

[Ch3301s21]21. Power to make orders

(1) The Tribunal may, at its discretion, grant or refuse any application made under this Act, and may make such order as it thinks fit, including the award of compensation to either party.

(2) In making such order the Tribunal shall have regard to all the circumstances of the case in so far as they may be relevant to the issue.

(3) Every order of the Tribunal requiring any resident African to quit the estate on which he resides shall specify—

(a) the date on or before which the resident African is required to quit the estate;

(b) the amount of compensation which shall be paid by the owner of the estate to the resident African in respect of crops, buildings and other improvements and for disturbance;

(c) whether the owner of the estate shall be responsible for the cost of transportation of the resident African to the new place selected for the resident African by the Minister,

and when the cost of transportation can be ascertained the Tribunal may fix the amount of such cost.

(4) Where the Tribunal has ordered a resident African to quit the estate on which he resides and has ordered that compensation shall be paid, such resident African need not quit the estate until the amount of compensation which the Tribunal has ordered to be paid to him has been paid in full.

[Ch3301s22]22. Compensation for disturbance

(1) Every resident African who has been ordered by the Tribunal to quit the estate on which he resides shall be entitled to compensation for disturbance.

(2) Compensation for disturbance shall be assessed by the Tribunal and shall be of such amount as the Tribunal considers just and reasonable. The Minister may in his discretion reduce or increase the amount of compensation assessed by the Tribunal.

(3) In cases where there is disagreement between members of the Tribunal as to the amount payable as compensation, the matter shall be referred to the Minister who may appoint an

independent valuer to arrive at an independent assessment, or may himself assess the compensation. The amount assessed by an independent valuer shall be deemed to be an assessment by the Tribunal approved by the Minister.

[Ch3301s23]23. Offence to disobey order

Any person who wilfully ignores or neglects or disobeys an order of the Tribunal made in accordance with this Act shall be guilty of an offence.

[Ch3301s24]24. Resettlement of evicted resident Africans

Where a resident African has, under this Act, been ordered to quit the estate on which he resides, the Government shall afford such resident African such assistance as may be necessary to enable him to obtain a suitable site for his dwelling and cultivable land on customary land or public land.

[Ch3301s25]25. Special agreement

(1) Any owner may enter into a written special agreement with any African whereby such African, together with his wife or wives (or her husband) and family, is entitled to reside on the estate of such owner.

(2) Such written agreement may provide that an African who enters into such agreement shall be required to work for the owner of the estate for such period during the year as may be agreed upon:

Provided that—

(a) no such special agreement made after the operative date shall be valid unless it has been approved in writing by the Minister with whom a written copy thereof shall be filed;

8 of 1952(b) any agreement which was a special agreement for the purposes of the Africans on Private Estates Ordinance, 1952 (now repealed), and which was in force on the operative date, shall cease to have any effect at the expiry of six months thereafter, unless it has been approved by the Minister in writing as a special agreement and a copy thereof filed with him;

(c) no agreement shall be approved by the Minister as a special agreement unless he is satisfied that it provides for adequate security of tenure, adequately controls the types of crops which may be grown and is fair and equitable in all the circumstances;

(d) if any agreement ceases to have effect by reason of proviso (b), the African who was a party to the agreement may apply for registration as a resident African under section 5.

(3) Reference to every special agreement approved under this section shall be made in a register kept in accordance with section 4, and copy thereof shall be supplied by the owner to the African with whom it is made.

(4) Notwithstanding section 6 of the Deeds Registration Act, no special agreement shall be subject to compulsory registration in the Deeds Registry Office. Cap. 58:02

(5) Every special agreement shall be free of stamp duty.

[Ch3301s26]26. Minister may make schemes

26 of 1988(1) Subject to subsection (4) the Minister may, after consultation with the owner, prescribe a scheme for the orderly development of any estate which comprises undeveloped land or land occupied by resident Africans.

(2) Such scheme shall as the Minister may see fit, be prepared by or with the assistance of the Commissioner for Town and Country Planning and may provide for—

(a) the setting aside of a defined area of the estate for occupation by Africans pursuant to special agreements and may limit the number of families who may so occupy such area;

(b) the delimitation of areas on the estate which may be occupied or used by resident Africans;

(c) the removal of resident Africans from land occupied by them to another part of the estate or to public land, to facilitate an approved scheme of development, and the payment of the cost of such removal and compensation;

(d) penalties for infringements of the scheme.

(3) Any owner whose estate is affected by a scheme prescribed or proposed to be prescribed under subsection (1) may by notice in writing inform the Minister that he desires any land so affected to be acquired by Government.

(4) In any case in which the owner has expressed a desire under subsection (3)—

(a) the land specified in the notice of such desire shall be deemed to be required for a public purpose;

26 of 1971(b) the Minister may cause steps to be taken for the acquisition of such land;

(c) the scheme shall not take effect until the land has been so acquired.

[Ch3301s27]27. Effect of Act

This Act shall have effect notwithstanding any condition to the contrary, express or implied, in any past grant or lease of public land.

[Ch3301s28]28. Penalty

Any person who is guilty of an offence under this Act shall be liable to a fine of K200 and to imprisonment for six months.

[Ch3301s29]29. Regulations and rules

The Minister may make regulations—

(a) prescribing any thing which by this Act may be or is to be prescribed by him;

(b) providing for the appointment of officers or other persons with power to enter upon any estates for the purpose of enforcing this Act and for investigating the condition of Africans residing or working thereon;

(c) generally for the purpose of carrying this Act into effect.

SUBSIDIARY LEGISLATION

APPLICATION OF ACT

APPLICATION TO SOUTHERN REGION

under s. 2

G.N. 127/1962

268/1970

The Minister has directed that the Africans on Private Estates Act shall apply to the whole of the Southern Region with the exception of the estates set forth in the Schedule.

SCHEDULE

District Name of Estate Owner Acreage

Blantyre Limbe/Bangwe British Central Africa Company Ltd. 1382

Michiru Blantyre and East Africa Ltd. and other owners of Subdivisions deriving title from Blantyre and East Africa Ltd. 1554

Ngumbe British Central Africa Company Ltd. 638

Ngumbe do 1485

Chiradzulu Chikowa do 1772

Matambo Colonel W. D. Lewis 716.4785

Sakata Hill British Central Africa Company Ltd. 512

Thyolo Chaoni British Central Africa Company Ltd. 437

Chisunga do 3892

Chiwale A. M. Henderson and Sons 945

Gotha Tea Estate Gotha Tea Estates Company Ltd. 1465

Kamponji L. J. Rumsey 965

Kumadzi	Alex. Lawrie & Co. Ltd.	1344.10
Kwenengwe	British Central Africa Company Ltd.	1295
Lujenda	Lujenda Estates Limited	1372.67
Mafisi	Naming'omba Tea Estates Limited	1803
Makandi/Sanjika	British Central Africa Company Ltd.	8250
Makwasa Group	Thyolo Highlands Tea Estates Ltd.	6571.259
Mandimwi	Naming'omba Tea Estates Limited	1994
Mikolongwe	British Central Africa Company Ltd.	1751
Mindali do	2214	
Mindimwe	Naming'omba Tea Estates Limited	1351
Mwiwala	British Central Africa Company Ltd.	395.087
Mirango	Lujenda Estates Limited	1350.9
Mpeni	British Central Africa Company Ltd.	2908
Mpezo do	1510	
Msituiwire, Chimvuu/ Namikuyu	do	1570
Nakhurumbo	Gotha Tea Estates Limited	1081
Namabinzi	Naming'omba Tea Estates Limited	893
Namadzi	A. M. Henderson and Sons	971
Naming'omba	Naming'omba Tea Estates Limited	2089
Namisinje	British Central Africa Company Ltd.	705
Nansadi	do	813
Napiyo do	1155	
Nasonia	Nasonia Tea Company Ltd.	1480
Nchefu	Miss H. Glover	591.61
Nchiwi	Lujenda Estates Limited	16.17
Ndata	British Central Africa Company Ltd.	2226
Nkami do	600	

Nkami (B)	do	957	
Ntimabe	do	869	
Ntuwanjati	E. P. Roe	1000	
Tunga	British Central Africa Company Ltd.	1341	
Uplands	do	4208	
Namireme	Thyolo Highlands Tea Estates Ltd.	340.957	

APPLICATION TO CENTRAL AND NORTHERN REGIONS

under s. 2

G.N. 128/1962

The Minister has directed that the Africans on Private Estates Act shall apply in the Central and Northern Regions to the estates set forth in the Schedule with effect from the 1st day of September, 1962.

SCHEDULE

CENTRAL REGION

District Estate Owner

Dedza Sekwere M. W. Bartlett

Linthipe M. De Vito

Tete Ibrahim Hassam

Mdinde J. N. S. Chaudhri

Mpata Milonde J. N. S. Chaudhri

Mphati Trustees of Osman Adam

Golomoti G. H. Charlton

Golomoti African Export Corporation Limited

Orpington Dharap Brothers

Dowa Mpali Mbabzi Estates Limited

Kasangadzi Mbabzi Estates Limited

MonjesiMbabzi Estates Limited

Chikambe Mbabzi Estates Limited

Nakandwa Mbabzi Estates Limited

Chikwawa Mrs. G. M. Wallace

Chikwawa Extension Mrs. G. M. Wallace

Kantunda I. Conforzi (Tea and Tobacco) Limited

Chikwawa I. Conforzi (Tea and Tobacco) Limited

Kasache D. W. K. MacPherson Limited

Mchinji Likasi British Central Africa Company Ltd.

Lisoka Mrs. G. M. Wallace

Mperere I. Conforzi (Tea and Tobacco) Limited

Konongo D. W. K. MacPherson Limited

Agra D. W. K. MacPherson Limited

Namitete Extension Mrs. M. Dickinson

Kawere/Kalulu Mrs. M. Dickinson

Kasungu Chasenga Mbabzi Estates Limited

Nkandaula Mbabzi Estates Limited

Katondo Mbabzi Estates Limited

Lilongwe Chanumba R. W. J. Wallace Limited

Kalata R. G. Calvert

Mudi Mbabzi Estates Limited

Mbabzi Mbabzi Estates Limited

Chipala Mbabzi Estates Limited

Bua Mbabzi Estates Limited

Namitete Mbabzi Estates Limited

Kasu Mrs. G. M. Wallace

Msangwa Mrs. G. M. Wallace

Lingadzi Mrs. G. M. Wallace

Namitete Mrs. G. M. Wallace

Daning'a Mrs. G. M. Wallace

Nsungwa I. Conforzi (Tea and Tobacco) Limited

Nsungwa I. Conforzi (Tea and Tobacco) Limited

Likuni I. Conforzi (Tea and Tobacco) Limited

Lisungwe I. Conforzi (Tea and Tobacco) Limited

Cirikande I. Conforzi (Tea and Tobacco) Limited

Ncheza I. Conforzi (Tea and Tobacco) Limited

Kakuyu R. P. Warren

Kapanula R. P. Warren

Malowa R. P. Warren

Kachawa T. W. Bradshaw

Likuni T. W. Bradshaw

Namitete Mrs. M. Dickinson

Kaphiri Mrs. M. Dickinson

Mitundu R. McFadyen

Nanjai Dambo R. McFadyen

Mkhana D. Mackenzie

Mgwerisi D. Mackenzie

Zanzi F. Comminetti

Masula F. Comminetti

Lingadzi Mrs. Sirjeet Kour

Namitete Namitete Estates Limited

Ncheu Balaka S. H. Osman

Mitongwe A. C. Dent

Balaka H. O. Hussein

Bilila H. Osman and Sons

Dzunje Mrs. M. Nussbaum

Rivi Rivi I. Conforzi (Tea and Tobacco) Limited

NORTHERN REGION

Karonga Nyungwe D. Maxwell

Nyungwe T. Maxwell

THE AFRICANS ON PRIVATE ESTATES (FORMS) RULES

under s. 29(2)

G.N. 129/1962

1. Citation

These Rules may be cited as the Africans on Private Estates (Forms) Rules.

2. Register of resident Africans

The register of resident Africans referred to in section 4 (1) of the Act shall be in the form set forth in Form I in the Schedule and shall contain the particulars specified therein.

3. Certificate of registration

The document certifying registration referred to in section 4 (2) of the Act shall be in the form set forth in Form II in the Schedule.

4. Register of Africans under special agreements

The register of Africans entering an estate under special agreements referred to in section 4 (3) of the Act shall be in the form set forth in Form III in the Schedule and shall contain the particulars specified therein.

SCHEDULE

FORM I

THE AFRICANS ON PRIVATE ESTATES ACT

(SECTION 4(1))

REGISTER OF RESIDENT AFRICANS

I II III IV V VI VII VIII IX

I	II	III	IV	V	VI	VII	VIII	IX
Register Number	Date of Registration	Name in Full	Tax Census Number	Name or description of locality where resident on Estate	Acreage allocated	Whether or not exempted from paying rent	Name and full details of wife or wives (including residence)	Details of children (number, sex and ages)

In the event of additions being made to the register in terms of section 8 (in pursuance of a valid marriage, etc.) it is only necessary to enter columns I to IV and to enter the register number in column V of the resident African with whom marriage has been joined.

FORM II

THE AFRICANS ON PRIVATE ESTATES ACT

(SECTION 4 (1))

CERTIFICATE OF REGISTRATION AS A RESIDENT AFRICAN

This is to certify that the undermentioned person has been registered as a resident African with effect from on Estate in District in accordance with section 4 (1) of the Africans on Private Estates Act.

Name

Estate Register No.

FORM III

THE AFRICANS ON PRIVATE ESTATES ACT

(SECTION 4 (3))

REGISTER FOR AFRICANS ON SPECIAL AGREEMENTS

Agreement No. Date of Agreement Name of Tenant in full Tax Census No. (if any) Home
Address of Tenant Whether agreement approved by Minister and Ministry Reference

AFRICANS ON PRIVATE ESTATES TRIBUNAL RULES

under s. 18

G.N. 1/1963

1 Citation

These Rules shall be known as the Africans on Private Estates Tribunal Rules.

2. Interpretation

In these Rules, unless the context otherwise requires, "Chairman" means the Chairman of the Tribunal; "member" means a member of the Tribunal; "Secretary" means the Secretary to the Tribunal.

3. Persons who may apply to Tribunal

Application to the Tribunal shall be made only by a person aggrieved by an act, omission or determination of any other person under the Act. For the purposes of this rule, "person" includes the Government.

4. Method of application

All applications shall be made to the Secretary. There is no set form for an application, but all applications must be written and either signed or thumb-printed. An application should state the names and addresses of all persons involved in the matter and shall briefly state the matter in dispute.

5. Secretary to notify person complained against

(1) When the Secretary has received an application, he shall notify the person complained against of the substance of the complaint and invite a written reply.

(2) Where an application is filed against a person or persons unknown, the Secretary may seek assistance from responsible sources to determine the names and addresses of such person or persons.

6. Secretary to establish agreed facts

The Secretary shall attempt to establish as many facts as possible as agreed facts before the Tribunal acts on any matter.

7. Convention of Tribunal

(1) The Chairman, or in his absence or illness, any member designated by him, may convene the Tribunal.

(2) No meeting of the Tribunal may be convened on less than seven days' written notice.

8. Quorum and voting

(1) Three members of the Tribunal shall constitute a quorum. A majority of a quorum shall be competent to conduct the business of the Tribunal.

(2) The Chairman, or the member elected to act as Chairman, shall have both an original and a casting vote.

(3) No member of the Tribunal shall be qualified to participate or vote in any matter in which he has a direct financial interest.

9. Chairman

The Chairman shall preside at all meetings of the Tribunal unless incapacitated by sickness or absent from some other cause. When the Chairman is absent from any meeting, the members present shall choose one of their number to act as Chairman for that meeting.

10. Questions of competence

The Secretary may offer advice to the Tribunal in any matter where the question of the Tribunal's competence to hear that matter is in doubt. The Tribunal shall decide the question of competence before dealing with the substance of the dispute.

11. General procedure

(1) As presiding officer of the Tribunal, the Chairman shall have general powers to supervise the hearing of any matter before the Tribunal. This includes regulating the manner in which persons giving information to the Tribunal may be questioned.

(2) The Tribunal shall not be bound by technical rules of evidence.

(3) Every person having an interest in any matter before the Tribunal shall have the opportunity to be heard, either in person or by a representative.

(4) The Chairman may invite any person who, in the Chairman's opinion, may be able to assist the Tribunal in its deliberations, either to appear in person or to submit a written statement to the Tribunal.

12. Prompt despatch of business

(1) The Tribunal shall promptly consider any matter brought before it.

(2) Where a person has been invited to comment on or reply to a matter before the Tribunal, and such person fails to do so within a reasonable time, the Tribunal may consider the matter, notwithstanding the absence of the invited information.

13. Determination of Tribunal

(1) The Tribunal may withdraw to consider its determination.

(2) A summary of the determination of the Tribunal shall be signed by the Chairman and any written dissent by a member shall be signed by him. Copies shall be made available to the parties to the dispute by the Secretary.

14. Allowances and honoraria

The subsistence and travelling allowances paid to members shall be at the rates laid down from time to time by the Government for payment to non-official members of committees, boards and similar bodies. An honorarium at the rate of £100 per annum shall be paid to the Chairman and each member of the Tribunal. The honorarium will be payable in quarterly instalments calculated from the date of appointment to the Tribunal in respect of each completed month's service on the Tribunal.

[Chap3302]CHAPTER 33:02

HANDICAPPED PERSONS

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ADMINISTRATION

3. Establishment of Council
4. Composition of the Council
5. Secretary/Registrar and officers
6. Tenure of office of members
7. Remuneration of members of the Council
8. Proceedings of the Council
9. Non-liability of members of Council
10. Functions of the Council
11. Power of the Council
12. Authentication of the Common seal
13. Annual report
14. Exemption from taxes
15. Funds of the Council
16. Accounts
17. Appointment of auditors and audit of Council's accounts
18. Duties of auditors

PART III

REGISTRATION

19. Registration of the handicapped
20. Registration of associations

21. Power to impose conditions
22. Inspection of institutions
23. Penalties for failing to register

PART IV

MISCELLANEOUS

24. Restrictions on seeking subscriptions, contributions or collections
25. Minister may make regulations

48 of 1971

9 of 1986

An Act to make provision for the improvement of the care, assistance and education of handicapped persons in Malawi; to establish a Council for the handicapped; to provide for the voluntary registration of handicapped persons; to provide for the registration, direction, control and regulation of associations whose objects include the welfare of the handicapped; and further to provide for matters incidental thereto and connected therewith

[1ST OCTOBER 1972]

PART I

PRELIMINARY

[Ch3302s1]1. Short title

This Act may be cited as the Handicapped Persons Act.

[Ch3302s2]2. Interpretation

In this Act, unless the context otherwise requires—

"association" has the meaning assigned to it by section 20;

"authorized officer" means a medical practitioner and any other person authorized by the Minister for the purposes of this Act;

"Chairman" means the Chairman of the Council appointed and designated pursuant to section 4;

"Council" means the Malawi Council for the Handicapped established by section 3;

“the handicapped” means those persons who, by reason of any defect or impairment of the mind, senses or body, congenital or acquired, are unable to take part in normal education, occupation and recreation, or who, by reason of any such defect or impairment, require special assistance or training to enable them to take part in normal education, occupation or recreation, and

“handicap” shall be construed accordingly;

“institution” means any land, buildings or other premises in which an association carries on work for the promotion of the welfare of the handicapped, and includes premises where the handicapped live and are cared for by any such association;

“Minister” means the Minister for the time being responsible for the administration of this Act;

“Vice-Chairman” means the Vice-Chairman of the Council elected pursuant to section 4.

PART II

ADMINISTRATION

[Ch3302s3]3. Establishment of Council

There is hereby established a Council to be known as the Malawi Council for the Handicapped (hereinafter referred to as “the Council”) which shall be a body corporate by that name with perpetual succession and common seal and shall be capable of suing and being sued, of acquiring, holding, letting and otherwise disposing of land and, subject to the provisions of this Act, of performing all such acts and things as a body corporate may by law perform.

[Ch3302s4]4. Composition of the Council

9 of 1986(1) The Minister shall, by notice in the Gazette, appoint the members of the Council.

(2) The Council shall consist of—

- (a) one member designated by the Minister as Chairman;
- (b) two independent members who shall be persons with wide and specialized knowledge in the field of the handicapped;
- (c) five other members.

(3) The Minister may appoint to the Council such additional members, not exceeding two, as he deems essential to the Council in the exercise of its functions and powers.

(4) The Council shall, at its first meeting, elect one of its members to be Vice-Chairman of the Council for the period ensuing from the date of that meeting to the date of its first annual general meeting, and shall, at its first annual general meeting, and at each and every annual general meeting held thereafter, elect one of its members to be Vice-Chairman of the Council for the ensuing year.

[Ch3302s5]5. Secretary/ Registrar and officers

(1) There shall be a Secretary to the Council who shall be appointed by the Minister, and who shall be the Registrar for all of the purposes of this Act.

(2) The Minister may appoint such other officers of the Council as he may deem necessary for the proper administration of the affairs of the Council.

(3) The Minister shall determine the terms and conditions of appointment of the Secretary and other officers appointed pursuant to subsections (1) and (2).

(4) The Secretary shall be the chief executive officer of the Council and shall work under the direction of, and be responsible to, the Council for the performance of any duties assigned to him by this Act or delegated to him by the Council, as the case may be.

(5) The Secretary may delegate or assign any administrative or other duties to any officer appointed pursuant to subsection (2) and each officer so appointed shall be responsible to the Secretary for the performance of any such duties lawfully delegated or assigned to him.

(6) The Secretary and every officer appointed pursuant to this section shall be paid such salaries and emoluments as shall be fixed by the Minister in the terms of their respective appointments, and such salaries and emoluments shall be paid to them out of the funds of the Council.

(7) Notwithstanding the foregoing provisions of this section, the Minister may designate an officer in the public service to be the Secretary to the Council, or may designate officers in the public service to be officers of the Council, and in any such event the provisions of subsection (6) shall not apply in respect of such Secretary or officers so designated by the Minister.

[Ch3302s6]6. Tenure of office of members

(1) Members of the Council shall, subject to the provisions of this section, hold office for such period, being not more than three years, as may be specified in their respective appointments.

(2) A retiring member shall be eligible for re-appointment.

(3) On the expiry of the period for which a member 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.

(4) The office of a member shall be vacated—

(a) upon his death;

(b) if he is absent from three consecutive meetings of the Council without the permission of the Council;

(c) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(d) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;

(e) if he becomes physically or mentally incapable of performing his duties as a member of the Council.

[Ch3302s7]7. Remuneration of members of the Council

Any member of the Council who is not an officer in the public service shall be paid, out of the funds of the Council, such remuneration and allowances, if any, as the Minister may in his case fix.

[Ch3302s8]8. Proceedings of the Council

(1) The Council shall meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

(2) At any meeting of the Council more than half the number of members of the Council shall constitute a quorum and all acts, matters or things authorized or required to be done by the Council shall be decided by resolution by majority vote of the members present at any such meeting.

(3) At all meetings of the Council, the Chairman or in his absence the Vice-Chairman or, in the absence of both, such member as the members present shall elect, shall preside.

(4) The person presiding at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(5) Subject to the provisions of subsection (2), no act, decision or proceedings of the Council shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Council being defective.

(6) The Council may from time to time make rules for the transaction of the business of the Council or of any Committee of the Council.

(7) The Council may appoint committees for any purposes that it may deem expedient and may, with the prior consent of the Minister, co-opt any person to be a member of any committee so appointed. The Chairman of the Council shall, by virtue of his office, be a member of every committee so appointed.

(8) Subject to the provisions of this Act, the Council may regulate its own procedure.

(9) The Council shall hold in each year an annual general meeting within three months of the first day of the financial year of the Government .

(10) The Council shall cause minutes of every Council meeting to be kept.

[Ch3302s9]9. Non-liability of members of Council

No member of the Council, or of any committee of the Council, shall be liable for any act or default of his, or of the Council, done in the exercise in good faith of the functions or powers of the Council.

[Ch3302s10]10. Functions of the Council

The Council shall act as an agent of the Government and, in promoting the welfare of the handicapped, its functions shall be—

- (a) to advise the Minister in regard to all matters affecting the welfare, education, training and employment of the handicapped and in regard to all matters relating to the prevention of any type of handicap;
- (b) to promote public interest in the welfare and care of the handicapped;
- (c) to administer vocational and special training centres for the handicapped;
- (d) to administer rehabilitation services for the handicapped and to administer services for the care and welfare of handicapped persons;
- (e) to raise and receive funds and donations which it may apply for the welfare of the handicapped.

[Ch3302s11]11. Powers of the Council

The Council shall have power—

- (a) to acquire by purchase, gift or otherwise any property, real or personal, and any rights or interest therein or thereover;
- (b) to enter into any contract or agreement;
- (c) to employ upon such terms and conditions as may be determined by the Council such managers, agents and servants as the Council may deem necessary, to fix their remuneration, and to arrange for pension schemes, gratuities and retiring allowances and any contributions therefor;
- (d) to augment the earnings of persons registered pursuant to section 19, or of any person engaged in promoting the welfare, education, training or employment of the handicapped;
- (e) to raise and receive funds and donations to be applied for the welfare of the handicapped;
- (f) to borrow and raise moneys;
- (g) to invest any moneys not immediately required in any investment for the time being authorized by law for the investment of trust moneys, and to vary such investments;
- (h) to assist by grants-in-aid or loans in the establishment, maintenance or running of any association or institution which will be of direct benefit to the handicapped;
- (i) to do all such acts, matters and things as may be necessary for fulfilling the objects of the Council.

[Ch3302s12]12. Authentication of the Common seal

The common seal of the Council shall be authenticated by the signature of the Chairman or of some other member of the Council authorized by the Chairman, in writing, in that behalf and such seal shall be officially and judicially noticed.

[Ch3302s13]13. Annual report

(1) The Council shall, as soon as practicable and in any case not later than six months after the termination of the financial year, submit to the Minister an annual report of its work and operations during the year.

(2) The annual report shall include a balance sheet and a complete statement of income and expenditure duly audited, and the report of the auditors and such other information as the Minister may require.

[Ch3302s14]14. Exemption from taxes

The Council shall be exempt from any tax on income, profits or capital gains.

[Ch3302s15]15. Funds of the Council

The funds of the Council shall consist of—

(a) such sums as may be payable to the Council from moneys appropriated by Parliament;

(b) such moneys as may be given to the Council by way of donation, contribution, collection or gift; and

(c) such other moneys or assets as may vest in or accrue to the Council whether in the course of its work or operations or otherwise.

[Ch3302s16]16. Accounts

The Council shall keep or cause to be kept a full and correct account of all moneys and assets vested, received or otherwise obtained and all moneys expended and assets sold or otherwise disposed of by the Council.

[Ch3302s17]17. Appointment of auditors and audit of Council's accounts

(1) The Council shall with the approval of the Minister, at its first meeting, appoint one or more persons who publicly carry on the profession of accountants as its auditors to examine and report to the Council and to the Minister on the Council's accounts not less than once in each financial year.

(2) In addition to the report referred to in subsection (1), the Minister may, at any time, require the Council to obtain from its auditors such other reports, statements or explanations in connexion with the work, operations, undertakings and property of the Council as the Minister may consider expedient.

(3) The Council shall produce to the auditors all its books and accounts with all vouchers in support thereof and all books, papers and writings in its possession or control relating thereto.

(4) The auditors shall be entitled at all reasonable times to require from all members, the Secretary and officers and all other persons in the employ of the Council such information and explanations as may be necessary for the performance of their duties as auditors.

(5) The expenses of and incidental to any audit shall be borne and paid by the Council.

[Ch3302s18]18. Duties of auditors

It shall be the duty of the auditors of the Council, in addition to the ordinary duties of auditors, to certify not less than once in each financial year whether or not—

(a) they have received from the Council all the information and explanations which they considered necessary for the performance of their duties as auditors;

(b) the accounts of the Council have been properly kept; and

(c) the accounts of the Council present a true and fair view of the financial position of the Council according to the information and explanations given and the books and records produced to them.

PART III

REGISTRATION

[Ch3302s19]19. Registration of the handicapped

(1) A register of the handicapped in the form prescribed, hereinafter referred to as "the register", shall be maintained by the Council.

(2) Any person wishing to be registered as handicapped shall make or cause to be made on his behalf an application in the prescribed form to the Council.

(3) On receipt of an application under the provisions of subsection (2) the Council shall cause the person by whom or on whose behalf the application is made to be examined by an authorized officer.

(4) Where an authorized officer has examined any person under the provisions of subsection (3), he shall forward a certificate in the prescribed form to the Council stating whether he is satisfied that the person examined by him is a handicapped person.

(5) Where an authorized officer certifies that he is satisfied that a person examined by him under this section is a handicapped person, the Council shall, on receipt of such certificate, direct the Registrar to cause the name of that person to be entered in the register and to issue a certificate of registration, in the prescribed form, to the person so registered.

(6) Where any person, who is registered pursuant to this section, is subsequently examined by a medical practitioner and such medical practitioner certifies in the prescribed form that the said

person is no longer a handicapped person, the Council shall, on receipt of such certificate, cause the Registrar to strike the name of the said person off the register.

[Ch3302s20]20. Registration of associations

(1) A Register of Associations in the form prescribed (hereinafter referred to as "the register") shall be kept and maintained by the Council.

(2) Every group or body of persons, corporate or unincorporate, other than any body corporate established by any Act of Parliament expressly enacted for that purpose, formed or operating within Malawi and having as one of its objects the promotion of the welfare of the handicapped (in this Act referred to as an "association") shall apply to the Council in the manner prescribed, for registration as a registered association under this Act.

(3) Every association applying for registration pursuant to subsection (2) shall, in its application—

(a) set forth the name and address of the association and the names, designations and addresses of its officers and the members of its executive committee or other body in control of its affairs; and

(b) submit together with its application a copy of the memorandum and articles, constitution or rules, as the case may be, of the association.

(4) As soon as is practicable after receiving an application pursuant to subsection (2), the Council shall consider the same and, having satisfied itself as to the suitability of the memorandum and articles, constitution or rules of the association and the good faith of its officers and members, the Council may direct the Registrar to cause such association to be registered in the register.

(5) Where any amendment is made to the memorandum and articles, constitution or rules of an association registered pursuant to this section, the association shall forthwith give particulars thereof in writing to the Council.

(6) An association registered pursuant to this section shall, not later than the last day of April in each year, submit to the Council a report of the operations of the association together with a balance sheet duly certified by auditors elected at the annual general meeting of the association.

[Ch3302s21]21. Power to impose conditions

(1) The Council may before registration of an association or at any time thereafter impose conditions—

(a) limiting the number of the handicapped in any age group who may be maintained at any one time in any institution operated or managed by the said association;

(b) for ensuring that any such institution shall be adequately staffed both as regards the qualifications and experience of the persons employed therein or taking part in the conduct thereof;

(c) for ensuring that any such institution shall be adequately equipped and maintained;

(d) providing for the keeping by any association of records of the handicapped admitted into and maintained in any such institution;

(e) generally for securing the wellbeing of the handicapped persons admitted into any such institution.

(2) Any association upon which conditions are imposed by the Council pursuant to subsection (1) shall be notified by the Council in writing of the terms of such conditions.

(3) Any conditions imposed by the Council under the provisions of this section may, at any time, be varied or revoked by the Council and the Council shall, in writing, notify the association concerned of such variation or revocation.

(4) Any association aggrieved by any condition imposed, or by any variation of any such condition made, by the Council under this section may, within thirty days after being notified of such imposition or variation, appeal to the Minister, who may dismiss the appeal, or revoke the condition imposed or variation made, or vary such condition or variation and, in this regard, may exercise generally all or any of the powers of the Council under subsection (1).

(5) The decision of the Minister on any appeal pursuant to subsection (4) shall be final and shall not be subject to appeal to or question in any court of law, and the Minister shall not be required to assign any reason for any such decision.

[Ch3302s22]22. Inspection of institutions

(1) Any public officer authorized by the Minister may, at all reasonable times, enter any institution and may inspect the same, and the facilities provided therein for the handicapped, the arrangements for their welfare, education, training, rehabilitation, health and employment and any records kept pursuant to this Act.

(2) Any person who hinders or obstructs any such authorized public officer in the exercise of any of the powers conferred by subsection (1) shall be guilty of an offence and shall be liable to a fine of one hundred Kwacha.

[Ch3302s23]23. Penalties for failing to register

If at any time after three months after the commencement of this Act—

(a) any handicapped person is admitted to, or found in any institution operated by an association which is not registered under section 20; or

(b) any condition lawfully imposed in relation to an association under section 21 is contravened or not complied with,

every person concerned in the management of the said association and any person in control or in charge of the said institution shall be guilty of an offence, and shall be liable, in the case of a first offence, to a fine of two hundred Kwacha, and in the case of a second or subsequent offence, to a fine of four hundred Kwacha and to imprisonment for six months.

PART IV

MISCELLANEOUS

[Ch3302s24]24. Restrictions on seeking subscriptions, contributions or collections

(1) Save with the written permission of the Council, but without prejudice to any other law, no person shall—

(a) publish appeals to the general public for subscriptions, contributions, donations or other forms of gifts for the welfare of the handicapped; or

(b) organize, hold, assist or be concerned in any collection of money, or in any attempt to collect any money, from house to house, in any street, by sale of goods or otherwise, for the welfare, education, training, rehabilitation or health of the handicapped.

(2) Any person who contravenes subsection (1) shall be liable to a fine of one hundred Kwacha and to imprisonment for six months and the court before which the person is convicted of an offence under this section may order that the money, goods or other things collected or received by him by way of a subscription, donation, contribution or gift, shall be forfeited and paid or given to the Council:

Provided that it shall be a sufficient defence if the person charged with an offence under this section proves that he was acting for and on behalf of an association registered under section 20.

[Ch3302s25]25. Minister may make regulations

The Minister may make regulations for the better administration and efficient working of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

(a) the form of records to be kept under this Act;

(b) the criteria to be applied when examining any person who has applied to be registered under section 19;

(c) anything to be prescribed under this Act.

[Chap3303]CHAPTER 33:03

KAMUZU NATIONAL FOUNDATION TRUST

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation

3. Establishment and property of Trust
4. Trustees of the Trust
5. The Trustees: appointment, tenure and meetings
- 5A. Secretary
6. Objects of the Trust
7. Powers of the Trustees
8. Trustees' power to use Trust income
9. Trustees' power to use Trust capital
10. Exemptions from taxation

49 of 1971

9 of 1986

An Act to provide for the establishment of a fund entitled the Kamuzu National Foundation Trust; to provide for the appointment of Trustees thereof and for the vesting of the property constituting such fund in such Trustees; to provide for the incorporation of such Trustees as a body corporate under the name, the Trustees of the Kamuzu National Foundation Trust; to provide for the terms and conditions of the trusts under which such fund shall be held and administered by such Trustees; and further to provide for matters incidental to or connected with the foregoing

[31ST DECEMBER 1971]

[Ch3303s1]1. Short title

This Act may be cited as the Kamuzu National Foundation Trust Act.

[Ch3303s2]2. Interpretation

In. this Act unless the context otherwise requires—

“alternate Trustee” means an alternate Trustee appointed in accordance with section 5 (2);

“objects” means the objects of the Trust declared by section 6;

“Trust” means the fund known as the Kamuzu National Foundation Trust established by section 3;

“Trust capital” means such moneys as are transferred to and vested in the Trustees for the purposes of the Trust by virtue of section 11, together with all moneys or other property, real or personal, received by the Trustees in their capacity as such, whether by gift, devise or bequest, or

purchased or otherwise acquired by, or vested in, the Trustees for the benefit of the Trust, other than Trust income not accumulated;

“Trust income” means any interest, rents, dividends or other annual or periodic earnings from the investment or use of the Trust capital;

“Trustee” means a Trustee appointed in accordance with section 5 (1);

“the Trustees” means the Trustees of the Kamuzu National Foundation Trust constituted and incorporated pursuant to section 4.

[Ch3303s3]3. Establishment and property of Trust

(1) There is hereby established a fund to be known as the Kamuzu National Foundation Trust (hereinafter referred to as the “Trust”) which shall vest in, be held and administered by Trustees pursuant to this Act upon and subject to the trusts and for the advancement and furtherance of the objects in this Act hereinafter declared.

(2) The property of the Trust shall consist of—

(a) such sums of money as may be paid to the Trustees for the benefit of the Trust from moneys appropriated therefor by Parliament;

(b) such sums of money or other property, real or personal, as may be purchased, acquired or received by, or transferred to, or vested in the Trustees, in their capacity as such, whether by way of gift, devise, bequest, purchase or otherwise howsoever;

(c) such sums of money or other property, real or personal as may accrue to the Trustees in the exercise of their powers under this Act;

(d) such sums of money or other property, real or personal, as may be transferred to the Trustees for the benefit of the Trust by or under this or any other written law.

[Ch3303s4]4. Trustees of the Trust

There is hereby constituted the Trustees of the Kamuzu National Foundation Trust, which shall by that name be a body corporate with perpetual succession and a common seal capable of suing and being sued and, subject to the provisions of this Act, of doing such acts and performing such deeds as a body corporate may lawfully do or perform.

[Ch3303s5]5. The Trustees

(1) The Trustees of the Kamuzu National Foundation Trust shall be appointed by the President and shall consist of—

(a) one person to represent the Malawi Army;

(b) one person to represent the Malawi Police;

(c) one person to represent the Malawi Congress Party;

(d) one person to represent commercial and industrial interests in Malawi;

(e) one person to represent banking institutions in Malawi, one of whom shall be designated by the President as Chairman of the said Trustees and another of whom shall be so designated as the Vice-Chairman thereof. In the absence or incapacity of the Chairman the Vice-chairman shall act in his stead.

(2) The President shall, upon the appointment of a Trustee pursuant to subsection (1), appoint from the same category an alternate Trustee.

(3) An alternate Trustee appointed pursuant to subsection (2)—

(i) shall act as a Trustee only when the Trustee to whom he is alternate is unable to exercise his functions as Trustee by reason of illness, absence from Malawi or other grave cause;

(ii) when acting as a Trustee shall have all the powers and be subject to all the duties of a Trustee.

(4) Alternate Trustees may, when not acting under the provisions of subsection (3), attend meetings of the Trustees as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.

(5) No person shall be appointed a Trustee or alternate Trustee who—

(a) is an undischarged bankrupt;

(b) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;

(c) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.

(6) The office of Trustee or of alternate Trustee shall be vacated—

(a) upon his death;

(b) upon his ceasing to reside in Malawi;

(c) upon the happening of any event which would render him ineligible for appointment as provided by subsection (5);

(d) upon his resignation as Trustee or alternate Trustee;

(e) upon his removal by the President.

(7) When the office of Trustee or of alternate Trustee is vacated pursuant to subsection (6), the President shall appoint a new Trustee, or alternate Trustee, as the case may be, from the category from which the said former Trustee or alternate Trustee was originally appointed.

(8) Trustees or alternate Trustees shall not be entitled to any remuneration for their services as Trustees or as alternate Trustees.

9 of 1986(9) Meetings of the Trustees shall be held once every four months at such places and times as the Chairman may determine and shall be convened by notice in writing given by the Chairman, and shall be presided over by him.

(10) A quorum of the Trustees shall consist of the Chairman and two other trustees, or, in the absence of the Chairman, the Vice-Chairman and two other Trustees.

(11) At every meeting of the Trustees the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(12) If any Trustee or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such Trustee or 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 Trustee and which is the subject of consideration by the Trustees, or if he or his spouse is related by consanguinity or affinity with any person whose application for assistance is being considered by the Trustees, he shall, as soon as he becomes aware of such interest in such matter, or of such relationship to such person, disclose the facts relating thereto to the Chairman and the President, and shall not, save with the written approval of the President, take part in the consideration of, or vote on, any question before the Trustees, which relates to such matter or person:

For the purposes of this subsection the expression "major shareholder" means any person who, at the relevant time, in his own right, or in the right of any other person, has the power to exercise or control not less than ten per centum of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

[Ch3303s5A]5A. Secretary

9 of 1986 The President shall appoint a person to be a Secretary to the Trust.

[Ch3303s6]6. Objects of the Trust

The objects of the Trust shall be—

(a) the grant of financial, medical, educational and other aid, assistance and relief to disabled, needy or incapacitated members, of all ranks, of the Malawi Army or of the Malawi Police or to the wives, widows or dependants of such persons;

(b) the grant of financial, medical, educational and other aid, assistance and relief to disabled citizens of Malawi generally;

(c) the grant of financial, medical or other aid or assistance to such educational or charitable purposes as the President may, from time to time, direct.

[Ch3303s7]7. Powers of the Trustees

The Trustees shall have power to hold the Trust upon and subject to the trusts by this Act declared, and shall have power to enter into any transaction or to do any act, which in their opinion

will tend to the advancement of the objects of the Trust as declared by section 6, or which is incidental or contributory thereto, and, without prejudice to the generality of the foregoing, shall have power to—

(a) receive upon trust any gift of any property, real or personal, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by section 6;

(b) receive upon trust from any executor or administrator with the will annexed any devise or bequest, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by section 6;

(c) receive, purchase, take on lease or otherwise acquire real or personal property whether generally or subject to any special trust for the advancement of any specific object within any of the objects declared by section 6;

(d) solicit, from any source whether within or outside Malawi, contributions, whether of money or other property, real or personal, to the Trust;

(e) borrow or otherwise raise money;

(f) invest any moneys of the Trust which are not immediately required for its objects, and in this regard the Trustees shall have power to make such wider range investments as fall within Part II of the Schedule to the Trustee Act: Cap. 5:02

(g) construct, maintain or alter any buildings, drainage or other works;

(h) manufacture, buy, sell, supply, distribute and deal in goods of any kind;

(i) subject to the approval of the President, employ administrative or executive staff and other servants or agents for the management and administration of the affairs of the Trust and to make provision for the salaries, wages, commissions and other conditions of service of such persons including pensions, gratuities and other superannuation benefits;

(j) establish or maintain or assist in establishing or maintaining or give financial or other support to any institution, society or association whose objects are similar to the objects declared by section 6 or any of them;

(k) provide scholarships, bursaries, or other financial aid for the advancement of any of the objects declared by section 6.

[Ch3303s8]8. Trustees' power to use Trust income

(1) In administering the Trust, the Trustees shall apply so much of the Trust income as they deem necessary for the furtherance of the objects of the Trust declared by section 6.

(2) Subject to the provisions of section 9, in the event of there being any surplus Trust income at the end of any financial year, the Trustees may, in their absolute discretion, allow such surplus to be carried over, as Trust income, to the succeeding financial year or may transfer the same to Trust capital.

(3) Save as provided by section 9, the Trustees shall not reduce the Trust capital.

[Ch3303s9]9. Trustees' power to use Trust capital

The Trustees, in their absolute discretion, shall have power to make, for the furtherance of any of the objects declared by section 6, advancement from the Trust capital:

Provided that, at no time, shall any such advancement be made which would reduce such Trust capital below the value of one hundred thousand Kwacha (K100,000):

And further provided that if upon any revaluation of the Trust capital at the end of any financial year the said capital is shown to be reduced below the value of one hundred thousand Kwacha (K100,000) the Trustees shall thereafter accumulate not less than one half of the Trust income during the course of the next succeeding financial years and shall apply such accumulation towards the said Trust capital until such time as the said Trust capital has, on further revaluation, been shown to have reached the value of one hundred thousand Kwacha (K100,000).

[Ch3303s10]10. Exemptions from taxation

(1) Any written law to the contrary notwithstanding—

(a) no duty imposed under any written law for the time being in force relating to customs or excise shall be levied, charged, collected or paid in respect of any goods imported into, or manufactured or produced within, Malawi by or on behalf of the Trustees;

(b) the income of the Trust from whatever source shall be exempt from any tax payable under any written law for the time being in force relating to taxes on income or profits.

(2) Where any testator devises or bequeaths any property, real or personal, for the Trust, generally, or subject to any special trust for the advancement of any of the objects declared by section 6 the value of the property so devised or bequeathed shall be deducted in determining the principal value of the property of such testator for the purposes of estate duty in accordance with the Estate Duty Act as if such devise or bequest were a debt allowable under section 12 of the said Act, and the said devise or bequest shall be payable into the said Trust free of any estate duty under the said Act. Cap. 43:02

[Chap3304]CHAPTER 33:04

NATIONAL FAMILY WELFARE COUNCIL OF MALAWI

ARRANGEMENT OF SECTIONS

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20 of 1990

G.N.126/1990

An Act to make provision for the co-ordination, promotion, fostering and implementation of family welfare programmes in Malawi; the establishment of a National Family Welfare Council of Malawi; and further to provide for matters incidental thereto or connected therewith

[4TH JANUARY 1991]

PART I

PRELIMINARY

[Ch3304s1]1. Short title

This Act may be cited as the National Family Welfare Council of Malawi Act.

[Ch3304s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Chairman” means the person designated as Chairman of the Council under section 8;

“Council” means the National Family Welfare Council of Malawi established under section 3;

“Family Welfare” means the well-being of all persons in Malawi in all aspects of their cultural, social, economic and other forms of human development, reproduction, growth, population and other human development related matters.

PART II

THE NATIONAL FAMILY WELFARE COUNCIL OF MALAWI

[Ch3304s3]3. Establishment of the Council

There is hereby established a body to be known as the National Family Welfare Council of Malawi which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveably, for the purposes, or in the course, of carrying out its functions; and
- (d) capable of doing and performing all such acts and things as bodies corporate may by law do and perform.

[Ch3304s4]4. Composition of the Council

(1) The Council shall consist of—

- (a) The following members appointed by the Minister—
 - (i) three persons representing religious organizations in Malawi;
 - (ii) a representative of the Private Hospital Association of Malawi;
 - (iii) a representative of the Council for Social Welfare;
 - (iv) a representative of the Malawi Broadcasting Corporation;
 - (v) a representative of the Chitukuko Cha Amayi m'Malawi;
 - (vi) not less than three and not more than five other members representing the non-governmental sector;
- (b) the following ex-officio members—
 - (i) the Secretary for Health or his representative;
 - (ii) the Secretary for Community Services or his representative;
 - (iii) the Secretary for Education and Culture or his representative;
 - (iv) the Secretary to the Treasury or his representative;
 - (v) the Secretary for Media Services and Public Affairs or his representative; and
 - (vi) the Secretary for Economic Planning and Development or his representative.

(2) A representative of an ex-officio member referred to in subsection (1) (b) shall be designated by, or on behalf of, the ex-officio by a notice in writing to the Council to attend the meetings thereof, and upon such designation such representative shall not attend to the business of the Council by representation.

(3) A member of the Council appointed under subsection (1) (a), shall hold office for a period of two years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the Gazette.

[Ch3304s5]5. Vacation of office of members

The office of a member, other than an ex-officio member, shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without the permission of the Chairman;
- (c) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;
- (d) if in the opinion of the Minister he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and
- (e) if the Minister so directs.

[Ch3304s6]6. Filling of vacancies on the Council

(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 4 (1) (a) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch3304s7]7. Co-opted persons

The Council may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

[Ch3304s8]8. Chairman and Vice-Chairman

(1) The Minister shall, by writing under his hand, designate one member of the Council to be the Chairman thereof and the person so designated shall, subject to subsection (2), hold office for the duration of his membership on the Council.

(2) The office of the Chairman shall become vacant—

- (a) if the holder resigns his office by notice to the Minister;
- (b) if the holder of the office ceases to be a member of the Council;
- (c) if the Minister so directs.

(3) The Council shall elect a Vice-Chairman from amongst its members who shall subject to subsection (4), hold office for the duration of his membership on the Council.

(4) The office of the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Council;
- (b) if the holder of the office ceases to be a member of the Council; and
- (c) if the Council so directs.

(5) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

[Ch3304s9]9. Remuneration of members of the Council

A member of the Council other than an ex-officio member, shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

[Ch3304s10]10. Meetings of the Council

(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council—

- (a) may be convened by the Chairman at any time; and
- (b) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

- (a) the Chairman or, in his absence, the Vice-Chairman, shall preside;
- (b) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of them to preside; and
- (c) the quorum shall be formed by a majority of members.

(4) An ex-officio member of the Council shall attend any meeting of the Council in person.

(5) At any meeting of the Council a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Council shall have power to regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

[Ch3304s11]11. Non-liability of members of the Council or of committees

No member of the Council or of any committee of the Council shall be liable for any act or default of his, or of the Council, done in the exercise in good faith of the functions or powers of the Council.

PART III

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch3304s12]12. Functions of the Council

The Council shall be responsible for co-ordinating, promoting, fostering and implementing family welfare programmes in Malawi, and without prejudice to the generality of the foregoing the functions of the Council shall be—

- (a) to develop family welfare services where they are nonexistent and strengthen such services where they are inadequate;
- (b) to promote standardization of family welfare services;
- (c) to promote and encourage the piloting of alternative family welfare service delivery methods;
- (d) to develop and maintain an effective management information system aimed at achieving optimum family welfare services and further to promote effective dissemination and use of such information;
- (e) to advise the Government on policies relating to family welfare and implement such policies either directly or through other organizations and agencies;
- (f) to promote an acceptable image of family welfare activities in Malawi;
- (g) to promote optimum standards of contraceptive care in Malawi by ensuring adequate and appropriate supply and wide distribution of a variety of methods of contraceptives;
- (h) to promote motivation of persons of child bearing age as a key factor in fostering the acceptability and sustenance of usage of contraceptives; and

(i) to develop and institute guidelines for cooperation, for the purposes of this Act, between the Government and other organizations and agencies operating in Malawi.

[Ch3304s13]13. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

- (a) to employ technical and administrative personnel;
- (b) to acquire by purchase, gift or otherwise any property, moveable or immovable, and any rights or interest therein or thereover;
- (c) to enter into any contract or agreement;
- (d) with the approval of the Minister, to raise and receive funds and donations to be applied for the family welfare activities;
- (e) subject to the Finance and Audit Act, to raise moneys by way of loans or overdrafts;
- (f) to invest any moneys not immediately required in any investment approved by the Minister or for the time being authorized by law;
- (g) to cooperate with the Government and other organizations and agencies in research activities;
- (h) to publish any technical or other information as it deems necessary or expedient for the promotion of family welfare; and
- (i) to do all such acts, matters and things as may be necessary for fulfilling the functions of the Council.

[Ch3304s14]14. Committees of the Council

(1) In addition to the Policies, Programmes and Procedures Committee, Quality Control Committee and Education Committee and save as otherwise provided in relation to those committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman shall, by reason of his office, be a member of every committee established under subsection (1).

(3) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(5) The Chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) At all meetings of a committee the quorum shall be formed by a majority of members.

(8) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(9) Every committee shall have the power to regulate its own procedure.

(10) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(11) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, with the approval of the Minister, determine.

PART IV

MANAGEMENT OF THE COUNCIL

[Ch3304s15]15. Appointment of an Executive Secretary and other staff

(1) Subject to the provisions of this section, the Council—

(a) shall appoint a person to be designated as the Executive Secretary of the Council upon such terms and conditions as the Council shall determine with the approval of the Minister;

(b) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Executive Secretary, after consultation with the Chairman, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Executive Secretary shall be the secretary to the Council and shall, on the instructions of the Chairman, convene meetings of the Council.

(4) An officer of the Council duly appointed by the Executive Secretary shall be secretary to a committee of the Council and shall, on the instructions of the chairman of the committee, convene meetings of the committee.

PART V

FINANCIAL PROVISIONS

[Ch3304s16]16. Funds, accounts and audit

(1) The funds of the Council shall consist of—

(a) such sums as may be appropriated by Parliament for the purposes of the Council;
and

(b) such moneys as may be given to the Council by way of donation, contribution, collection or gift approved by the Minister.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

(4) The expenses of and incidental to any audit shall be borne and paid by the Council.

PART VI

COMMITTEES OF THE COUNCIL

[Ch3304s17]17. Policies, Programmes and Procedures Committee

(1) There shall be a Policies, Programmes and Procedures Committee which shall consist of—

(a) one member of the Council appointed and designated by the Council as chairman of that committee;

(b) every officer who is the head of a department of the Council;

(c) the financial officer of the Council, if one be appointed; and

(d) four other persons conversant with personnel and administration matters appointed by the Council and who may or may not be members of staff of the Council.

(2) Subject to the general directions of the Council, the functions of the Policies, Programmes and Procedures Committee shall be—

(a) to review and formulate policies, programmes and procedures of the Council for approval by the Council;

(b) to implement or supervise the implementation of the policies and programmes of the Council; and

(c) to produce periodic reports on the programmes and activities of the Council.

[Ch3304s18]18. Quality Control Committee

(1) There shall be a Quality Control Committee which shall consist of—

- (a) one member of the Council appointed and designated by the Council as chairman of that committee;
- (b) every officer who is the head of a department of the Council;
- (c) an obstetrician and gynaecologist practising at a Government hospital, appointed by the Council;
- (d) one person experienced in providing health education, appointed by the Council;
- (e) two persons appointed by the Council from amongst persons suitably qualified to assist the committee in its work; and
- (f) a representative of the Malawi Bureau of Standards.

(2) Subject to the general directions of the Council and in collaboration with other departments of the Council, the functions of the Quality Control Committee shall be—

- (a) to monitor and supervise all contraceptive care services relating to family welfare;
- (b) to set up standards for supervisory activity and to receive and review reports in respect thereof;
- (c) to develop and disseminate information on the quality of methods of contraceptive care; and
- (d) to review and approve standards for clinic procedures aimed at ensuring proper client flow, availability of reference materials to service providers and proper direction of other matters.

[Ch3304s19]19. Education Committee

(1) There shall be an Education Committee which shall consist of—

- (a) one member of the Council appointed and designated by the Council as the chairman of that committee;
- (b) every officer who is the head of a department of the Council;
- (c) one person representing the Ministry of Education and Culture;
- (d) one person representing the Ministry of Health;
- (e) one person representing the Ministry of Community Services;
- (f) one person representing the Medical Council of Malawi;
- (g) one person representing the Nurses and Midwives Council of Malawi; and
- (h) one person representing non-governmental organizations in Malawi

(2) Subject to the general directions of the Council, the functions of the Education Committee shall be—

- (a) to make or review proposals for approval by the Council for family welfare training curricula;
- (b) to review materials of the Council relating to information, education and communication systems and to ensure that such materials are properly distributed for the purposes of the programmes of the Council;
- (c) to ensure liaison with the Government and other organizations involved in the programmes of the Council; and
- (d) to standardize family welfare education materials and programmes.

PART VII

MISCELLANEOUS PROVISIONS

[Ch3304s20]20. Regulations

The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act.

[Chap3305]CHAPTER 33:05

DISASTER PREPAREDNESS AND RELIEF

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27 of 1991

G.N. 48/1992

An Act to make provision for the co-ordination and implementation of measures to alleviate effects to disasters, the establishment of the office of Commissioner for Disaster Preparedness and Relief, the establishment of a National Disaster Preparedness and Relief Committee of Malawi, and for matters incidental thereto or connected therewith

[16TH MARCH 1992]

PART I

PRELIMINARY

[Ch3305s1]1. Short title

This Act may be cited as the Disaster Preparedness and Relief Act.

[Ch3305s2]2. Interpretation

In this Act, unless the context otherwise requires—

“area civil protection officer” means an area civil protection officer referred to in section 23;

“civil protection” means any service provided or measure taken for the purpose of preparing for, guarding against or dealing with any actual or potential disaster;

“civil protection area” means a civil protection area established pursuant to section 22;

“civil protection region” means a civil protection region established pursuant to section 18;

“Committee” means the National Disaster Preparedness and Relief Committee of Malawi established by section 5;

“Commissioner” means the Commissioner for Disaster Preparedness and Relief appointed under section 3;

“disaster” means an occurrence (whether natural, accidental or otherwise) on a large scale which has caused or is causing or is threatening to cause—

- (a) death or destruction of persons, animals or plants;
- (b) disruption, pollution or scarcity of essential supplies;
- (c) disruption of essential services;
- (d) influx of refugees into or out of Malawi;
- (e) plague or epidemic of disease that threatens the life or well-being of the community,

and includes the likelihood of such occurrence;

“Fund” means the National Disaster Preparedness and Relief Fund established under section 34;

“planning sub-committee” means a planning sub-committee appointed under section 16;

“state of disaster” means a state of disaster declared under section 32;

“volunteer” means a person who has applied to be a volunteer and whose name is entered in a register of volunteers established under section 26.

PART II

COMMISSIONER FOR DISASTER PREPAREDNESS AND RELIEF

[Ch3305s3]3. Establishment of the office of the Commissioner

(1) There shall be a Commissioner for Disaster Preparedness and Relief (in this Act referred to as the "Commissioner") whose office shall be a public office.

(2) In addition to the Commissioner there shall be appointed in the public service such officers subordinate to the Commissioner as are necessary for the proper performance of the functions of the Commissioner.

[Ch3305s4]4. Functions of the Commissioner

Subject to this Act, the Commissioner shall have the following functions—

- (a) directing the establishment of civil protection organizations and civil protection areas;
- (b) controlling and directing personnel, materials and services for the purposes of this Act;
- (c) directing and assisting regional civil protection officers and area civil protection officers in the performance of their duties under this Act;
- (d) co-ordinating the training of personnel for civil protection purposes;
- (e) generally co-ordinating the planning and execution of civil protection;
- (f) promoting research in matters relating to civil protection and disseminating information on matters of civil protection and on activities in civil protection regions and civil protection area;
- (g) advising the Minister on all matters relating to civil protection; and
- (h) performing any other functions relating to civil protection that may be assigned to him by the Committee or by the Minister under this Act.

PART III

NATIONAL DISASTER PREPAREDNESS AND RELIEF COMMITTEE OF MALAWI

[Ch3305s5]5. Establishment of the Committee

There is hereby established a body to be known as the National Disaster Preparedness and Relief Committee of Malawi (in this Act referred to as the "Committee").

[Ch3305s6]6. Composition of the Committee

- (1) The Committee shall consist of—
- (a) the following ex-officio members—

- (i) the Secretary to the President and Cabinet, or his representative;
- (ii) the Secretary for Health, or his representative;
- (iii) the Secretary for Community Services, or his representative;
- (iv) the Secretary for Local Government, or his representative;
- (v) the Secretary to the Treasury, or his representative;
- (vi) the Secretary for Economic Planning and Development, or his representative;
- (vii) the Secretary for Works, or his representative;
- (viii) the Secretary for Agriculture, or his representative;
- (ix) the Secretary for Forestry and Natural Resources, or his representative;
- (x) the Secretary for Transport and Communications, or his representative;
- (xi) the Inspector General of Police, or his representative;
- (xii) the Army Commander, or his representative;
- (xiii) the Secretary for Youth and Culture or his representative;

(b) not less than three and not more than five other members representing the non-governmental sector appointed by the Minister.

(2) A representative of an ex-officio member referred to in subsection (1) (a) shall be designated by, or on behalf of, the ex-officio member by notice in writing to the Committee to attend the meetings thereof, and upon such designation such representative shall not himself attend to the business of the Committee by representation.

(3) A member of the Committee appointed under subsection (1)(b) shall hold office for a period of two years, unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.

(4) The names of all members of the Committee as first constituted and every change in the membership of the Committee shall be published in the Gazette.

[Ch3305s7]7. Vacation of office by members of the Committee

The office of a member, other than an ex-officio member, shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Committee of which he has had notice, without the permission of the Chairman;

(c) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;

(d) if, in the opinion of the Minister, he becomes mentally or physically incapable of performing his duties as a member of the Committee; and

(e) if the Minister so directs.

[Ch3305s8]8. Filling of vacancies on the Committee

(1) On vacation of office by a member of the Committee, other than an ex-officio member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 6 (1) (b) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Committee is granted leave of absence by the Committee, the Committee may, if it sees fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch3305s9]9. Co-opted persons

The Committee may, in its discretion, at any time and for any period, invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Committee and take part in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

[Ch3305s10]10. Chairman and Vice-chairman of the Committee

(1) The Minister shall, by writing under his hand, designate one member of the Committee to be the Chairman thereof and the person so designated shall, subject to subsection (2), hold office for the duration of his membership on the Committee.

(2) The office of the Chairman shall become vacant—

(a) if the holder resigns his office by notice to the Minister;

(b) if the holder of the office ceases to be a member of the Committee; and

(c) if the Minister so directs.

(3) The Committee shall elect a Vice-Chairman from amongst its members who shall, subject to subsection (4), hold office for the duration of his membership on the Committee.

(4) The office of the Vice-Chairman shall become vacant—

(a) if the holder resigns his office by notice in writing to the Committee;

(b) if the holder of the office ceases to be a member of the Committee; and

(c) if the Committee or the Minister so directs.

(5) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

[Ch3305s11]11. Allowances of members of the Committee

A member of the Committee other than an ex-officio member, shall be paid out of the funds of the Fund such allowances as the Minister may determine.

[Ch3305s12]12. Meetings and procedure of the Committee

(1) Subject to subsection (2), the Committee shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Committee—

(a) may be convened by the Chairman at any time;

(b) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Committee and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Committee—

(a) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(b) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their member to preside;

(c) the quorum shall be formed by a majority of members;

(d) the decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman, Vice-Chairman or the person presiding shall have a casting vote in addition to this deliberative vote.

(4) The Committee shall have power to regulate its own procedure.

(5) The Committee shall cause minutes of every meeting of the Committee to be kept.

[Ch3305s13]13. Functions of the Committee

The Committee shall be responsible for co-ordinating the implementation of measures to alleviate disasters in Malawi, and without prejudice to the generality of the foregoing the functions of the Committee shall include—

(a) the planning and implementation of the measures for the establishment, maintenance and effective operation of civil protection;

(b) reviewing, from time to time, the measures referred to in paragraph (a);

(c) considering plans prepared by planning sub-committees pursuant to section 17.

[Ch3305s14]14. Sub-committees of the committee

(1) In addition to the planning sub-committees, and save as otherwise provided in relation to those sub-committees, the Committee may establish any number of other sub-committees to carry out any special or general functions determined by the Committee and may delegate to any sub-committee such of the functions of the Committee as the Committee may deem expedient:

Provided that—

(i) the vesting or imposition of any functions in a sub-committee shall not divest the committee of such functions; and

(ii) the Committee may vary or revoke any decision of any such sub-committee in exercise of its functions.

(2) The Chairman shall, by reason of this office, be a member of every sub-committee established under subsection (1).

(3) The Chairman of each sub-committee shall be appointed by the Committee from amongst the members of the Committee.

(4) If at a meeting of a sub-committee the Chairman is absent, the members present may elect one of their number to be chairman.

(5) Every sub-committee may, in its discretion, invite any person to attend a meeting of the sub-committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(6) The Chairman of a sub-committee may, at any time and place, convene a meeting of the sub-committee of which he is chairman.

(7) The Chairman may, at any time, direct the chairman of any sub-committee to convene a meeting of such sub-committee and such chairman shall, as soon as is practicable, comply with such direction.

(8) At all meetings of a sub-committee the quorum shall be formed by a majority of members.

(9) At all meetings of a sub-committee each member present shall have one vote on a question before the sub-committee and, in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(10) Every sub-committee shall have the power to regulate its own procedure.

(11) Every sub-committee shall keep minutes of its meetings and shall inform the committee of its activities.

(12) A member of a sub-committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that sub-committee be paid out of the funds of the Fund such allowances as the Committee may, with the approval of the Minister, determine.

[Ch3305s15]15. Non-liability of members of the Committee or of sub-committees

No member of the Committee or of any sub-committee of the Committee shall be liable for any act or default of his, or of the Committee, done in the exercise in good faith of the functions or powers of the Committee.

PART IV

PLANNING SUB-COMMITTEES AND CIVIL PROTECTION PLANS

[Ch3305s16]16. Planning sub-committees

(1) The Committee may, from time to time, appoint such planning sub-committees as it considers necessary for the purpose of preparing plans in respect of any aspect of civil protection in any civil protection region or in any civil protection area.

(2) A planning sub-committee shall consist of persons from the public service, local authorities, statutory bodies and such non-governmental organizations as the Committee, after consultation with the Minister, considers have a general responsibility for carrying out functions associated with or related to civil protection or which have resources and services for carrying out civil protection measures.

(3) The Committee shall designate one of the members of a planning sub-committee as chairman.

(4) A planning sub-committee shall hold its first meeting on such date and at such place as the Committee may fix and thereafter the planning sub-committee shall meet for the dispatch of business and adjourn, close and otherwise regulate its meeting and procedures as it considers appropriate.

[Ch3305s17]17. Civil protection plans

(1) A planning sub-committee shall prepare a civil protection plan for the civil protection region or civil protection area for which it was appointed, in which the planning sub-committee shall specify its proposals of the civil protection measures to be undertaken and the functions to be exercised by government departments, local authorities, statutory bodies and non-governmental organizations in contemplation of, or in the event of, a disaster.

(2) The chairman of a planning sub-committee shall submit every plan prepared pursuant to subsection (1) to the Chairman who shall submit it for consideration by the Committee.

(3) If the committee adopts a plan submitted to it under subsection (2), the Chairman shall submit the plan to the Minister for his approval.

(4) Where the Committee does not adopt a plan submitted to it under subsection (2), the Chairman shall return the plan, together with directions, if any, given thereon by the Committee, to the appropriate planning sub-committee for a review of the plan or for a new plan to be prepared and the planning sub-committee shall endeavour to comply with such directions.

(5) Where a plan has been approved by the Minister, every public officer and every local authority, statutory body or non-governmental organization which is required under the plan to undertake civil protection measures, shall take necessary steps to undertake and effect those measures.

PART V

REGIONAL ORGANIZATION OF CIVIL PROTECTION

[Ch3305s18]18. Civil protection plans

(1) The Minister may, subject to subsection (2), by order published in the Gazette and on the advice of the Commissioner, establish civil protection regions or declare an area to be a civil protection region for the purposes of this Act with such boundaries and names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such region.

(2) In establishing or declaring any civil protection region the Minister shall pay due regard to—

- (a) the boundaries of local authorities within the proposed region; and
- (b) the boundaries of regions and districts as established by the Regional and District Boundaries and Place Names Act, Cap. 18:04

and shall ensure that, wherever practicable, no local authority, district or region is included in two or more civil protection regions.

[Ch3305s19]19. Regional civil protection officers and their assistants

(1) For the carrying out of the purposes of this Act, there shall be appointed in the public service a regional civil protection officer for each civil protection region and such other officers assistant to him as may be necessary.

(2) In performing their duties under this Act, regional civil protection officers and their assistants shall be subordinate to the Commissioner.

[Ch3305s20]20. Functions of regional civil protection officers

(1) Subject to this Act, a regional civil protection officer shall, within the civil protection region for which he has been appointed, be responsible for—

- (a) co-ordinating the planning of civil protection measures;
 - (b) co-ordinating the training of personnel for civil protection purposes;
 - (c) directing and assisting area civil protection officers in the execution of their duties;
- and
- (d) preparing reports on civil protection activities in his civil protection region regularly and whenever he is required to do so by the Commissioner or the Committee.

(2) Subject to any instructions given to him by the regional civil officer for his region, an assistant to the regional civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon a regional civil protection officer under this Act.

[Ch3305s21]21. Appointment of committees and delegation of powers by regional civil protection officers

(1) A regional civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.

(2) A regional civil protection officer may with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.

(3) Delegation of any power by a regional civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke any decision of any committee or person in the exercise of that power:

Provided that where the regional civil protection officer has been directed by the Commissioner to delegate any power to a committee or person, he shall not vary or revoke a decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

(4) Where there has been delegation of powers to a committee or to any person under subsection (2), the regional civil protection officer shall, in writing, notify the committee or the person of the delegation and shall, in the notification, specify the terms of the delegation.

PART VI

AREA ORGANIZATION OF CIVIL PROTECTION

[Ch3305s22]22. Civil protection areas

(1) The Minister may, subject to subsection (2), by order published in the Gazette, and on the advice of the Commissioner, establish civil protection areas in civil protection regions or declare any area to be a civil protection area for the purposes of this Act with such names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such area.

(2) In declaring any civil protection area the Minister shall pay due regard to—

(a) the boundaries of local authorities within the proposed area; and

(b) the boundaries of districts established under the Regional and Districts Boundaries and Place Names Act, Cap. 18:04

and shall ensure that, wherever practicable, no local authority or district is included in two or more civil protection areas.

[Ch3305s23]23. Area civil protection officers and their assistants

(1) For the carrying out of the purposes of this Act, there shall be appointed in the public service an area civil protection officer for each civil protection area and such other officers assistant to him as may be necessary.

(2) In performing their duties under the Act area civil protection officers and their assistants shall be subordinate to their respective regional civil protection officer and to the Commissioner.

[Ch3305s24]24. Functions of area civil protection officers

(1) Subject to this Act, an area civil protection officer shall, within the civil protection area for which he has been appointed, be responsible for—

(a) the establishment, maintenance and command of civil protection organizations;

(b) the provision, operation and co-ordination of all civil protection services and activities;

(c) giving such orders and taking such measures, during a state of disaster, as in his opinion are reasonably necessary in order to deal with such state of disaster;

(d) co-ordinating the use of materials and services made available by government departments, local authorities, statutory bodies and other non-governmental organizations during a state of disaster; and

(e) the preparation of reports on civil protection generally in his civil protection area whenever he is required to do so by the regional civil protection officer or by the Commissioner or the Committee.

(2) In the exercise of his functions, an area civil protection officer may—

(a) enter into arrangements, other than financial arrangements, with any person whereby that person makes available or undertakes to make available his services or those of his staff, whether individually or in units under the control of that person, for the purpose of carrying out such civil protection measures and activities as may be agreed upon;

(b) cause personnel to be trained for civil protection purposes within the civil protection area under his jurisdiction;

(c) disseminate information and advice on matters relating to civil protection to local authorities or to the public generally.

(3) Whenever it is possible to do so, an area civil protection officer shall exercise his powers under this Act after consultation and in cooperation with the District Commissioner and the commanding officers of the Malawi Police Service and the Malawi Defence Force within his civil protection area.

(4) Subject to any instructions given to him by the area civil protection officer for his area, an assistant to the area civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon an area civil protection officer under this Act.

[Ch3305s25]25. Appointment of committees and delegation of powers by area civil protection officers

(1) An area civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.

(2) An area civil protection officer may, with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.

(3) Delegation of any power by an area civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke a decision of any committee or any person in the exercise of that power:

Provided that where the area civil protection officer has been directed by the Commissioner to delegate any power to a committee or person he shall not vary or revoke the decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

(4) Where there has been delegation of powers to a committee or to any person under subsection (2), the area civil protection officer shall, in writing, notify the committee of the delegation and shall, in the notification, specify the terms of the delegation.

PART VII

VOLUNTEERS

[Ch3305s26]26. Volunteers

(1) Any person may, by applying to the area civil protection officer for the civil protection area concerned, volunteer—

- (a) to serve in a civil protection organization for the civil protection area; or
- (b) to provide or assist in the provision of any civil protection service within the civil protection area; or
- (c) to perform, within the civil protection area, any function connected with civil protection,

and the area civil protection officer shall enter the name of such person in the register kept pursuant to subsection (4).

(2) A volunteer may resign as a volunteer upon giving fourteen days' notice in writing to the area civil protection officer for the civil protection area concerned who shall, upon the expiry of that period, remove the volunteer's name from the register.

(3) A volunteer shall comply with every reasonable instruction given to him by the area civil protection officer for the civil protection area concerned or by any person authorized to give such instruction by the area civil protection officer.

(4) Every area civil protection officer shall maintain a register of all volunteers in the civil protection area within which he may exercise his powers.

[Ch3305s27]27. Reimbursement and indemnification of persons employed in civil protection

Every volunteer and any other person employed in a civil protection organization established and maintained under this Act shall be reimbursed and indemnified from the proceeds of the Fund to such extent and in such manner as may be prescribed for any reasonable expense or liability incurred by such volunteer or other person as a result of—

- (a) carrying out any order or performing any civil protection service under this Act; or
- (b) making available, for purposes of civil protection, any land or other property.

[Ch3305s28]28. Disability benefits

(1) Any written law relating to the payment of compensation on death of, or injury to, an officer in the public service shall, mutatis mutandis, apply in relation to a volunteer or other person performing any duty under this Act as though he were an officer in the public service; and for the purpose of this section every such volunteer shall be ranked at a grade of Technical Officer (T.O.) and be assigned the highest salary point of that grade.

(2) Any compensation payable under subsection (1) shall be paid out of the Consolidated Fund without further appropriation than this Act.

PART VIII

GENERAL POWERS OF CIVIL PROTECTION OFFICERS

[Ch3305s29]29. Interpretation

In this Part—

“civil protection officer” includes a regional civil protection officer, an officer assistant to a regional civil protection officer, an area civil protection officer and an officer assistant to an area civil protection officer.

[Ch3305s30]30. Orders by civil protection officers

(1) Subject to this Act, a civil protection officer may, by order in writing, direct any person—

(a) to supply him with information relating to the existence and availability of any service, facility or thing whatsoever which may be used for or in connexion with civil protection and which is under the control or in the possession of such person;

(b) to maintain such specified stocks of fuel, food, water, medical supplies, for use during a state of disaster as he may reasonably be expected to maintain; and

(c) while a declaration of a state of disaster under this Act is in force, to perform any work or render any service which, as a result of the disaster, is reasonably necessary for the purpose of dealing with the situation.

(2) Every civil protection officer and every person employed in a civil protection capacity shall keep secret and aid in keeping secret any information supplied in compliance with an order given under paragraph (a) of subsection (1).

(3) Any person aggrieved by an order given under paragraph (a), (b) or (c) of subsection (1) may appeal in writing against the order to the Minister.

(4) In any appeal under subsection (3), the Minister, after inviting the civil protection officer concerned to submit written representations in the matter and considering any representations so submitted, may confirm, vary or set aside the order appealed against or give such other directions in the matter as he thinks appropriate.

[Ch3305s31]31. Powers of civil protection officers to requisition land and property

(1) Subject to subsection (2), a civil protection officer may, while a declaration of a state of disaster under this Act is in force, take possession or control of any land or other property whatsoever for the purpose of dealing with the situation that has arisen.

(2) As soon as possible after taking possession or control of any land or property under subsection (1), a civil protection officer shall cause written notice of such taking to be served on any person owning or possessing such land or property:

Provided that, if it is expedient to do so, the civil protection officer shall cause such notice to be served before taking possession or control of the land or property concerned.

(3) Any person from whom possession or control of any land or property has been or is about to be taken in accordance with this section may, if he objects to such taking, notify in writing the civil protection officer concerned accordingly, and upon such notification the civil protection officer, if he does not accept the objection, shall instruct the Attorney General to apply to the High Court for a determination of his right to exercise his powers under this Act to take possession or control of the land or property in question, and such application shall be made within thirty days after the written notification by the person objecting.

(4) On an application under subsection (3), the High Court shall, unless it is satisfied that the exercise of the power by the civil protection officer concerned was reasonably justified in the circumstances of the situation arising or existing as a result of the disaster concerned or giving rise to the declaration of the state of disaster for the purpose of dealing with that situation, order the civil protection officer to return any land or property which he has taken into his possession or control or to cancel his notice of intention to take possession or control thereof, as the case may be.

(5) When the continued possession or control by a civil protection officer of any land or property taken under this section is no longer required or is no longer reasonably justified for the purpose of this Act, that land or property shall, wherever possible, be promptly returned to the person entitled to its possession or control and as far as possible in the condition in which it was at the time of such, taking of possession or control.

(6) Adequate compensation shall be paid promptly out of the Fund for—

(a) the taking of possession or control of any land or property under this section;

(b) where appropriate, any failure to return any land or property in accordance with subsection (4) or (5); and

(c) any damage to any land or property taken under this section.

(7) The owner or any other person entitled to the return of any land or property under subsection (5) or entitled to compensation under subsection (6) may apply to the High Court for the return of the land or property or for the determination of his right thereto or the amount of compensation, as the case may be, and the High Court shall make such order in respect thereof as it thinks fit.

(8) Part II of the Lands Acquisition Act shall, mutatis mutandis, apply in respect of a claim for compensation for land taken under this section. Cap. 58:04

(9) No land or other property owned or possessed by the Government shall be taken under this section without the consent of the Minister responsible for the land.

PART IX

DECLARATION OF A STATE OF DISASTER

[Ch3305s32]32. Declaration of a state of Disaster

(1) If at any time it appears to the President that any disaster is of such a nature and extent that extraordinary measures are necessary to assist and protect the persons affected or likely to be affected by the disaster in any area within Malawi or that circumstances are likely to arise making such measures necessary, the President may, in such manner as he considers fit, declare that, with effect from a date specified by him in the declaration, a state of disaster exists within an area defined by him in the declaration:

Provided that where such declaration has been made in any manner other than by notice in the Gazette, the President shall, as soon as possible after making it, cause it to be published in the Gazette.

(2) The declaration of a state of disaster under subsection (1) shall remain in force for a period of three months from the date specified in the declaration as the commencement date of the state of disaster, unless the President by notice in the Gazette, withdraws such declaration before the expiry of such period:

Provided that the President may, from time to time, extend or further extend such period by not more than another three months and shall do so by notice in the Gazette, published before the expiry of such period or any such extension thereof.

[Ch3305s33]33. Communication to the National Assembly

Where a state of disaster has been declared under section 32 the Minister shall communicate such declaration to the National Assembly during the meeting next occurring after the declaration.

PART X

NATIONAL DISASTER PREPAREDNESS AND RELIEF FUND

[Ch3305s34]34. Establishment of the Fund

(1) There is hereby established a fund to be known as the National Disaster Preparedness and Relief 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 purposes of the Fund;
- (b) advances made to the Fund under section 36;
- (c) such sums as may be received for the purposes of the Fund by way of voluntary contributions; and
- (d) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

[Ch3305s35]35. 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.

[Ch3305s36]36. 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 out of moneys appropriated for that purpose by Parliament 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.

[Ch3305s37]37. Objects of the Fund

The objects for which the Fund is established shall be the development, promotion, management and administration of civil protection.

[Ch3305s38]38. Application of the Fund

Without derogation from the generality of section 37, the Fund may be applied to—

- (a) research and training which is calculated to promote civil protection;
 - (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 civil protection;
 - (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.

[Ch3305s39]39. 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.

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by Part VI of 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 the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

[Ch3305s40]40. Holdings of the Fund

(1) All sums received for the purposes of the Fund shall be paid into a banking 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, after consulting with the Minister responsible for finance, may determine.

[Ch3305s41]41. Financial year

The financial year of the Fund shall be the period of twelve months ending on the 31st March in each year:

Provided that 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

EMERGENCY POWERS OF THE MINISTER

[Ch3305s42]42. Minister may take over certain powers and duties during disaster

(1) Where a state of disaster has, under this Act, been declared to exist in any area and the Minister considers that the civil protection organization in that area is unable to provide adequate civil protection to meet the disaster, the Minister, on the advice of the Committee, may—

(a) by notice published in such manner as he thinks fit—

(i) take over, to such extent and for such purposes as he may specify in the notice, any power or duty conferred or imposed by or under this Act upon the area civil protection officer for the civil protection area concerned;

(ii) confer or impose upon any person or authority any power or duty conferred or imposed upon an area civil protection officer or other person by or under this Act:

Provided that if such notice has been made in any manner other than by publication in the Gazette, the Minister shall, as soon as possible after making the notice, cause it to be published in the Gazette;

(b) direct any person employed in the public service to render such assistance as the Minister may direct to any area civil protection officer or other person upon whom a power or duty is conferred by or under this Act.

(2) Where the Minister has, by notice under subsection (1)—

(a) taken over any powers or duties; or

(b) conferred or imposed powers or duties on any person or authority,

any reference in this Act to the exercise of such powers or the performance of such duties by any person or authority shall be construed as reference to the exercise of the powers or the performance of the duties by the Minister or the person or authority upon whom he has conferred or imposed such powers or duties.

[Ch3305s43]43. Burial, etc., during disasters

Where the Minister is satisfied that persons have died as a result of any disaster, he may, after consulting with the Minister responsible for health, if he considers that it is necessary or expedient to do so, give directions and make such arrangements as he considers appropriate in respect of—

(a) the removal, safe custody, examination, burial or cremation of the remains of the persons concerned;

(b) the issue of certificates in respect of the deaths or causes of death of the persons concerned;

(c) any other related matters,

and any such directions or arrangements shall have effect notwithstanding any written law to the contrary.

PART XII

MISCELLANEOUS

[Ch3305s44]44. Secretariat

The Commissioner, every regional civil protection officer and every area civil protection officer shall act as secretary to the Committee and any committee appointed under Part V and any committee appointed under Part VI, respectively.

[Ch3305s45]45. Commissioner, etc., to deliberate at meeting of the Committee, etc.

The Commissioner and such other officers as he may designate shall be entitled to attend meetings of the Committee and to take part in the deliberations thereof but shall not be entitled to vote, and regional or area civil protection officers shall similarly be entitled to attend meetings of their respective committees.

[Ch3305s46]46. Offences

Any person, who without lawful excuse, fails to comply with an order, direction or instruction given under this Act shall be guilty of an offence and liable to a fine of K5,000 or to imprisonment for three years.

[Ch3305s47]47. Regulations

The Minister may make regulations providing for all matters which, in his opinion, are necessary or expedient for giving effect to this Act.

[Ch3305s48]48. Transitional

If at the commencement of this Act there are—

- (a) any sums held in an account or a special fund of the Government; or
- (b) any materials at the disposal of the Government,

for the purpose of managing any existing disaster, such sums or materials shall forthwith transfer to the Fund and shall be applied in accordance with this Act as if the disaster had been declared under this Act.

[Chap3401]CHAPTER 34:01

PUBLIC HEALTH

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29/1959(F)

22/1963

224/1963

219/1964(N)

166/1967

An Act to amend and consolidate the law regarding the preservation of public health

[29TH JULY 1948]

[Ch3401s1]1. Short title

This Act may be cited as the Public Health Act.

[Ch3401s2]2. Application of Act

This Act, or specified provisions thereof only, shall apply to such part or parts of Malawi as the Minister may direct by notice published in the Gazette.

[Ch3401s3]3. Power to vary application

The Minister may by notice published in the Gazette suspend or rescind the application of this Act, or of specified provisions thereof, to any part or parts of Malawi to which it, or such specified provision, has or have been applied.

PART I

INTERPRETATION OF TERMS

[Ch3401s4]4. Interpretation

In this Act and in any Rules made under this Act, unless the context otherwise requires, the following terms have the following meanings—

“adult” means a person who is over or appears to be over eighteen years of age;

21 of 1992 “assisted hospital” means a hospital or any other health facility which is maintained in whole or in part by grants-in-aid;

21 of 1992 “Board or Board of Governors” means a Board of Governors established under Part IIA;

“building” includes any structure whatsoever whether permanent or temporary for whatsoever purpose used;

“burial” means burial in earth, interment or any other form of sepulture, or the cremation or any other mode of disposal of a dead body, and “buried” has a corresponding meaning;

“carrier of a disease” means one in whose body the infection of a disease is still present and liable to be transmitted to another person, although the carrier is not himself suffering from the disease in an active form;

“child” means a person who is under or appears to be under eighteen years of age;

“dairy” includes any farm-house, cow shed, milk-stall, milk-shop or other place from which milk is supplied or in which milk is kept or used for purposes of sale or is manufactured into butter, ghee, cheese, dried milk or condensed milk for sale;

“dairyman” includes any cow-keeper, purveyor of milk, or occupier of a dairy, and in cases where a dairy is owned by a corporation or company, the secretary or other person actually managing such dairy;

“district” means in relation to a local authority, the area which is under the jurisdiction of that local authority;

“drain” means any drain together with its appurtenances used for the drainage of one building only, or of premises within the same curtilage and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which drainage of two or more buildings or premises occupied by different persons is conveyed, and

includes any pipe or channel whether opened or closed, used or intended to be used for the drainage of land;

“dwelling” means any house, room, shed, hut, cave, tent, vehicle, vessel or boat or any other structure or place whatsoever, any portion whereof is used by any human being for sleeping or in which any human being dwells;

“to erect” in reference to a dwelling or room includes “to alter”, “add to” or “convert into” and “erected” has a corresponding meaning;

“factory” means any premises wherein, or within the close or curtilage or precincts of which, steam, water, or other power whether mechanical or manual is used in aid of the manufacturing process there carried on;

“food” means any article used for food or drink other than drugs or water, but includes ice, and any article which ordinarily enters into or is used in the composition or preparation of human food, and includes flavouring matters and condiments, and “foodstuffs” has a corresponding meaning;

“guardian” means any person having by reason of the death, illness, absence or incapacity of a parent or any other cause, the custody of a child;

“health officer” means a medical officer of health and a health inspector;

“health inspector” means a health inspector of the Ministry of Health or one employed by a local authority;

“infected” means suffering from, or in the incubation stage of, or contaminated with the infection of, any infectious disease;

“infectious disease” means any disease which can be communicated directly or indirectly by any person suffering therefrom to any other person;

“isolation” means the segregation and the separation from, and interdiction of communication with others, of persons who are or are suspected of being infected, and “isolated” has a corresponding meaning;

“keeper of a lodging-house” means any person keeping a hotel or lodging-house;

“land” includes any right over or in respect of land or any interest therein;

“latrine” includes privy, urinal, earth-closet and water-closet;

“lodging-house” means a building or part of a house including the veranda thereof, if any, which is let or sublet in lodgings or otherwise, either by storeys, by flats, by rooms, or by portions of rooms;

“medical observation” means the isolation of persons in a suitable place;

“medical officer” means any registered or licensed medical practitioner in the employment of the Government and includes any person authorized by the Secretary for Health to act as a medical officer;

“medical officer of health” means the Secretary for Health or any medical officer appointed by the Secretary for Health to act as such in any area;

“medical practitioner” means a person who is registered or licensed as such under any law in force in Malawi governing the registration of medical practitioners;

“medical surveillance” means the keeping of a person under medical supervision. Persons under such surveillance may be required by the medical officer of health or any officer duly authorized by the Secretary for Health to remain within a specified area or to attend or medical examination at specified places and times;

“occupier” shall include any person in actual occupation of land or premises without regard to the title under which he occupies and, in case of premises subdivided and let to lodgers or various tenants, the person receiving rent payable by the lodgers or tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

“offensive trade” includes the trade of blood-boiler, bone-boiler, fell-monger, soap-boiler, tallow-melter, tripe-boiler, tanner, preparer or storer of hides, manure manufacturer, and any other noxious or offensive trade, business or manufacture declared by the Minister by notice published in the Gazette to be a noxious or offensive trade;

“owner” shall, as regards immovable property, include any person, other than the Government, receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rent or profits if such land or premises were let whether on his own account or as agent for any person other than the Government entitled thereto or interested therein. The term includes any lessee or licensee from the Government and any superintendent, overseer, or manager, of such lessee or licensee residing on the lands or premises;

“parent” means and includes the father and mother of a child whether legitimate or not;

“premises” includes any building or tent together with the land on which it is situated and the adjoining land used in connexion therewith, and includes any vehicle, conveyance or vessel;

21 of 1992 “proprietor” in relation to an assisted hospital, includes a former proprietor;

“public building” means a building used or constructed or adapted to be used either ordinarily or occasionally as a place of public worship or as a hospital, college, school, theatre, public hall, or as a public place of assembly or entertainment for persons admitted by ticket or otherwise, or used or adapted to be used for any other public purpose;

“public vehicle” means any vehicle which plies or stands for hire, or is from time to time let out for hire or is intended to be let out for hire and includes any railway coach or aircraft or vessel;

“slaughter-house” means any premises set apart for the purpose of a slaughter-house by a local authority;

“stock” means and includes all domesticated animals of which the flesh or milk is used for human consumption;

“street” means any highway, road or sanitary lane, and includes any bridge, footway, square, court, alley or passage whether a thoroughfare or a part of one or not;

“trade premises” means any premises (other than a factory) used or intended to be used for carrying on any trade or business;

“vehicle” means every means of conveyance or of transit or parts thereof manufactured for use or capable of being used on land, water or in the air and in whatever way driven or propelled or carried;

“veranda” includes any stage, platform or portico projecting from the external wall of any building;

“veterinary officer” means the Director of Veterinary Services or any veterinary officer in the employment of the Government or any member of the Government veterinary staff appointed by the Director of Veterinary Services to act as such in any area;

“workshop” means any building or part of a building or any premises in which manual labour is exercised for the purposes of trade.

PART II

ADMINISTRATION

[Ch3401s5]5. Power to direct inquiries

The Minister may cause to be made such inquiries as he may see fit in relation to any matters concerning the public health in any place.

[Ch3401s6]6. Power of persons directed to make inquiries

When the Minister directs any inquiry to be made, the person directed to make such inquiry shall have free access to all books, plans, maps; documents, and other things relevant to the inquiry, and shall have in relation to witnesses and their examination and the production of documents similar powers to those conferred upon Commissioners by the Commissions of Inquiry Act, and may enter and inspect any building, premises, or place, the entry or inspection whereof appears to him requisite for the purpose of such inquiry. Cap. 18:01

[Ch3401s7]7. General duties of local authorities

It shall be the duty of every local authority to take all lawful, necessary and under its special circumstances reasonable and practicable measures for preventing the occurrence or dealing with any outbreak or prevalence of any infectious, communicable or preventable disease, to safeguard and promote the public health, and to exercise the powers and perform the duties in respect of the public health conferred or imposed on it by this Act or by any other law.

[Ch3401s8]8. Proceedings on complaint against local authorities

Whenever any complaint is made that the public health in any locality is endangered by the failure or refusal on the part of the local authority to exercise the powers or perform the duties devolving upon it under this Act, the Minister, if satisfied after due inquiry that the local authority is guilty of default, may make an order directing the local authority to perform its duty in the matter of such complaint and prescribing a time for such performance. If such order is not obeyed within the time prescribed the Minister may appoint some person to carry out such order, and the cost of carrying out the order may be recovered as a debt due to the Government from the local authority.

[Ch3401s9]9. Powers of person appointed under preceding

Any person appointed under the last preceding section to perform the duty of a defaulting local authority shall, in the performance and for the purpose of such duty, have all the powers of such local authority other than the powers of levying rates vested in any local authority pursuant to the provision of any Act in that behalf, and the Minister may from time to time by order change any person so appointed.

[Ch3401s10]10. This Act in relation to other Acts

Save as is specially provided in this Act, this Act shall be deemed to be in addition to and not in substitution for any provisions of any other Act which are not in conflict or inconsistent with this Act.

PART IIA

MANAGEMENT OF ASSISTED HOSPITALS

[Ch3401s10A]10A. Board of Governors of assisted hospitals

21 of 1992(1) Where, in the opinion of the Minister, it is desirable that a Board of Governors should be set up to manage an assisted hospital or a group of assisted hospitals, he shall cause proposals for that purpose to be placed before the proprietor of that hospital or group of hospitals.

(2) Where, in the opinion of the proprietor of any assisted hospital or group of assisted hospitals, it is desirable that a Board of Governors be set up to manage the hospital or group of hospitals, the proprietor shall submit proposals for that purpose to the Minister.

(3) The Minister may, by order published in the Gazette establish a Board of Governors for the hospital or group of hospitals to which such proposals relate in accordance with any agreement which may be reached between him and the proprietor.

[Ch3401s10B]10B. Contents of order

21 of 1992(1) An order establishing a Board of Governors under section 10A shall provide for—

- (a) the name of the Board;
- (b) the exercise by the Board of the duty of management of the assisted hospital or group of hospitals specified in the order, subject to such limitations or restrictions as may be specified;

(c) the membership of the Board, including representation on the Board of the Ministry, the proprietor, the community or communities served by the hospital or group of hospitals and such bodies or organizations as may be agreed upon by the Minister and the proprietor, all in such numbers and proportions as may be so agreed;

(d) the method by which the continuity of the membership of the Board may be provided;

(e) the revocation of the appointment of, the retirement and resignation of, members of the Board and the appointment of new members thereof and of temporary members thereof in case of absence or inability to act of any members thereof;

(f) the respective responsibilities, duties and powers of the Board and of the other persons (if any) in whom any land or other property is vested in trust for or for the benefit of any hospital affected by the order and in respect of the use of the buildings and grounds of any such hospital at times when they are not required to be used for purposes of health services;

(g) such other matters as the Minister may, in agreement with the proprietor, consider necessary in respect of the constitution, functions or procedure of the Board.

(2) A Board of Governors established under subsection (1) shall be a body corporated by the name of the Board, unless the order by which it is established otherwise provides. Such body corporate shall have perpetual succession and may sue and be sued by its name and shall have power to make contracts and to own land.

(3) All or any property of the proprietor may be vested by an order made under section 10A in the Board of Governors thereby established or in trustees for the assisted hospital or group of assisted hospitals thereby affected.

(4) In any case in which property is or remains vested in trustees for an assisted hospital or group of assisted hospitals, the order establishing a Board of Governors thereof may provide that the Board shall have sole responsibility for management of the assisted hospital or group of assisted hospitals and in such case the trustees shall, notwithstanding any other provision of this Act or of any other written law, be under no liability as proprietors for any act or omission in relation to the management of the assisted hospital or group of assisted hospitals by the Board of Governors thereof, who shall be solely responsible for their own acts and omissions.

(5) An order made under section 10A may be amended by the Minister at any time with the agreement of the proprietor of the assisted hospital or group of assisted hospitals thereby affected:

Provided that if such proprietor has died or ceased to exist, such amendment may be made without any such agreement.

PART III

NOTIFICATION OF INFECTIOUS DISEASES

[Ch3401s11]11. Notifiable diseases

The provisions of this Act, unless otherwise expressed, shall, so far as they concern notifiable infectious diseases, apply to anthrax; blackwater fever; cerebro-spinal meningitis or cerebro-spinal fever; cholera; diphtheria or membranous croup; dysentery (bacillary); encephalitis lethargica; enteric or typhoid fever (including paratyphoid); erysipelas; hydrophobia or human rabies; influenza; measles; plague; acute primary pneumonia; acute anterior poliomyelitis; acute polioencephalitis; puerperal fever (including septicaemia, pyaemia, septic pelvic cellulitis or other serious septic condition occurring during the puerperal state); relapsing fever; scarlet fever or scarlatina; sleeping sickness or human trypanosomiasis; smallpox or any disease resembling smallpox; all forms of tuberculosis which are clinically recognizable apart from reaction to the tuberculin test; typhus fever; whooping-cough and yellow fever.

[Ch3401s12]12. Declaration of notifiable diseases by Minister

The Minister may by notice published in the Gazette—

- (a) declare that any infectious disease other than those specified in section 11 shall be a notifiable disease under this Act;
- (b) declare that only such provisions of this Act as are mentioned in such notice shall apply to any such notifiable disease;
- (c) restrict the provisions of this Act, as regards the notification of any disease, to the district of any local authority or to any area defined.

[Ch3401s13]13. Notification of infectious diseases

(1) Where an inmate of any dwelling in Malawi is suffering from any notifiable infectious disease, unless such dwelling is a hospital in which persons suffering from any notifiable infectious diseases are received, the following provisions shall have effect—

- (a) the head of the family to which such inmate (in this Act referred to as “the patient”) belongs and in his default the nearest relatives of the patient present in the building or in their default the person in charge of or in attendance on the patient, and in default of any such person the occupier of the dwelling shall, as soon as he becomes aware that the patient is suffering from any notifiable infectious disease to which this Act applies, send notice thereof to the nearest medical officer of health;
- (b) whenever any child attending any school, orphanage or like institution, or any person residing in any hotel, boardinghouse or other like institution, shall be known to be suffering from any infectious disease (whether such infectious disease is specified in this Act or not) the manager, principal or person in charge of such school, orphanage or other like institution, or the manager or proprietor or person in charge of such hotel, boarding-house or other like institution shall forthwith send notice thereof to the nearest medical officer of health and shall furnish to him on his request a list of scholars or residents thereat, together with their addresses;
- (c) every medical practitioner attending on or called in to visit a patient shall forthwith on becoming aware that the patient is suffering from any notifiable infectious disease to which this Act applies, send to the nearest medical officer of health a certificate stating the name of the

patient, the situation of the building and the notifiable infectious disease from which, in the opinion of such medical practitioner, the patient is suffering;

(d) in any case in which a medical practitioner has been called in, the obligation to notify an infectious disease shall rest on such medical practitioner only;

(e) every medical practitioner who becomes aware, by postmortem examination or otherwise that any person has died of a notifiable infectious disease shall immediately furnish a written certificate thereof to the nearest medical officer of health and shall also inform the head of the household or the occupier of the premises or any person who has been in attendance on such diseased person of the infectious nature of the disease and the precautions to be taken to prevent its conveyance to others.

(2) Every person required by this section to give a notice or certificate who fails to give the same shall be liable to a fine of £5:

Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given.

[Ch3401s14]14. Regulations for the notification of infectious diseases

The Minister may, in respect of the notification of infectious disease, make Regulations as to—

(a) the duties of owners or occupiers of land, the owners or managers of mines, employers of labour and all Chiefs or Headmen or others in regard to reporting the occurrence of any infectious disease;

(b) the duties of the person in charge of any school, orphanage or similar institution in regard to the reporting of such diseases or any other communicable disease specified in the Regulations to the local authority;

(c) the circumstances in which notification of particular infectious diseases shall not be required;

(d) the duties of the local authority in respect to the keeping of registers and records of such notifications;

(e) the duties of registrars of death in respect of furnishing the local authority with notification of returns of deaths notified with such registrars;

(f) the forms to be used and the particulars to be furnished by medical practitioners when making such notifications to the local authority;

(g) the forms to be used and the particulars to be furnished by the local authorities when transmitting returns and reports to the Secretary for Health,

and generally for better carrying out the provisions and attaining the objects and purposes of this Part. Any person who contravenes or fails to comply with any such Regulation shall be guilty of an offence.

[Ch3401s15]15. Fees for certificates

The local authority shall pay to every medical practitioner, other than a Government medical officer, for each certificate duly sent by him in accordance with this Act a fee of five shillings.

PART IV

PREVENTION AND SUPPRESSION OF INFECTIOUS DISEASES

[Ch3401s16]16. Powers of medical officer of health to inspect premises and persons

A medical officer of health may at any time enter and inspect any premises in which he has reason to believe that any person suffering or who has recently suffered from any infectious disease is or has recently been present, or any inmate of which has recently been exposed to the infection of any infectious disease, and may medically examine any person in such premises for the purpose of ascertaining whether such person is suffering or has recently suffered from or is a carrier of any such disease and may cause a post-mortem examination to be made on any corpse for the purpose of ascertaining if the cause of death has been any infectious disease.

[Ch3401s17]17. Cleansing and disinfection of premises and articles therein

(1) If a local authority is satisfied upon a certificate of a medical officer of health or a health inspector that the cleansing and disinfection of any premises, and the disinfection and destruction of any articles therein likely to retain infection, would tend to prevent the spread of any infectious disease, the authority shall give notice to the occupier of the premises that it will at his cost cleanse and disinfect the premises and disinfect or, as the case may require, destroy any such articles therein.

(2) The authority may, twelve hours after the delivery of such notice, or at any time with the consent of the occupier, cause the premises to be cleansed and disinfected and the articles to be disinfected or destroyed, as the case may require, and may, if it thinks fit, recover from him the expenses reasonably incurred by it in so doing.

(3) Where a local authority has under this section disinfected any premises or article, or destroyed any articles, it may if it thinks fit, pay compensation to any person who has suffered damage by its action.

(4) For the purpose of this section, the owner of unoccupied premises shall be deemed to be in occupation thereof.

[Ch3401s18]18. No compensation for deprivation during disinfection

Compensation shall not be payable in respect of the deprivation of the occupation or use of any building or part thereof or of the use of any article occasioned by disinfection, if no undue delay has occurred.

[Ch3401s19]19. Provision of means of disinfection

Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing or other articles which have become infected, and may cause any articles brought for disinfection to be dealt with free of charge.

[Ch3401s20]20. Provision of conveyance for infected persons

Any local authority may provide and maintain a conveyance or conveyances for the carriage of persons suffering from any infectious disease and may pay the expenses of carriage therein of any person so suffering to a hospital or other place of detention.

[Ch3401s21]21. Provision for removal to hospital of persons suffering from infectious diseases where serious risk

Where the local authority is satisfied on a certificate of the medical officer of health that a person is suffering from an infectious disease and—

- (a) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken; and
- (b) that serious risk of infection is thereby caused to other persons; and
- (c) that accommodation for him is available in a suitable hospital or institution,

the local authority may order him to be removed thereto and maintained at the cost of the authority, and to be there detained until such medical officer of health is satisfied that he is free from infection or can be discharged without danger to the public health.

[Ch3401s22]22. Penalty on exposure of persons and articles liable to convey infectious disease

Any person who—

- (a) while suffering from any infectious disease wilfully exposes himself without proper precautions against spreading the said disease in any street, public place, shop, inn or public conveyance, or enters any public vehicle without previously notifying the owner, conductor or driver thereof that he is so suffering; or
- (b) being in charge of a person so suffering exposes such sufferer; or
- (c) gives, lends, sells, transmits or exposes, without previous disinfection, any clothing, bedding or rags which he knows to have been exposed to infection from any such disease, or any other article which he knows to have been so exposed,

shall be liable to a fine of £15 and to imprisonment for three months; and a person who, while suffering from any such disease, enters any public vehicle without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner or driver the amount of any loss and expenses he or they may incur in carrying into effect the provisions of this Act with respect to disinfection of the vehicle:

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags or other things for the purpose of having the same disinfected.

[Ch3401s23]23. Penalty on failing to provide for disinfection of vehicle

Every owner or driver of a vehicle shall immediately notify a medical officer of health, and provide for the disinfection of such vehicle to the satisfaction of such medical officer of health, after it has to his knowledge conveyed any person suffering from an infectious disease, and if he fails to do so he shall be liable to a fine of £20; but no such driver or owner shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expenses incurred by him in carrying this section into effect.

[Ch3401s24]24. Penalty for letting infected house

Any person who knowingly lets for hire any dwelling or premises or part thereof in which, within the previous six weeks, any person has been suffering from an infectious disease without having the same, and all articles therein liable to retain infection, efficiently disinfected to the satisfaction of the medical officer of health as testified by a certificate signed by him shall be liable to a fine of £50.

This section shall apply to any owner or keeper of a lodginghouse.

[Ch3401s25]25. Duty of person letting house lately infected to give true information

Any person letting for hire or showing for the purpose of letting for hire any building or part thereof who on being questioned by any person negotiating for the hire of such building or part as to the fact of there being or within six weeks previously having been therein any person suffering from any infectious disease knowingly makes a false answer to such question shall be liable to a fine of £50.

[Ch3401s26]26. Notification of deaths and removal of bodies of persons dying of infectious disease

(1) In every case of death from an infectious disease it shall be the duty of the occupier of the building in which the death has occurred immediately to notify the local authority of the death and on receipt of such notification the local authority shall at once transmit the information received to the nearest medical officer of health and make the best arrangements practicable pending the removal of the body and the carrying out of thorough disinfection for preventing the spread of such disease.

(2) It shall be an offence against this Act for the occupier of any premises to keep any dead body in any room in which food is kept or prepared or eaten, or to keep any dead body for more than twenty-four hours in any room in which any person lives, sleeps or works or to keep the body of any person who is known to have died of an infectious disease in any place other than a mortuary or other place set apart for the keeping of dead bodies, without first obtaining the sanction of the local authority or a medical officer of health.

(3) Where any person dies of an infectious disease it shall be an offence against this Act to remove the body except to a mortuary or for the purpose of immediate burial; and it shall be the

duty of any person who removes the body to take it direct to the mortuary or to the place of interment for burial.

(4) Nothing in this section shall be deemed to prevent the removal by due authority of any dead body from a hospital to a mortuary.

[Ch3401s27]27. Removal and burial of bodies of persons who have died of an infectious disease

A medical officer of health, a health officer, a health inspector, a local authority or any administrative or police officer on a certificate from a medical practitioner that a person has died from an infectious disease, is empowered to direct that the dead body of a person who has so died be removed to a mortuary or other suitable place whenever such body—

(a) is retained in contravention of the preceding section in a room in which any person lives, sleeps, or works, or in which food is kept or prepared or eaten; or

(b) is retained in any premises in circumstances which, in the opinion of a medical officer of health, are likely to cause nuisance or endanger health.

Any person who obstructs the execution of any order or direction given under this section shall be guilty of an offence.

[Ch3401s28]28. Local authority to remove and bury unclaimed bodies

A local authority shall be responsible for the removal and burial of bodies of destitute persons and of unclaimed bodies within its own district.

[Ch3401s29]29. Rules

The Minister may make Rules applicable to all infectious diseases or only to such infectious diseases as may be specified therein, regarding the following matters—

(a) the closing of any school or any place of public entertainment, where deemed necessary for the purpose of preventing the spread of any infectious disease, and the regulation and restriction of school attendance;

(b) the duties of parents or guardians of school children who are suffering or have recently suffered from or been exposed to the infection of any infectious disease, and the duties of persons in charge of schools in respect of such children;

(c) the establishment, maintenance, management, and inspection of isolation hospitals, convalescent homes or other institutions for the accommodation or treatment of persons suffering from or who have recently suffered from any infectious disease, the removal of persons to such institutions and their discharge therefrom and the classification and control of the patients and staff of such institutions;

(d) the imposition and enforcement of quarantine or of medical observation or surveillance in respect of persons suffering or suspected to be suffering from an infectious disease who are not removed to a hospital or place of isolation, the premises in which such persons are

accommodated, those in charge of or in attendance on such persons, and other persons living in or visiting such premises or who may otherwise have been exposed to the infection of any such disease;

(e) the duties in respect of the prevention of infectious diseases therefrom, of owners of land on which other persons reside and of employers of labour and of Chiefs or headmen and others;

(f) the measures to be taken for the prevention of the spread of any infectious disease requiring to be dealt with in a special manner;

(g) the conveyance by rail or otherwise of persons suffering from, or bodies of persons who have died of, an infectious disease;

(h) the prevention of the spread from any animal or the carcass or product of any animal to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable by any animal, or the carcass or product of any animal, to man;

(i) the prevention of the spread of disease by flies or other insects and the destruction and the removal of or the abatement of conditions permitting or favouring the prevalence or multiplication of such insects;

(j) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof;

(k) the prevention of the spread of ancylostomiasis, schistosomiasis or other disease in man caused by an animal or vegetable parasite;

(l) the prevention of the spread of any infectious disease by the carrying on of any business, trade or occupation;

(m) the prevention of the spread of any infectious disease by carriers, and the keeping under medical surveillance and the restriction of the movements of such carriers;

(n) the prohibition of spitting in public places or in public vehicles, except into receptacles provided for the purpose;

(o) the regulation and restriction of any trade or occupation entailing special danger to the health of those engaged therein, whether from infectious disease or otherwise, and the institution of measures for preventing or limiting such danger;

(p) the establishment, maintenance and management of cleansing stations and the cleansing of dirty or verminous persons, the disinfection or fumigation of buildings, clothing or other articles which have been exposed to or are believed to be contaminated with the infection of any infectious disease, or which are dirty or verminous, and the prohibition of the carrying out of any fumigation which involves the use of poisonous gas except under licence;

(q) the disposal of any refuse, waste matters or other matter or thing which has been contaminated with or exposed to the infection of any infectious disease;

(r) the giving compulsorily of any information or the production compulsorily of any documentary or other evidence required for the purpose of tracing the source or preventing the spread of any infectious disease, and generally for better carrying out the provisions and attaining the objects and purposes of this Part.

PART V

SPECIAL PROVISIONS REGARDING CERTAIN FORMIDABLE EPIDEMIC OR ENDEMIC DISEASES

[Ch3401s30]30. Formidable epidemic or endemic diseases

This Part shall apply to smallpox, plague, cholera, yellow fever, cerebro-spinal meningitis, typhus, sleeping sickness or human trypanosomiasis and any other disease which the Minister may by notice declare to be a formidable epidemic or endemic disease for the purpose of this Part.

[Ch3401s31]31. Power to make Rules for prevention of disease

Whenever any part of Malai appears to be threatened by any disease described in the last preceding section, the Minister may declare such part an infected area and may make Rules for all or any of the following purposes, namely—

- (a) for the speedy interment of the dead;
- (b) for house to house visitation;
- (c) for the provision of medical aid and accommodation, for the promotion of cleansing, ventilation and disinfection and for guarding against the spread of disease;
- (d) for preventing any person from entering or leaving any infected area without undergoing all or any of the following—
 - medical examination, disinfection, inoculation, vaccination or passing a specified period in an observation camp or station;
- (e) for the formation and regulation of hospitals and observation camps or stations, and for the placing therein and reception of persons who are suffering from or have been in contact with persons suffering from infectious disease;
- (f) for the destruction or disinfection of buildings, furniture, goods or other articles, which have been used by persons suffering from infectious disease, or which are likely to spread the infection;
- (g) for the removal of persons who are suffering from an infectious disease and persons who have been in contact with such persons;
- (h) for the removal of corpses;
- (i) for the destruction of rats, the means and precautions to be taken on shore or on board vessels for preventing them passing between vessels and from vessels to the shore or from the shore to vessels and the better prevention of the danger of spreading infection by rats;

(j) for the destruction of mosquitoes, the means and precautions to be taken in respect of aircraft arriving at or departing from Malai and for preventing mosquitoes from passing from aircraft to land or from land to aircraft, and the better prevention of the danger of spreading infection by mosquitoes;

(k) for the removal and disinfection of articles which have been exposed to infection;

(l) for prohibiting any person from living in any building or using any building for any purpose whatsoever if in the opinion of a medical officer of health any such use is liable to cause the spread of any infectious disease; any Rules made under this section may give a medical officer of health power to prescribe the conditions on which such a building may be used;

(m) for the compulsory medical examination of persons suffering or suspected to be suffering from infectious disease;

(n) for the registration of residents in an infected area;

(o) for the registration of vehicles in an infected area;

(p) for the compulsory confiscation and disposal of canoes and fishing gear used by any person in breach of any rule relating to the disease known as sleeping sickness;

(q) for the control of wood cutting in an infected area;

(r) for the restriction of residence in, immigration to or emigration from, an infected area;

(s) for the control of fishing and hunting in an infected area;

(t) for any other purpose whether of the same kind or nature as the foregoing or not having for its object the prevention, control or suppression of infectious disease,

and may by order declare all or any of the Rules so made to be in force within the whole or any part or parts of the infected area.

[Ch3401s32]32. Local authority to see to the execution of Rules

The local authority of any area within which or part of which Rules made under this Part are declared to be in force, shall do and provide all such acts, matters and things as may be necessary for mitigating any such disease, or aiding in the execution of such Rules, or for executing the same, as the case may require. A local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such Rules.

[Ch3401s33]33. Power of local authority or medical officer of health to enforce Rules

Any local authority or medical officer of health or any person duly authorized by any local authority or medical officer of health shall have power of entry on any premises or vehicle, for the purpose of executing or superintending the execution of any Rules so made by the Minister as aforesaid.

[Ch3401s34]34. Notification of sickness or mortality in animals suspected of plague

(1) Any person who becomes aware of any unusual sickness or mortality among rats, mice, cats, dogs or other animals susceptible to plague or other formidable epidemic diseases not due to poison or other obvious cause, shall immediately report the fact to a medical officer of health, where practicable, and where impracticable, to a local authority.

(2) Any such person who fails so to report shall be guilty of an offence.

[Ch3401s35]35. Local authorities to report notification of formidable epidemic disease by telegraph

Every local authority shall immediately report to the Secretary for Health or the nearest medical officer of health by telegraph, or other expeditious means, particulars of every notification received by such authority of a case or suspected case of any formidable epidemic or endemic disease, or of any unusual sickness or mortality in animals made under the last preceding section.

[Ch3401s36]36. Secretary for Health may requisition buildings

(1) Where there exists or is threatened an outbreak of any disease to which this Part applies it shall be lawful for the Secretary for Health to require any person owning or having charge of any land or any premises, or any person owning or having charge of tents, transport, bedding, hospital equipment, drugs, food or other appliances, materials or articles urgently required in connexion with the outbreak, to hand over the use of any such land or premises or to supply or make available any such article, subject to the payment of a reasonable amount as hire or purchase price.

(2) Any person who, without reasonable cause, fails or refuses to comply with any such requirement, shall be guilty of an offence.

[Ch3401s37]37. Penalties for offences against this Part

Any person guilty of an offence against this Part shall be liable to a fine of £100 and to imprisonment for twelve months.

PART VI

PREVENTION OF INTRODUCTION OF INFECTIOUS DISEASES

[Ch3401s38]38. Power to enforce precautions at borders of Malawi

(1) For the purpose of preventing the introduction of infectious disease into Malawi the Minister may by order—

(a) regulate, restrict or prohibit the entry into Malawi or any part thereof of any person or of persons of any specified class or description or from any specified country, locality or area;

(b) regulate, restrict or prohibit the introduction into Malawi or any specified part thereof of any animal, article or thing;

(c) impose requirements or conditions as regards the medical examination, detention, quarantine, disinfection, vaccination, isolation or medical surveillance or otherwise of persons

entering, or the examination, detention, or disinfection or otherwise of such persons as aforesaid or of articles and things introduced into Malawi or any part thereof.

(2) Any person who contravenes or fails to comply with any such order shall be liable to a fine of £50 and to imprisonment for six months.

[Ch3401s39]39. Removal of infected persons from railway trains

(1) Where any person arriving in Malawi by railway train or other vehicle is found to be suffering from any infectious disease, and in the opinion of a medical officer of health cannot be accommodated or cannot be nursed or treated so as to guard against the spread of the disease or to promote recovery, the medical officer of health may order the removal of such person to a hospital or place of isolation for such period as may be necessary in the interests of the patient or to prevent the spread of infection.

(2) All expenses necessarily incurred in dealing with a patient under this section shall be a charge against the said patient and may be recovered from him as a debt due to the Government. In the case of a person unable to pay any or all of such expenses necessarily incurred on his behalf, such expenditure or balance thereof shall be a charge on the Consolidated Fund.

[Ch3401s40]40. Isolation or surveillance of persons exposed to infection

(1) Where any person arriving by railway train or other vehicle within Malawi is believed to have been recently exposed to the infection, or to be in the incubation stage of, any notifiable disease, a medical officer of health may require such person to be removed to some hospital or place of isolation until considered free from infection, or alternatively may allow such person to proceed to his place of destination and there report himself to the local authority for medical surveillance by such local authority until considered free from infection.

(2) The medical officer of health shall in each instance notify the local authority of the district of such person's destination, of the fact that such person is believed to have been recently exposed to infection and has been allowed to proceed to his destination.

[Ch3401s41]41. Powers of medical officers of health to inspect railway trains and medically examine passengers

(1) Any medical officer of health may at any time board any railway train or other vehicle arriving within Malawi, and may inspect any portion thereof or anything therein, and may medically examine any person travelling by such train or vehicle and require any such person to answer any question for the purpose of ascertaining if such person is infected by or has recently been exposed to the infection of any notifiable infectious disease.

(2) Any person who refuses to allow any such officer to board any railway train or other vehicle or to make any inspection or medical examination as aforesaid or otherwise obstructs or hinders any such officer in the execution of his duty, or who fails or refuses to give any information which he may lawfully be required to give, or who gives false or misleading information to any such officer, knowing it to be false or misleading, shall be guilty of an offence.

PART VII

SMALLPOX

[Ch3401s42]42. Definition of “protected person” “public vaccinator” “unprotected person” and “vaccination” in this Part

For the purposes of this Part—

“protected person” means a person or child who is protected;

“public vaccinator” means a public vaccinator appointed by the Secretary for Health and any person appointed by the Secretary for Health to assist or act for a public vaccinator and includes any registered or licensed medical practitioner;

“unprotected person” includes a child and means a person who has not been protected from smallpox either by having had the disease, or by having been successfully vaccinated not less than fourteen days nor more than three years previously; and

“vaccination” means the introduction into the skin of smallpox vaccine virus contained in a pure and tested vaccine lymph.

[Ch3401s43]43. Vaccination of children

The parent or guardian of every child born in Malawi shall, after six months and within twelve months from birth, unless such child is unfit or has suffered from smallpox, cause such child to be successfully vaccinated by a public vaccinator.

[Ch3401s44]44. Vaccination of persons in declared areas or entering Malawi

(1) The Minister may by notice published in the Gazette declare any area to be a compulsory vaccination area and shall in such notice specify a period within which the vaccination of all unprotected persons dwelling in such area shall take place.

(2) Every unprotected adult and the parent or guardian of every unprotected child in any area declared to be a compulsory vaccination area shall cause himself and such child to be vaccinated within the period specified.

(3) Every unprotected adult and the parent or guardian of every unprotected child entering Malawi shall cause himself and such child to be vaccinated within one month:

Provided that—

(a) this section shall not require the vaccination of any adult or child who, in the opinion of a public vaccinator, is not in a fit state to be vaccinated;

(b) this section shall not apply to any person who can prove that reasonable facilities for vaccination were not available.

[Ch3401s45]45. If adult or child unfit for vaccination certificate to be given

If any public vaccinator shall be of opinion that any adult or child is not in a fit state to be vaccinated, he shall give to the adult or to the parent or guardian of the child a certificate under his hand that the adult or child is then in a state unfit for vaccination.

The said certificate shall remain in force for six months only but shall be renewable for successive periods of six months until the public vaccinator shall deem the adult or child to be fit for vaccination, when the adult or child shall with all reasonable despatch be vaccinated.

[Ch3401s46]46. Certificates to be given for successful vaccination

Every public vaccinator who shall have performed the operation of vaccination upon any adult or child, and shall have ascertained that the same has been successful shall deliver to such adult or the parent or guardian of such child a certificate certifying that the said adult or child has been successfully vaccinated.

[Ch3401s47]47. No fee to be charged for a certificate or for vaccination by public vaccinator

No fee or remuneration shall be charged to the person vaccinated by any public vaccinator for any certificate granted under this Act, nor for any vaccination done by him in pursuance of this Act.

[Ch3401s48]48. Vaccination of inmates of institutions

Every superintendent or person in charge of a leprosy settlement, mental hospital, chronic sick hospital, gaol, prison, reformatory, or other similar institution, shall where practicable, cause to be vaccinated within fourteen days following his admission to such institution every inmate thereof who, being in a fit state of health to undergo vaccination, fails to prove satisfactorily that he has been successfully vaccinated within the three years immediately preceding; if such person is at the time unfit to undergo vaccination, he shall be vaccinated as soon as he is so fit.

[Ch3401s49]49. School attendance

(1) Subject to section 45, no child shall be admitted to or attend any school until there has been produced to the school manager or other person in charge thereof a certificate or other satisfactory evidence that the child is a protected person and any school manager or other person who admits or permits such child to be admitted shall be guilty of an offence.

(2) For the purpose of ascertaining whether subsection (1) is being observed, every public vaccinator shall, whenever instructed by the Secretary for Health, visit any school and make therein such inspection of the children attending thereat as will enable him to furnish such particulars as the Secretary for Health may require as to the children who are unprotected.

[Ch3401s50]50. Supply of vaccine lymph and inoculation from arm to arm, etc., forbidden

Any person who inoculates himself or any other person against smallpox with material taken from a person suffering from smallpox or from a vaccine vesicle on another person shall be guilty of an offence.

[Ch3401s51]51. Power to order vaccination of all persons at any time

(1) The Minister may, at any time when he considers it necessary as a result of an outbreak, or to prevent the outbreak of smallpox in any area, direct that all persons or any class of persons within Malawi, or within any place, area, municipality, town, village or community therein, or all persons entering Malawi shall, unless they can give satisfactory evidence that they have, within such period as the Minister may specify, already been vaccinated, be vaccinated forthwith.

(2) Where the Minister has issued directions under subsection (1) the local authority having jurisdiction in any place, area, municipality, town or village or in respect of any community specified in such directions shall require all persons therein to attend, or all parents or guardians of children to cause such children to attend at centres or vaccination posts according to instructions issued there to undergo inspection by a public vaccinator and if found to be unprotected, and subject to section 45, to undergo vaccination. Such instructions may be issued by notice in the press, or by notices posted in public places, or otherwise as may be deemed sufficient by the local authority. Any person, parent or guardian failing to comply with such instructions shall be guilty of an offence.

(3) The Minister may make rules for the purpose of regulating or enforcing vaccination under this section and such rules may confer powers on public vaccinators in respect of persons passing vaccination centres or posts, who require vaccination.

[Ch3401s52]52. Power to make Rules

The Minister may make Rules—

(a) prescribing forms of certificates, notices, returns and books of record to be used in connexion with public vaccination, and defining the information to be furnished therein, and requiring the furnishing and prescribing the manner of use thereof by registrars of deaths, public vaccinators, local authorities, medical practitioners, parents or guardians of children, persons in charge of schools, employers of labour and others;

(b) conferring powers and imposing duties, in connexion with the carrying out of enforcement of vaccination, on magistrates, administrative officers, members of the police force, or other Government officers, local authorities, persons in charge of schools, employers of labour, Chiefs and village headmen and others;

(c) prescribing and defining the duties in connexion with vaccination of public vaccinators;

(d) prescribing the manner in which vaccination shall be performed and the precautions to be observed by those performing it and by the persons or the parents or the guardians of children vaccinated;

(e) providing for the vaccination of persons and assigning where deemed desirable the responsibility for the carrying out of such vaccination to local authorities or employers of labour; and

(f) generally for the better carrying out of this Part and attaining the objects and purposes thereof.

PART VIII

VENEREAL DISEASES

[Ch3401s53]53. Venereal diseases

The provisions of this Act, unless otherwise expressed, in so far as they concern venereal diseases, shall be deemed to apply to primary or secondary syphilis, acute and chronic gonorrhoea, gonorrhoeal ophthalmia, soft chancre, lymphogranuloma inguinale, ulcerating granuloma and any other disease that may be declared by the Minister by notice published in the Gazette to be a venereal disease.

[Ch3401s54]54. Employment of infected persons

(1) Any person who, while suffering from any venereal disease in a communicable form, accepts or continues in employment either as an employee or on his own account in or about any factory, shop, hotel, restaurant, dwelling-house, or any place in any capacity entailing the care of children or the handling of food intended for consumption or of food utensils for use by any other person shall be guilty of an offence, unless he proves that he did not know or suspect, and had no reasonable means of knowing or suspecting, that he was so suffering.

(2) Every person shall be guilty of an offence who employs or continues to employ any person suffering from any venereal disease in a communicable form, if by reason of such employment such person is required or is permitted to have the care of children or to handle any food intended for consumption or food or household utensils, unless the employer proves that he did not know or suspect, and had no reasonable means of knowing or suspecting that the person so employed by him was suffering from such disease.

(3) If an employee who is employed in any manner set out in the preceding subsections is shown by a certificate signed by a registered or licensed medical practitioner to be suffering from a venereal disease, or if any employer has reasonable cause to suspect that such employee is suffering from a venereal disease and the said employee refuses to submit himself to medical examination, it shall be lawful for the employer summarily to dismiss the employee with payment of wages up to the date of dismissal.

[Ch3401s55]55. Publication of advertisements of cures

(1) No person shall publish, exhibit or circulate any advertisement or statement intended to promote the sale of any medicine, appliance or article for the alleviation or cure of any venereal disease or disease affecting the generative organs or functions, or of sexual impotence or of any complaint or infirmity arising from or relating to sexual intercourse.

(2) No person shall hold out or recommend to the public by any notice or advertisement, or by any written or printed papers or handbills, or any label or words written or printed, affixed to or delivered with, any packet, box, bottle, phial or other enclosure containing the same, any pills, capsules, powders, lozenges, tinctures, potions, cordials, electuaries, plasters, unguents, salves, ointments, drops, lotions, oil, spirits, medicated herbs and waters or chemical and official preparations whatsoever, to be used or applied externally or internally as medicines or medicaments for the prevention, cure, or relief of any venereal disease or disease affecting the generative organs

or functions, or sexual impotence, or of any complaint or infirmity arising from or relating to sexual intercourse.

(3) This section shall not apply to publications by or under the authority of the Secretary for Health, or by any local authority, public hospital, or other public body in the discharge of its lawful duties or by any society or person acting with the authority of the Government first obtained, or to any books, documents or papers published in good faith for the advancement of medical science.

[Ch3401s56]56. Prevention of the treatment of venereal disease otherwise than by registered or licensed persons

No person, unless he is a registered or licensed medical practitioner, or a State registered nurse, or other person certified by the Secretary for Health to be competent to diagnose and treat venereal disease, shall for reward treat any person for venereal disease or suspected venereal disease or prescribe any remedy therefor, or give any advice in connexion with the treatment thereof, whether the advice is given to the person to be treated or to any other person.

[Ch3401s57]57. Conveyance of infection an offence

No person shall wilfully or by culpable negligence infect any other person with venereal disease or do or permit or suffer any act likely to lead to the infection of any other person with such disease.

[Ch3401s58]58. Offences and penalties

(1) Any person who contravenes or fails to comply with any of the provisions of this Part shall be liable to a fine of £150 and to imprisonment for two years.

(2) When a person is convicted of an offence against this Part, the court may order any advertisement or written matter specified in section 55, or drugs, poisons, medicines, needles, syringes or surgical, medical or diagnostic instruments or appliances, published or used by, belonging to, or in the possession of the person convicted, to be forfeited, and to be destroyed or otherwise disposed of.

PART IX

SANITATION AND HOUSING

[Ch3401s59]59. Nuisances prohibited

No person shall cause a nuisance, or shall suffer to exist on any land or premises owned or occupied by him or of which he is in charge, any nuisance or other condition liable to be injurious or dangerous to health.

[Ch3401s60]60. Duties of local authorities to maintain cleanliness and prevent nuisances

It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures for maintaining its area at all times in clean and sanitary condition, and for preventing the occurrence therein of, or for remedying or causing to be remedied, any nuisance or

condition liable to be injurious or dangerous to health and to take proceedings at law against any person causing or responsible for the continuance of any such nuisance or condition.

[Ch3401s61]61. Duty of local authorities to prevent or remedy danger to health arising from unsuitable dwellings

It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures for preventing or causing to be prevented or remedied all conditions liable to be injurious or dangerous to health arising from the erection or occupation of unhealthy dwellings or premises, or the erection of dwellings or premises on unhealthy sites or on sites of insufficient extent, or from overcrowding, or from the construction, condition or manner of use of any factory or trade premises, and to take proceedings under the law or rules in force in its area against any person causing or responsible for the continuance of any such conditions:

Provided that no action shall be taken by any local authority in pursuance of this Part in respect of any factory if such action is calculated to interfere with the construction of any building or with the condition or manner of use of any machinery without the consent of the Chief Inspector of Factories.

[Ch3401s62]62. What constitutes a nuisance

The following shall be deemed to be nuisances liable to be dealt with in the manner provided in this Part—

(1) any vehicle in such a state or condition as to be injurious or dangerous to health;

(2) any dwelling or premises or part thereof which is or are of such construction or in such state or so situated or so dirty or so verminous or so damp as to be likely to be injurious or dangerous to health or which is or are liable to favour the spread of any infectious disease;

(3) any street, road or any part thereof, stream, pool, ditch, gutter, watercourse, sink, water tank, cistern, latrine, cesspool, soak-away pit, septic tank, cesspit, soil-pipe, waste-pipe, drain, sewer, garbage receptacle, dust bin, dung pit, refuse pit, slop tank or manure heap so foul or in such a state or so situated or constructed as to be offensive or to be likely to be injurious or dangerous to health;

(4) any well or other source of water supply or any cistern or other receptacle for water, whether public or private, the water from which is used or is likely to be used by human beings for drinking or domestic purposes or in connexion with any dairy, or in connexion with the manufacture or preparation of any article of food intended for human consumption, which is in a condition liable to render any such water injurious or dangerous to health;

(5) any noxious matter, or waste water, flowing or discharged from any premises, wherever situated, into any public street, or into the gutter or side channel of any street, or into any gully, swamp, or watercourse or irrigation channel not approved for the reception of such discharge;

(6) any collection of water, sewage, rubbish, refuse, ordure, or other fluid or solid substances which are offensive or which are dangerous or injurious to health or which permit or facilitate the breeding or multiplication of animal or vegetable parasites of men or domestic animals,

or of insects or of other agents which are known to carry such parasites or which may otherwise cause or facilitate the infection of men or domestic animals by such parasites;

(7) any collection of water found to contain any of the immature stages of the mosquito;

(8) any cesspit, latrine, urinal, dung pit, or refuse pit found to contain any of the immature stages of the mosquito;

(9) any stable, cow shed or other building or premises used for keeping of animals or birds which is so constructed, situated, used or kept as to be offensive or which is injurious or dangerous to health;

(10) any animal or bird so kept as to be offensive or injurious to health;

(11) any accumulation of stones, timber, or other material of any nature whatever if such is likely, in the opinion of a medical officer of health, to harbour rats and other vermin, and any premises in such a state or condition and any building so constructed as to be likely to harbour rats;

(12) any dwelling or premises so overcrowded as to be injurious or dangerous to the health of the inmates, or dilapidated or defective in lighting or ventilation, or not provided with or so situated that such dwelling or premises cannot be provided with sanitary accommodation to the satisfaction of a medical officer of health;

(13) any public or other building which is so situated, constructed, used or kept as to be unsafe or injurious or dangerous to health;

(14) any occupied dwelling for which a proper, sufficient and wholesome water supply is not available within a reasonable distance;

(15) any factory or trade premises not kept in a cleanly state and free from offensive smell arising from any drain or latrine, or not ventilated so as to destroy or render harmless and inoffensive as far as practicable any gases, vapours, dust or other impurities generated, or so overcrowded or so badly lighted or ventilated as to be injurious or dangerous to the health of those employed therein;

(16) any factory or trade premises causing or giving rise to smells or effluvia which are injurious or dangerous to health;

(17) any area of land kept or permitted to remain in such a state as to be offensive, or liable to cause any infectious, communicable or preventable disease or injury or danger to health;

(18) any machinery sending forth smoke in such quantity or in such manner as to be offensive or injurious or dangerous to health;

(19) any cemetery, burial place, crematorium or other place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health;

(20) any gutter, drain, shoot, stack pipe, down spout, water tank or cistern which by reason of its insufficiency or its defective condition shall cause damp in any dwelling;

(21) any deposit of material in or on any building or lane which shall cause damp in any building so as to be dangerous or injurious to health;

(22) any dwelling, public building, trade premises, workshop or factory not provided with sufficient and sanitary latrines;

(23) any act, omission, or thing which is or may be offensive, dangerous to life or injurious to health.

[Ch3401s63]63. Author of nuisance

The author of a nuisance means the person by whose act, default or sufferance the nuisance is caused, exists or is continued, whether he be the owner or occupier or both owner and occupier or any other person.

[Ch3401s64]64. Notice to abate nuisance

A local authority or a medical officer of health, if satisfied of the existence of a nuisance, may serve a notice on the author of the nuisance, or, if he cannot be found, then on the occupier or owner of the dwelling or premises on which the nuisance arises or continues, requiring him to abate it within the time specified in the notice, and if the local authority or medical officer of health thinks it desirable (but not otherwise) any work to be executed to abate or prevent a recurrence of the said nuisance may be also specified in the notice:

Provided that—

(a) where the nuisance arises from any want or defect of a structural character, or where the dwelling or premises are unoccupied, the notice shall be served on the owner;

(b) where the author of the nuisance cannot be found or it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the dwelling or premises, the local authority shall abate the nuisance and may do what is necessary to prevent the recurrence thereof.

[Ch3401s65]65. Procedure in case owner fails to comply with notice

(1) If the person on whom a notice to abate a nuisance has been served as aforesaid fails to comply with any of the requirements thereof within the time specified, or if the nuisance although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority may cause a complaint relating to such nuisance to be made before a Resident Magistrate's court or a subordinate court of the first or second grade and such court may thereupon issue a summons requiring the person on whom the notice was served to appear before it.

(2) If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises the court shall make an order on the author thereof, or the occupier or owner of the dwelling or premises, as the case may be, requiring him to comply with all or any of the requirements of the notice or otherwise to abate the nuisance within a time specified in the order and to do any works necessary for that purpose; or an order prohibiting the recurrence of the

nuisance and directing the execution of any works necessary to prevent the recurrence, or an order both requiring abatement and prohibiting the recurrence of the nuisance.

(3) The court may by such order impose a fine of £20 on the person on whom the order is made and may also give directions as to the payment of all costs incurred up to the time of the hearing or making of the order for the abatement of the nuisance.

(4) Before making any order, the court may, if it thinks fit, adjourn the hearing or further hearing of the summons until an inspection, investigation or analysis in respect of the nuisance alleged has been made by some competent person.

(5) Where the nuisance proved to exist is such as to render a dwelling unfit, in the judgment of the court, for human habitation, the court may issue a closing order prohibiting the use thereof as a dwelling until in its judgment the dwelling is fit for that purpose; and may further order that no rent shall be due or payable by or on behalf of the occupier of that dwelling in respect of the period in which the closing order exists; and on the court being satisfied that such dwelling has again been rendered fit for use as a dwelling the court may terminate the closing order and by a further order declare the dwelling habitable, and from the date thereof such dwelling may be let or inhabited.

Notwithstanding any such last-mentioned order, further proceedings may be taken in accordance with this section in respect of the same dwelling in the event of any nuisance occurring or of the dwelling being again found to be unfit for human habitation.

[Ch3401s66]66. Penalties in relation to nuisance

(1) Any person who fails to obey an order by a court to comply with the requirements of a local authority or medical officer of health or otherwise to abate the nuisance, shall, unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine of £5 for every day during which the default continues; any person wilfully acting in contravention of a closing order issued under the last preceding section shall be liable to a fine of £5 for every day during which the contravention continues.

(2) The local authority may in such a case enter the premises to which any such order relates and abate the nuisance or do whatever may be necessary in the execution of such order and recover in a Resident Magistrate's court or a subordinate court of the first or second grade the expenses incurred from the person on whom the order is made.

[Ch3401s67]67. Court may order local authority to execute works in certain cases

Whenever it appears to the satisfaction of the court that the person by whose act or default the nuisance arises, or that the owner or occupier of the premises is not known or cannot be found, the court may at once order the local authority to execute the works thereby directed and the cost of executing the same shall be a charge on the property on which the said nuisance exists.

[Ch3401s68]68. Provision in case of two orders for overcrowding relating to same premises

Where the court has twice within a period of three months issued an order as specified in section 65 (2) relating to overcrowding of the same premises or part of the same premises the court

may, on the application of a local authority, order such premises to be closed for such period as the court may deem necessary.

[Ch3401s69]69. Power of sale

Any matter or thing removed by a local authority in abating any nuisance under this Part may be sold by public auction, and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them in reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing if he shall establish his claim thereto within two years from the date of such sale, failing which such surplus shall be paid into the Consolidated Fund.

[Ch3401s70]70. Persons jointly responsible for nuisances may be proceeded against

(1) Where any nuisance liable to be dealt with in the manner provided in this Part appears to be wholly or partly caused by the acts or defaults of two or more persons, a local authority may institute proceedings against any one of such person or may include all or any two or more of them in one proceeding, and any one or more of such persons may be ordered to abate the nuisance, so far as it appears to be caused by his or their acts or defaults or may be prohibited from continuing any acts or defaults which contribute to the nuisance, or may be fined or otherwise dealt with notwithstanding that the acts or default of any one of such persons would not separately have caused a nuisance, and the costs may be distributed as may appear to the court fair and reasonable.

(2) Proceedings under the preceding subsection against several persons included in one complaint shall not abate by reason of the death of any of the persons so included, but all such proceedings may be carried on as if such deceased person had not been originally so included.

(3) Where some only of the persons by whose act or default any nuisance has been caused or partly caused have been proceeded against under this Part, they shall, without prejudice to any other remedy, be entitled to recover from any other persons who were not so proceeded against and by whose act or default the said nuisance was caused or partly caused a proportionate part of the costs of and incidental to such proceedings and abating such nuisance, and of any fine and costs ordered to be paid in such proceedings.

[Ch3401s71]71. Demolition of unfit buildings

34 of 1969 (1) Where in the opinion of the Minister a nuisance exists with respect to premises which in his opinion are so dilapidated or so defectively constructed or so situated that repairs to or alterations of such premises are not likely to remove the nuisance the Minister may issue a demolition order ordering the owner of the premises to commence to demolish them on or before a specified day, being at least one month from the date of issuing the order, and to complete the demolition and to remove the materials which comprised the premises from the site before another specified day:

Provided that at least one month before issuing such a demolition order notice of the intention to issue such an order shall be served on the owner of the premises who may make representations in respect thereof to the Minister. The Minister shall consider any representations so made before issuing a demolition order under this section.

(2) The Minister shall give notice to the occupier of the premises in respect of which a demolition order has been issued requiring him to vacate the premises within a time to be specified in such notice, and if any person fails to comply with the notice or enters the premises, without lawful excuse, after the date specified in the notice, he shall be guilty of an offence.

(3) If any person fails to comply with an order for demolition issued under this section he shall be guilty of an offence and be liable to pay the daily fine provided in section 66 (1), and the Minister may cause the premises to be demolished and may recover from the owner the expenses incurred in doing so after deducting the net proceeds of the sale of the materials which the Minister may sell by auction.

(4) No compensation shall be paid to the owner or occupier of any premises in respect of the demolition thereof as aforesaid.

(5) For the purposes of this section the Minister means the Minister for the time being responsible for land.

[Ch3401s72]72. Prohibitions in respect of back-to-back dwellings and rooms without through ventilation

(1) The Minister may, by notice published in the Gazette, prohibit within any area defined in such notice—

(a) the erection of any premises intended to be used as a dwelling constructed on the back-to-back system; or

(b) the erection of any room intended to be used as a sleeping or living or work room which is not provided with an external window or windows having a total area not less than one-tenth of the floor area, at least half of such window or windows being capable of being opened:

Provided that—

(i) any such room which is without a fireplace and flue shall in addition be provided with a fresh air inlet having an unobstructed sectional area of at least thirty square inches;

(ii) such windows or inlets shall be so placed as to secure through or cross ventilation; or

(c) the erection of any premises intended to be used as a dwelling on made ground containing street sweepings, refuse, rubbish or other matter liable to decomposition unless the approval of the local authority has been obtained and such measures for safeguarding health have been taken as such local authority may require.

(2) Any person who contravenes any provision of this section shall be liable to a fine of £50 and to a further fine of £2 for every day during which such contravention continues after the date fixed in any written notice in respect thereof from the local authority.

[Ch3401s73]73. Cost of execution of provisions relating to nuisances

(1) All reasonable costs and expenses incurred in serving a notice, making a complaint or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or, if no order is made but the nuisance is proved to have existed when the notice was served or the complaint made, then of the author of the nuisance.

(2) Such costs and expenses incurred in relation to any such nuisance may be recovered as a civil debt, and the court shall have power to divide such costs and expenses between the authors as to it may seem just.

(3) Where, in accordance with this Act, a local authority has itself abated a nuisance, or done what is necessary to prevent a recurrence thereof, if no owner or occupier of the premises can be found, or appears or pays the expenses thereby incurred within six months after the completion of the abatement of such nuisance, the court may order the premises upon which the work shall have been done, or any part thereof, or any movable property found thereon, to be sold by public auction, and the amount realized by such sale shall be applied in defraying such costs and expenses, and the balance (if any) paid over to the owner or occupier if he shall establish his claim thereto within two years after the date of such sale failing which such balance shall be paid into the Consolidated Fund.

[Ch3401s74]74. Examination of premises

A local authority or a health officer may, at all reasonable times, enter any premises for the purpose of ascertaining the existence of any nuisance therein; and the local authority may, if necessary, open up the ground of such premises and cause the drains to be tested, or such other work to be done as may be necessary for the effectual examination of the said premises:

Provided that if no nuisance is found to exist the local authority shall restore the premises at their own expense.

[Ch3401s75]75. Power to make Rules

The Minister may make Rules, and may confer powers and impose duties in connexion with the carrying out and enforcement thereof on local authorities, owners and others as to—

(a) the inspection of land, dwellings, buildings, factories and trade premises, and for securing the keeping of the same clean and free from nuisance and so as not to endanger the health of the inmates or the public health;

(b) the construction of buildings, the provision of proper lighting and ventilation, and the prevention of overcrowding;

(c) the periodical cleansing and white-washing or other treatment of premises and the cleansing of land attached thereto and the removal of rubbish or refuse therefrom;

(d) the drainage of land, streets or premises, the disposal of offensive liquids and the removal and disposal of rubbish, refuse, manure and waste matters;

- (e) the standard or standards of purity of any liquid which, after treatment in any purification works, may be discharged therefrom as effluent;
- (f) the keeping of animals or birds and the construction, cleanliness and drainage of places where animals or birds are kept;
- (g) the establishment and carrying on of offensive trades, factories or trade premises which are liable to cause offensive smells or effluvia, or to discharge liquid or other material liable to cause such smells or effluvia, or to pollute streams, or are otherwise liable to be a nuisance or injurious or dangerous to health, and for prohibiting the establishment or carrying on of such factories or trade premises in unsuitable localities or so as to be a nuisance or injurious or dangerous to health;
- (h) the subdivision and general lay-out of land intended to be used as building sites, the level, construction, number, direction, and the width of streets and thoroughfares, the limitation of the number of dwellings or other buildings to be erected on such land, the proportion of any building site which may be built upon and the establishment of zones within which different limitations shall apply and zones within which may be prohibited the establishment or conduct of occupations or trades likely to cause nuisance or annoyance to persons residing in the neighbourhood;
- (i) the inspection of the district of any local authority by that local authority with a view to ascertain whether the lands and buildings thereon are in a state to be injurious or dangerous to health and the preparation, keeping, and publication of such records as may be required;
- (j) the control of houses let in lodgings, the fixing of the maximum number of lodgers, the minimum floor space allotted to each lodger, the adequate ventilation and lighting and periodical cleansing and lime washing at stated intervals of the premises, the provision of adequate sanitary appliances and other requirements having for their object the protection of the health of the lodgers or surrounding inhabitants;
- (k) the sanitary control of markets and market buildings.

[Ch3401s76]76. Rules as to buildings

(1) The power under section 75 to make Rules relating to the construction of buildings shall include the power to regulate all or any of the following matters—

- (a) as regards building—
 - (i) the materials to be used in the construction of buildings;
 - (ii) the space about buildings and the dimensions of rooms intended for human habitation;
 - (iii) the height of buildings; the height of chimneys, not being separate buildings, above the roof of the building of which they form part;
- (b) as regards works and fittings—

(i) sanitary conveniences in connexion with buildings, the drainage of buildings, including the means for conveying soil, waste, storm and subsoil water from buildings and their curtilages and cesspools and other means for the reception or disposal of foul matter in connexion with buildings;

(ii) refuse pits in connexion with buildings;

(iii) wells, tanks and cisterns for the supply of water for human consumption in connexion with buildings;

(iv) stoves and other fittings in buildings (not being electric stoves or fittings), in so far as rules with respect to such matters are required for the purpose of health and the prevention of fire;

(v) private and public sewers and communications between drains and sewers and between sewers.

(2) Any Rules to which this section relates may include provisions as to—

(a) the giving of notices and the deposit of plans, sections, specifications and written particulars;

(b) the inspection of work, the protection and testing of drains and private sewers, and the taking by the local authority of samples of materials to be used in the construction of buildings, or in the execution of other works;

(c) the protection of public sewers; and

(d) the examination and licensing of plumbers and drain layers.

[Ch3401s77]77. Power to require removal or alteration of work not in conformity with Rules

(1) If any work to which any Rules referred to in section 76 are applicable contravenes any of those Rules, the local authority, without prejudice to its right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the Rules.

(2) If a person to whom a notice has been given under the foregoing provisions of this section fails to comply with the notice before the expiration of twenty-eight days, or such longer period as the authority may allow, the authority may pull down or remove the work in question, or effect such alterations therein as it deems necessary, and may recover from him the expenses reasonably incurred by it in so doing.

(3) No such notice as is mentioned in subsection (1) shall be given after the expiration of twelve months from the date of the completion of the work in question, and, in any case where plans were deposited, it shall not be open to the authority to give such a notice on the ground that the work contravenes any building rule, if either the plans were passed by the authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work

has been executed in accordance with the plans and of any requirement made by the authority as a condition of passing the plans.

PART X

CONSERVANCY, SEWERAGE AND DRAINAGE

[Ch3401s78]78. Interpretation of Part X

(1) In this Part unless the context otherwise requires the following terms shall have the following meanings—

“cesspool” means a tank or receptacle for the reception of sewage and foul matter for which no automatic outlet is provided;

“earth-closet” means a closet for the reception of faecal matter into a movable receptacle in which it is deodorized by the use of earth, ashes, chemicals or by some other method;

“lateral drain” means that portion of a system of drains or private sewers, which—

(a) in the case of a sewer for soil and waste water, lies between the intercepting chamber and the public sewer (including the intercepting trap and sewer connexion); or

(b) in the case of a sewer for storm water, lies between the last inspection chamber and the public sewer, or, if there be no inspection chamber, between the curtilage of the premises and the public sewer;

“prejudicial to health” means injurious or likely to cause injury to health;

“private sewer” means a sewer which is not a public sewer;

“privy” means a closet for the reception of faecal matter into a non-movable receptacle and includes a pit latrine or a bored-hole latrine;

“public sewer” means any sewer vested in or constructed by or on behalf of or under the control of a local authority;

“septic tank” means a tank or receptacle for the reception of sewage or foul matter for the effluent from which an automatic outlet is provided;

“sewer” does not include a drain as defined in section 3 but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings and their curtilages;

“soil water” means any discharge from water-closets or urinals and all water containing excremental liquid or substance;

“storm water” includes surface or rain water;

“waste water” means liquid waste of a non-excremental nature but does not include storm water;

“water-closet” means latrine accommodation used, adapted or intended to be used in connexion with a water carriage system and comprising provision for the flushing of the receptacle by means of water;

“workplace” does not include a factory or workshop but save as aforesaid includes any place in which persons are employed otherwise than in domestic service.

(2) Any reference in this Part to a drain or sewer shall be construed as including a reference to any manholes, ventilating shafts, pumps or other accessories belonging to that drain or sewer.

(3) For the purpose of this Part, a building or proposed building shall not be deemed to have a public sewer available unless—

(a) there is or there is in course of construction within one hundred feet of the curtilages of the building or proposed building, and at a level which makes it reasonably practicable to construct a drain to communicate therewith, a public sewer or other sewer which the owner of the building or proposed building is, or will be, entitled to use; and

(b) the intervening land is land through which he is entitled to construct a drain, and shall not be deemed to have a sufficient water supply available unless it has a sufficient supply of water laid on or unless such a supply can be laid on to it from a point within one hundred feet of the curtilage of the building or proposed building, and the intervening land is land through which the owner of the building or proposed building is, or will be, entitled to lay a communication pipe:

Provided that, for the purposes of this definition, the limit of one hundred feet shall not apply, if the local authority undertakes to bear so much of the expenses reasonably incurred in constructing a drain to communicate with a public sewer or, as the case may be, in laying a pipe for the purpose of obtaining a supply of water, as may be attributable to the fact that the distance of the public sewer, or of the point from which a supply of water can be laid on, exceeds one hundred feet as aforesaid.

Public Sewers

[Ch3401s79]79. Provision of public sewers and sewerage disposal work

(1) A local authority may within its district and also, subject to the prior approval of the Minister without its district—

(a) construct and maintain a public sewer—

(i) in, under or over any street, or under any cellar or vault below any street;
and

(ii) in, or over any land not forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(b) construct sewage disposal works on any customary land or public land or land acquired, or lawfully appropriated for the purpose.

(2) In the exercise of its powers under subsection 1 (a) (ii), the local authority shall not be liable to pay any compensation to an owner or occupier of any private lands but shall make good, or, at its option, shall pay for any damage done or occasioned by reason of the exercise of the said powers.

[Ch3401s80]80. Duty of local authority to keep map showing public sewers

(1) Every local authority shall keep deposited at its offices, for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers existing or in course of construction within its district or under its control.

(2) Where some of the public sewers are reserved for soil and waste water only or for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

[Ch3401s81]81. Power of local authority to alter or close public sewers

A local authority may alter the size or course of any public sewer vested in it, or may discontinue and prohibit the use of any such public sewer, either entirely, or for the purpose of soil and waste water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the authority of the use of the sewer for that purpose, the authority shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the sewer so provided.

[Ch3401s82]82. Certain matters not to be passed into sewers or drains

(1) No person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or private sewer communicating with a public sewer—

(a) any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or

(b) any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam, which, or a liquid which when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous or the cause of a nuisance, or prejudicial to health; or

(c) any petroleum spirit, or carbide of calcium.

(2) A person who contravenes any of the provisions of this section shall be liable to a fine of £10 and to a further fine of £5 for each day on which the offence continues after conviction therefor.

Right to Connect with Public Sewers

[Ch3401s83]83. Right of owners and occupiers within district of local authority to drain into public sewers

Subject to this section and section 86, the owner or occupier of any premises, or the owner of any private sewer, within the district of a local authority shall be entitled to have his drains or

private sewer made to communicate with any available public sewer of that authority, and thereby to discharge soil and waste water and storm water from those premises or that private sewer:

Provided that nothing in this section shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a manufacturing process or any liquid from a factory, other than domestic sewage or storm water except by agreement with the local authority;
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited under this Act or any other law; or
- (b) where separate public sewers are provided for soil and waste water and for storm water, to discharge directly or indirectly—
 - (i) soil or waste water into a sewer provided for storm water; or
 - (ii) except with the approval of the authority, storm water into a sewer provided for soil and waste water; or
- (c) to have his drains or private sewer made to communicate directly with a storm water overflow; or
- (d) to have his drains or private sewer made to communicate with a public sewer provided for soil and waste water unless and until he satisfies the authority that the premises to be drained have a sufficient water supply available; or
- (e) to have his drains or private sewer made to communicate with any public sewer if such sewer is situated in excess of one hundred feet of the curtilage of the premises.

[Ch3401s84]84. Use of public sewers by owners and occupiers without the district of local authority

Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer without the district of a local authority shall have the like rights with respect to drainage into the available public sewers of the authority as he would have had under section 82 if his premises or private sewer were situate within its district and that section shall apply accordingly:

Provided that, without prejudice to the prohibition contained in section 83 against the discharge of certain liquids or other matters into public sewers or into some public sewers or the right of a local authority under section 86 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection, the authority may, in the case of a drain or private sewer from premises outside its district, refuse to permit a communication to be made except upon such reasonable terms and conditions as may be prescribed or as the Minister may approve. Such terms and conditions may include—

- (a) compliance with any reasonable requirements of the authority that the premises to be drained shall be sanitary or in a proper state of repair; and

(b) such reasonable payment or periodical payment as subject to any special or general directions of the Minister, the authority may see fit to impose.

[Ch3401s85]85. Sewer connexions in streets and through private land

For the purpose of making or maintaining a communication with a public sewer it shall be lawful for a local authority to construct or repair a lateral drain or, with the prior consent of the local authority and in such manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on or over any land, but where such land does not form part of a street, such authority or owner shall give to every owner or occupier of such land reasonable notice and shall be liable to make good or, at the option of the authority or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power:

Provided that the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or any adjacent land and, in case of dispute, a person aggrieved may appeal in the manner set out in section 132 (e) and (f).

[Ch3401s86]86. Procedure in regard to making communication with public sewers

(1) A person who wishes or who is required to have his drains or private sewers made to communicate with a public sewer shall give to the local authority notice of his proposals in writing in such manner as may be prescribed and at any time within twenty-one days of the receipt thereof the authority may by notice to him refuse to make the communication if it appears to the authority that the mode of construction of the drain or private sewer is not in conformity with the rules in force governing the same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the authority and for the purpose of examining the mode of construction and condition of the drain or private sewer the authority may, if necessary, require it to be laid open for inspection.

(2) If no such notice as aforesaid is served on such person, the authority shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in such manner as may be prescribed or as the authority may decide, but it shall not be obligatory on the authority to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) If any payment so made to the authority exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaid by it and, if and so far as those expenses are not covered by the payment made to it, the authority may recover the expenses, or the balance thereof, from the person for whom the work was done.

(4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street and the taking of any steps which the authority may consider necessary for repairing, relaying or safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making such communication.

(5) Any lateral drain so constructed shall vest in the local authority (but shall not thereby become a public sewer) and the maintenance, repair and renewal of the same from time to time shall be carried out by the authority at the expense of the owner of the premises served by such drain.

(6) Any person (other than a person lawfully acting on behalf of a local authority) who causes a drain or sewer to communicate with a public sewer and any person who fails to comply with or acts in contravention of any of the provisions of this section, shall be liable to a fine of £20, and, whether proceedings have or have not been taken in respect of that offence, the local authority may close any communication made in contravention of any of such provisions, and recover from the offender any expenses reasonably incurred by it in so doing.

Drainage and Latrines or New Buildings

[Ch3401s87]87. New buildings to be provided with any necessary drains, etc.

(1) Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with a local authority, the authority shall reject the plans unless either the plans show that satisfactory provision will be made for the drainage of the building or of the extension, as the case may be, or the authority is satisfied that in the case of the particular building or extension it may properly dispense with any provision for drainage.

In this section the expression “drainage” includes the conveyance, by means of a drain, of soil and waste water and the conveyance of storm water and subsoil water from the building and its curtilage.

(2) A proposed drain shall not be deemed to be a satisfactory drain for the purposes of this section unless it is proposed to be made, as the authority may require, to connect with an available public sewer, or, if there be no such sewer, to discharge into a cesspool, septic tank or other place which the local authority may approve.

[Ch3401s88]88. Latrine accommodation to be provided for new buildings

Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with a local authority, the authority shall reject the plans unless either the plans and the prescribed particulars deposited therewith show that the prescribed or sufficient and satisfactory latrine accommodation will be provided, or the authority is satisfied that in the case of a particular building or extension it may properly dispense with the provision of latrine accommodation:

Provided that—

(a) unless a sufficient water supply and public sewer are available, the authority shall not reject the plans on the ground only that the proposed accommodation consists of or includes an earth-closet or earth-closets or a privy or privies of a type approved by the authority; and

(b) if the plans and the deposited particulars show that the proposed building or extension is likely to be used as a factory, workshop, workplace, club, place of entertainment or other place in which persons of both sexes will be employed, or will be in attendance, the authority

shall reject the plans, unless either the authority is satisfied that sufficient and satisfactory separate latrine accommodation for persons of each sex will be provided, or that in the circumstances of the particular case it may properly dispense with the provision of such separate accommodation.

Drainage and Latrines of Existing Buildings

[Ch3401s89]89. Provisions as to drainage, etc., of existing buildings

(1) If it appears to a local authority that in the case of any building—

- (a) satisfactory provision has not been, and ought to be, made for drainage; or
- (b) any cesspool, septic tank, private sewer, drain, soil-pipe, rain-water-pipe, spout, sink or other necessary appliance provided for the building is defective or insufficient; or
- (c) any cesspool, septic tank or other such work or appliance as aforesaid provided for the building is in such a condition as to be prejudicial to health or a nuisance; or
- (d) any cesspool, septic tank, private sewer or drain formerly used for the drainage of the building, but no longer used therefor, is prejudicial to health or a nuisance,

it shall by notice require the owner of the building to make satisfactory provision for the drainage of the building, or, as the case may be, require either the owner or the occupier of the building to do such work as may be necessary for renewing, repairing, or cleansing the existing cesspool, septic tank, sewer, drain pipe, spout, sink or other appliances, or for filling up, removing or otherwise rendering innocuous the disused cesspool, septic tank, sewer or drain.

(2) Except in cases where the local authority is satisfied that in the case of any particular building it may properly dispense with any provision for drainage, for the purposes of subsection (1), “satisfactory provision for drainage” means that the drainage system and appliances of the building comply with the rules for the time being in force relating to the same and that the drainage systems of the premises connect with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the authority may approve.

[Ch3401s90]90. Replacement of earth-closets, etc., by water-closets

If any existing building in the district of a local authority has a sufficient water supply and a public sewer is available, the authority may, subject to section 78 (3), by notice to the owner of the building require that any latrines, other than water-closets, provided for, or in connexion with, the building shall be replaced by water-closets and that the owner shall make an application within a specified time to have his drain made to communicate with a public sewer under section 86, notwithstanding that the latrines are not insufficient in number and are not prejudicial to health or a nuisance.

[Ch3401s91]91. Building or land having insufficient latrines or latrines so defective as to require reconstruction

30 of 1969 If it appears to a local authority, having due regard to the purposes for which any building or land is used, that—

(a) such building or land is without sufficient latrine accommodation; or

(b) latrines provided for or in connexion with such building or land are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition,

the authority shall, by notice to the owner of the building or land, require him to provide the building or land with such latrines or additional latrines, or such substituted latrines, as the authority may approve and may consider necessary:

Provided that, unless a sufficient water supply and public sewer are available, the authority shall not require the provision of a water-closet except in substitution for an existing water-closet.

[Ch3401s92]92. Buildings having defective latrines capable of repair

(1) If it appears to a local authority that any latrines provided for or in connexion with a building are in such a state as to be prejudicial to health or a nuisance, but that they can without reconstruction be put into a satisfactory condition, the authority shall by notice require the owner or the occupier of the building to execute such works, or to take such steps by cleansing the latrines or otherwise, as may be necessary for that purpose.

(2) In so far as such a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, be liable to a fine of £5 and to a further fine of £2 for each day on which the offence continues after conviction therefor:

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the authority's requirements, or of its decision to address the notice to him and not to the occupier or, as the case may be, the owner of the building.

Drainage of Buildings in Combination

[Ch3401s93]93. Drainage of buildings in combination

(1) Where a local authority might under this Part require each of two or more buildings to be drained separately into an existing public sewer, but it appears to the authority that those buildings may be drained more economically or advantageously in combination, the authority may, when the drains of the buildings are first laid, require that the buildings be drained in combination into the existing public sewer by means of a private sewer to be constructed either by the owners of the buildings in such manner as the authority may direct, or, if the authority so elects, by the authority on behalf of the owners:

Provided that an authority shall not, except by agreement with the owners concerned, exercise the powers conferred by this subsection in respect of any building for the drainage of which plans have been previously passed by it.

(2) An authority who makes such a requirement as aforesaid shall fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned, or, in a case in which the distance of the existing public sewer from the curtilage of any of the buildings in question is or exceeds one hundred feet, the proportions in

which those expenses are to be borne by the owners concerned and the local authority, and shall forthwith give notice of the decision to each owner affected.

(3) An owner aggrieved by a decision of an authority may appeal to the High Court in such manner as may be prescribed by Rules made by the High Court. Subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer shall be borne in the proportions so fixed, and those expenses, or, as the case may be, contributions thereto, may be recovered accordingly by the person, whether the authority or owners, by whom they were incurred in the first instance.

(4) A sewer constructed by a local authority under this section shall not be deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the authority, or by reason of the fact that some part of those expenses is borne by it.

[Ch3401s94]94. Payment of advances for defraying drainage expenses

(1) In any case where it shall appear to a local authority that the owner or occupier of any premises is unable to make a present payment of the amount of the expenses necessary to be incurred for the drainage and sewerage of such premises and the communication thereof with an available public sewer, the local authority may, subject to any general or special directions of the Minister in that behalf, make an agreement in the prescribed form with such owner or occupier for the advance of a sum of money for such necessary expenses at such interest as may be prescribed and for its repayment in such and so many instalments as the authority may determine.

(2) Any sum of money so advanced shall be a charge on the premises and all estates and interests therein in respect of which the advance is made and section 135 shall apply, mutatis mutandis, as if the sum advanced were expenses incurred by a local authority under this Act.

[Ch3401s95]95. Rules

The Minister may make Rules for the purpose of prescribing any matters required to be prescribed including the method of construction of any cesspool, earth-closet, privy, septic tank or sewer, or any other structure mentioned in this Part, and generally for carrying out the purposes of this Part.

PART XI

THE PREVENTION AND DESTRUCTION OF MOSQUITOES

[Ch3401s96]96. Breeding places of mosquitoes to be nuisances

For the purpose of this Act—

(a) any collection of water, sewage, rubbish, refuse, ordure, or other fluid or solid substance, which permits or facilitates the breeding or multiplication of animal or vegetable parasites of human beings or domestic animals, or of insects or of other agents which are known to carry such parasites or which may otherwise cause or facilitate the infection of human beings or domestic animals by such parasites;

(b) any collection of water in any well, pool, gutter, channel, depression, excavation, barrel, tub, bucket, or any other article, found to contain any of the immature stages of the mosquito;

(c) any cesspool, latrine, urinal, dung pit or refuse pit found to contain any of the immature stages of the mosquito,

shall be nuisances liable to be dealt with in the manner hereinbefore provided for the treatment of nuisances.

[Ch3401s97]97. Yards to be kept free from bottles whole or broken, etc.

The occupier or owner of any premises shall keep such premises free from all bottles, whole or broken, whether fixed on walls or not, tins, boxes, calabashes, earthenware vessels, shells, or any other articles, and trees, standing or fallen, and tree stumps, in such a state or position as to be likely to retain water. Any occupier or owner of any premises failing to comply with this section shall be guilty of an offence and liable to a fine of £5.

[Ch3401s98]98. Clearance of bush or long grass

No person shall permit any premises or lands owned or occupied by him or over which he has control to become so overgrown with bush or long grass as, in the opinion of a medical officer of health, to be likely to harbour mosquitoes.

[Ch3401s99]99. Wells, etc., to be covered

It shall not be lawful for any person to keep, or for the occupier or owner of any premises to allow to be kept thereon, any collection of water in any well, barrel, tub, bucket, tank or other vessel intended for the storage of water, unless such well, barrel, tub, bucket, tank or other vessel is fitted with a sufficient cover, the said cover to be kept in good repair and properly protected or screened to the satisfaction of a medical officer of health so as to prevent the ingress of mosquitoes into the same. Any person offending against this section shall be liable to a fine of £5, and, after notice received from a local authority or a medical officer of health, to a further fine of £1 for each day during which he shall make default in complying with such notice:

Provided that this section shall not apply to the keeping of water in a swimming pool the use of which has been authorized in writing by a local authority or medical officer of health.

[Ch3401s100]100. Cesspits to be screened or protected

The occupier or owner of any premises upon or attached to which is any cesspool or septic tank shall cause such cesspool to be properly protected or screened to the satisfaction of a medical officer of health so as to prevent the ingress of mosquitoes. Any persons offending against this section shall be guilty of an offence and liable to a fine of £5, and to a further fine of £1 for each day during which he shall continue to make default after notice received from the local authority to comply with this section.

[Ch3401s101]101. Larvae, etc., may be destroyed

(1) Where any of the immature stages of the mosquito are found on any premises it shall be lawful for the local authority or a health officer to take immediate steps to destroy any such immature stages of the mosquito.

(2) It shall be lawful for the local authority or a health officer to take such action as is necessary to render any pools or collections of water unfit to become breeding places for mosquitoes.

[Ch3401s102]102. Mere presence of mosquito larvae an offence

Notwithstanding any provision of this Act, the occupier or owner of any house or premises or the owner or person having the charge of any vessel, timber, cask, or other articles in or about which there is any collection of water found by a health officer, or any person authorized by him, to contain any of the immature stages of the mosquito, shall be liable in respect of each and every such collection of water to a fine of £5.

PART XII

PROTECTION OF FOODSTUFFS

[Ch3401s103]103. Construction and regulation of buildings used for the storage of foodstuffs

(1) All warehouses or buildings of whatever nature in regular use for the storage of foodstuffs for trade purposes shall be constructed of such materials and in such manner as shall render such warehouses or buildings rat-proof.

(2) Where any warehouse or building intended for the storage of foodstuffs as aforesaid has fallen into a state of disrepair, or does not afford sufficient protection against rat invasion on account of its design or construction or by reason of the materials used being defective, a local authority may by written notice require the owner to effect such repairs and alterations as the notice shall prescribe within a time to be specified in the said notice, and if such requirement is not complied with the local authority may enter upon the premises and effect such repairs and alterations, and may recover all costs and expenses incurred from the owner.

(3) Where in the opinion of a medical officer of health any such foodstuffs within a warehouse or building are insufficiently protected against rats, vermin or pollution the owner thereof shall observe all written instructions and directions of the medical officer of health within a time to be specified in the notice for the better protection of the same, and any owner failing so to do shall be guilty of an offence:

Provided that in the case of any prosecution under this section the court may in its discretion acquit the accused if it is satisfied that all reasonable steps have been taken to exclude rats having regard to all the circumstances of the case.

[Ch3401s104]104. No person to reside or sleep in any room in which foodstuffs are stored, etc.

(1) No person shall reside or sleep in any kitchen or room in which foodstuffs for sale are prepared or stored for sale.

(2) If it appears to a medical officer of health that any kitchen or room is being used contrary to this section, or that any part of the premises adjoining the room in which foodstuffs are stored or exposed for sale is being used as a sleeping apartment under such circumstances that the foodstuffs are likely to be contaminated or made unwholesome, he may serve upon the offender or upon the owner of the house or upon both a notice calling for such measures to be taken as shall prevent the improper use of such kitchen and premises within a time to be specified in the notice, and if such notice be not complied with the party upon whom it was served shall be guilty of an offence.

PART XIII

WATER AND FOOD SUPPLIES

[Ch3401s105]105. Duty of local authorities as to polluted water supplies

It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures—

(a) for preventing any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes (whether such supply is derived from sources within or beyond its district); and

(b) for purifying any such supply which has become so polluted,

and to take measures (including if necessary, proceedings at law) against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

[Ch3401s106]106. Sale of unwholesome food prohibited

(1) No person shall sell or expose for sale or bring into Malawi or into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for its use and any medical officer of health, veterinary officer, health inspector, or any administrative officer or police officer of or above the rank of a sub-inspector may seize any such food, and any magistrate, on the recommendation of a health officer or veterinary officer, may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal as the case may be.

(2) No person shall collect, prepare, manufacture, keep, transmit or expose for sale any foodstuffs without taking adequate measures to guard against or prevent any infection or contamination thereof.

[Ch3401s107]107. Seizure of unwholesome food

Any health officer or local authority or person duly authorized by such in writing, may, at any time between the hours of 6 a.m. and 6 p.m. enter any shop or premises used for the sale or preparation for sale, or for the storage of food, to inspect and examine any food found therein which he shall have reason to believe is intended to be used as food for man, and should such food appear to such officer or authority to be unfit for such use, he may seize the same, and any

magistrate may order it to be disposed of as in the last foregoing section. The onus of proving that such food was not intended to be used as food for man shall be upon the person charged.

[Ch3401s108]108. Penalty

Any person in whose possession there shall be found any food liable to seizure under sections 106 and 107 shall be liable to a fine of K200 and to imprisonment for six months.

[Ch3401s109]109. Rules

43 of 1971, 3 of 1975 (1) The Minister may make Rules regarding all or any of the following matters—

(a) the inspection of dairy stock and of animals intended for human consumption, and of dairies, stock-sheds or yards, milk vessels and slaughterhouses, and of factories, stores, shops and any other places where any article of food is manufactured or prepared or kept;

(b) the taking and examination of samples of milk, dairy produce, meat or other articles of food and the removal or detention, pending examination or inquiry, of animals or articles which are suspected of being diseased or unsound or unwholesome or unfit for human consumption, and the seizure and destruction, or treatment or disposal so as not to endanger health, of any such article which is found to be unwholesome or unsound or diseased or infected or contaminated, and of diseased animals sold or intended or offered or exposed for sale for human consumption;

(c) the veterinary inspection of dairy stock, the sampling and bacteriological examination of milk and dairy produce and the prevention of the sale, or the keeping, transmission, or exposure for sale of milk from a diseased or infected animal;

(d) the duties of dairymen in connexion with the occurrence of infectious disease amongst persons residing or employed in or about their premises and the furnishing by them of the names and addresses of their customers, and in connexion with reporting the occurrence, in animals on the premises or any dairy cattle, of diseases which are communicable to man and of any disease of the udder;

(e) the inspection and examination of, and the regulation, inspection and supervision of the manufacture, preparation, storage, keeping and transmission of any article of food intended for sale or for export from Malawi and the prohibition of the manufacture, preparation, storage, keeping, transmission, sale or export from Malawi of any such article which is, or contains, an ingredient which is diseased or unsound or unfit for human consumption, or which has been exposed to any infection or contamination;

(f) the prohibition of the importation into Malawi of any article of food which is not clean, wholesome, sound and free from any disease, infection or contamination, and the seizure and disposal by destruction or otherwise of any such article so imported;

(g) the preparation, manufacture, or importation and the storage and sale of or trade in articles of food which are packed in air-tight receptacles or are otherwise preserved, and the

marking of any such article or receptacle with the date of manufacture or preparation, or with other information;

(h) the prohibition of the importation, sale, possession or use of vessels which are intended to contain milk or any liquid or semi-solid article of food and which are rusty or defectively soldered or are made of material containing in any part likely to come in contact with the contents, lead or other poisonous or injurious substance in such proportion as to be likely to cause injury or danger to health, and fixing the maximum proportions of such substances which may be used in such vessels;

(i) the licensing, regulation and inspection of hotels, restaurants, cafes, and eating-houses;

(j) the licensing, regulation and inspection of the preparation and sale of foods by hawkers;

(k) the licensing, regulation and inspection of aerated water factories and ice manufacture;

(l) the licensing, regulation and inspection of the premises of fishmongers

(m) the licensing, regulation and inspection of the premises of butchers and retailers of meat;

(n) the licensing, regulation and inspection of bakehouses and bakeries;

(o) the fixing of fees and the prescribing of forms in regard to any matters prescribed.

(2) Before making Rules relating to dairies, dairy stock, dairymen, milk and milk products, the Minister shall act on the advice of the Minister responsible for agriculture and natural resources.

[Ch3401s110]110. Fixing of standards for foodstuffs or other articles

(1) The Minister may specify by order standards of quality, composition and condition, and minimum standards, in respect of any foodstuffs, goods or other articles.

(2) Any person who imports, manufactures, sells or barter any foodstuffs, goods or other articles which do not comply with any standard specified in respect thereof by an order made under subsection (1) shall be guilty of an offence.

[Ch3401s111]111. Medical officer of health's powers to make orders for protection of public health

A medical officer of health, if he reasonably considers such action necessary for the protection of the public health, may—

(a) prohibit the employment by any dairyman or other person in connexion with the collection, preparation, storage, distribution or sale of milk or dairy produce or any article of food of any person who has been proved to be a carrier of the infection of typhoid or enteric fever or other infectious disease, while so infected;

(b) make orders requiring the closing of any stock-shed or yard or dairy, or the exclusion from any stock-shed or dairy premises of any animal the milk from which is believed to have conveyed or to be liable to convey any infectious disease.

[Ch3401s112]112. Power to make orders

The Minister, may make orders—

(a) prohibiting the sale or exposure for sale of milk by any dairyman who has been three times convicted of offences under this Part or any Rules made thereunder;

(b) requiring the medical examination of any persons in any premises in which any milk or dairy produce or other article of food intended for sale is collected, kept, sold or exposed for sale, or of any person who is or has been engaged in the collection, preparation, keeping, conveyance or distribution of any such milk or produce or article.

PART XIV

CEMETERIES

[Ch3401s113]113. Cemeteries and crematoria to be appointed

(1) It shall be lawful for the Minister to select and appoint and to notify in the Gazette sufficient and proper places to be the sites of, and to be used as, cemeteries or crematoria for townships and rural areas; and it shall be obligatory where such cemeteries or crematoria exist to bury or cremate the dead in such cemeteries or crematoria in conformity with the provisions of Rules made by the local authority concerned. Any person who shall be guilty of a breach of any such Rule shall be liable to a fine of £75.

(2) No person shall export any corpse from Malawi, or cremate any corpse within Malawi, without, in the case of export, the written permission of the Minister, or, in the case of cremation, of a medical officer first had and obtained.

[Ch3401s114]114. List of authorized cemeteries

All cemeteries now being used as such and such other cemeteries as may be authorized by the Minister, notice whereof shall be published in the Gazette, shall be deemed authorized cemeteries.

[Ch3401s115]115. Permit to exhume

(1) Subject to this Act it shall not be lawful to exhume any body or the remains of any body which may have been interred in any authorized cemetery or in any other cemetery, burial ground or other place without a permit.

(2) (a) Such permit shall be granted only to the legal personal representative or next of kin of the person buried, or to his or their duly authorized agent.

(b) Such permit may be granted by the Minister in respect of any body or the remains of any body interred in any cemetery or burial ground or any other place.

(3) The Minister may prescribe such precautions as he may deem fit as the condition of the grant of such permit, and any person who shall exhume any body or the remains of any body contrary to this Act, or who shall neglect to observe the precautions prescribed as the condition of any such permit, shall be liable to a fine of £150:

Provided always that nothing herein contained shall be deemed to affect the right of a coroner to order the exhumation of a body or the remains of any body for the purpose of holding an inquiry into the cause of death of any person.

[Ch3401s116]116. Exhumation needed for execution of public works

(1) It shall be lawful for the Minister whenever he shall deem it expedient for the execution of any public work or any public purpose, to order removal of any body or the remains of any body from any grave whether in an authorized cemetery or elsewhere, and by order under his hand to direct such removal to be made in such manner as he shall think fit.

(2) No such order shall be made in respect of any grave situated in an authorized cemetery until six months' notice of the intention to make it shall have been given by notification in the Gazette. Copies of such notice shall be posted at or near the grave, and copies shall be sent by post in a registered letter to the legal personal representative or next of kin of the person buried, if his or their address can be ascertained. Such copies shall be accompanied by a translation in the language of the race to which such personal representative or next of kin belongs.

(3) When an order is made directing a removal from any grave aforesaid elsewhere than in an authorized cemetery, due notice of such order shall, so far as it is possible to do so, be given to the legal personal representative or next of kin of the person buried before the work of removal is undertaken and to the local authority of the area in which the grave is situated.

(4) The Minister shall cause proper and fitting arrangements to be made for the re-interment of any body or remains of any body removed under this section, and for the removal and re-erection of any monument, all charges in connexion therewith being defrayed out of the public revenue.

[Ch3401s117]117. Record of permit for exhumation

There shall be kept at the office of the Registrar General of Births, Deaths and Marriages, a record of every permit granted and of every order made under the last two sections other than an order made by a magistrate. Such record shall contain particulars, so far as the same can be ascertained, of the race, nationality, name, sex and age of the persons buried, date of burial and of the place of original burial and re-burial or removal. Such record shall be open during office hours to inspection by any person.

[Ch3401s118]118. Closing of cemeteries by Minister

It shall be lawful for the Minister to notify in the Gazette that any authorized crematorium or cemetery shall, from a time in such notification to be specified, be closed, and the same shall be closed accordingly and whoever, after the said specified time, shall burn or bury any body or the remains of any body in the said crematorium or cemetery shall be liable to a fine of £75.

[Ch3401s119]119. Cremations in places where no crematorium provided

In places where no crematorium is provided, it shall be permissible for cremations to be carried out at such places and under such conditions as are laid down by the local authority with the concurrence of the medical officer of health.

PART XV

GENERAL

[Ch3401s120]120. Basements not to be occupied without permission

It shall not be lawful without the written permission of the local authority on the advice of the medical officer of health to live in, occupy or use or to let or sublet, or to suffer or permit to be used any basement for habitation, nor to use such basement as a shop, office, workshop, or factory or for the preparation or storage of food, and no basement shall be used unless it is well lit and ventilated and is free from damp and is rendered ratproof to the satisfaction of a medical officer of health.

[Ch3401s121]121. Lodging-houses

The Minister may make Regulations for the conduct and inspection of lodging-houses and no person shall open or keep open a lodging-house unless the house is registered and the keeper thereof is licensed by the local authority.

[Ch3401s122]122. Nursing homes

(1) No person shall open or keep open a nursing home, maternity home, mental home, convalescent home, private hospital, infirmary or any institution where invalids, mental patients or convalescents are treated or received upon payment of fees or charges unless the premises thereof are approved by the Secretary for Health and a permit has been obtained from him. Permits granted shall be in accordance with any conditions laid down by the Secretary for Health and shall be liable to cancellation by him on violation or non-fulfilment of any of the conditions laid down.

(2) The Secretary for Health may authorize a medical practitioner on his behalf to visit any such premises as in this section mentioned and to report to the Secretary for Health upon any matter or thing connected with the premises or the use thereof.

(3) Any person who knowingly obstructs an authorized medical practitioner in any such inspection as is authorized by the Secretary for Health shall be guilty of an offence.

[Ch3401s123]123. Maternity and child welfare

The Minister may make Rules for the proper control and administration of clinics or institutions open or kept open by any person for the welfare and care of children or the care of expectant or nursing mothers.

[Ch3401s124]124. Regulation of public washermen

Any local authority may by public notice prohibit the washing of clothes by washermen in the exercise of their calling except at public wash-houses or at such other places as may be appointed for the purpose.

[Ch3401s125]125. Control of irrigated land

(1) Where it is shown to the satisfaction of the Minister, that the growing of any crop or the irrigation of any land in any area is unhealthy or insanitary, the Minister may, by notice published in the Gazette, prohibit the growing of any crop or the irrigation of any land within such area, and may cause any permit or authorization issued for the diversion, abstraction or use of water for such purpose to be cancelled upon such terms as may appear to him equitable.

(2) The Minister may make Rules for ensuring that the health of the inhabitants of a district may be safeguarded in respect of—

- (a) the prevention of pools of standing water;
- (b) the drainage and control of such pools when they exist;
- (c) the inspection, repair and cleansing of open channels, canals and drains.

[Ch3401s126]126. Supervision of importation or manufacture of vaccines, etc.

(1) The Minister may provide for the inspection, sampling and examination, by officers of the Ministry of Health, of vaccines, vaccine lymphs, sera, and similar substances imported into or manufactured in Malawi and intended to be used for the prevention or treatment of human diseases, and may prohibit the importation, manufacture, or use of any such substance which is considered to be unsafe or to be liable to be harmful or deleterious.

(2) The Minister may make such Rules as he may consider necessary for properly carrying out this section.

PART XVI

MISCELLANEOUS PROVISIONS

[Ch3401s127]127. Authentication of notices, etc.

(1) Any notice, order, consent, demand, complaint or other document which is required or authorized by or under this Act may be signed or authenticated in the case of a local authority by—

- (a) the secretary or executive officer;
- (b) the surveyor, engineer, health officer or financial officer of or acting on behalf of the authority as respects documents relating to matters within their respective provinces;
- (c) any other officer authorized by the authority in writing to sign documents of the particular kind or the particular document as the case may be.

(2) The Minister may by Rule prescribe the form of any notices, orders, consents, demands or other documents to be used for any of the purposes of this Act and if forms are so prescribed those forms or forms to a like effect may be used in all cases to which those forms are applicable.

[Ch3401s128]128. Service of notices, etc.

Any notice, court summons, order or other document required or authorized to be served or issued under this Act may be served by delivering the same at the residence of the person to whom it is addressed, or, where it is addressed to the owner or occupier of premises, by delivering the same, or a true copy thereof, to some person on the premises, or, if there is no person on the premises who can be served, by fixing the same on some conspicuous part of the premises; it may also be served by post in a registered letter, and if so served shall prima facie be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, court summons, order or other document was properly addressed and put in the post.

[Ch3401s129]129. Powers and duties of the officers of the Ministry of Health

Any duties imposed or powers conferred by this Act on medical officers of health or health officers may be carried out or exercised by the Secretary for Health or any person designated by him for that purpose.

[Ch3401s130]130. Defect in form not to invalidate notices, etc.

No defect in the form of any notice or order made under this Act shall invalidate or render unlawful the administrative action taken or be a ground for exception to any legal proceedings which may be taken in the matter to which such notice or order relates, provided the requirements thereof are substantially and intelligibly set forth.

[Ch3401s131]131. Powers of entry and inspection of premises and penalties for obstruction

(1) Any health inspector, medical officer of health, administrative officer, or police officer of the rank of subinspector or above, or any person generally or specially authorized in writing by the Secretary for Health, may, at any reasonable hour for the proper performance of the duty, enter any land or premises to make any inspection or to perform any work or to do anything which is required or authorized by this Act, if such inspection, work or thing is necessary for or incidental to the performance of his duties or the exercise of his powers.

(2) Any person who fails to give or refuses access to any officer, inspector, or person mentioned in or authorized under subsection (1), if he requests entrance on any land or premises; or obstructs or hinders him in the execution of his duties under this Act; or who fails or refuses to give information that he may lawfully be required to give to such officer, inspector or person; or who gives to such officer, inspector or person false or misleading information knowing it to be false or misleading; or who prevents the owner or any of his servants or workmen from entering any land or dwelling or premises for the purpose of complying with any requirement under this Act, shall be guilty of an offence.

[Ch3401s132]132. Provisions as to appeals against and the enforcement of notices requiring execution of works

The following provisions of this section shall, subject to any express modifications specified in the section under which the notice is given, apply with respect to appeals against, and the enforcement of, notices requiring the execution of works under this Act—

(a) Any such notice shall indicate the nature of the works to be executed, and state the time within which they are to be executed.

(b) Any person served with such a notice as aforesaid may appeal in the manner hereinafter provided on any of the following grounds which are appropriate in the circumstances of the particular case—

(i) that the notice or requirement is not justified by the terms of the law under which it purports to have been given or made;

(ii) that there has been some defect or error in, or in connexion with, the notice;

(iii) that the works required by the notice to be executed are unreasonable in character or extent;

(iv) that the time within which the works are to be executed is not reasonably sufficient for the purpose;

(v) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(c) If and in so far as an appeal under this section is based on the ground of some informality, defect or error in or in connexion with the notice, the appeal shall be dismissed, if it is shown that the informality, defect or error was not a material one.

(d) Where the grounds upon which an appeal under this section is brought include a ground specified in paragraph (b) (v), the appellant shall serve a copy of his notice of appeal on each other person referred to, and in the case of any appeal under this section may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal an order may be made with respect to the person by whom any work is to be executed or as to the proportions in which any expenses which may become recoverable by the authority are to be borne by the appellant and such other person.

In the exercise of the powers conferred by this subsection, regard shall be had as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required.

(e) Subject to this Act, any appeal in pursuance of this section shall be preferred, in the case of notices requiring the execution of works issued by a local authority, to the court of a

magistrate of the first or second class exercising jurisdiction in the place where the premises are situated in pursuance of any Rules made in that behalf by the High Court.

(f) The time within which any such appeal may be brought shall be two months from the date on which notice requiring the works was served upon the person desiring to appeal.

[Ch3401s133]133. Execution of works

(1) Subject to a right of appeal, if the person required by the notice to execute works fails to execute the works indicated within the time thereby limited, the local authority may itself execute the works and recover from that person the expenses reasonably incurred by it in so doing and, without prejudice to its right to exercise that power, he shall be liable to a fine of £5, and to a further fine of £2 for each day on which the default continues after conviction therefor.

(2) In proceedings by a local authority against the person served with the notice for the recovery of any expenses which the authority is entitled to recover from him, it shall not be open to him to raise any question which he could have raised on an appeal against such notice.

[Ch3401s134]134. Certain expenses recoverable from owners to be a charge on the premises; power to accept payment by instalments

(1) Where a local authority has incurred expenses for the repayment of which the owner of the premises in respect of which the expenses were incurred is liable under this Act, or by agreement with the authority, those expenses, together with interest from the date of service of a demand for the expenses, may be recovered by the authority from the person who is the owner of the premises at the date when the works are completed, or, if he has ceased to be the owner of the premises, before the date when a demand for the expenses is served, either from him or from the person who is the owner at the date when the demand is served, and, as from the date of the completion of the works, the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein. The charge hereby created shall be deemed to extend to any expenses lawfully paid to the Deeds Registrar in connexion with the registration or withdrawal of the charge in pursuance of the other provisions of this section.

(2) The charge created by subsection (1) shall be in favour of the local authority as the case may be if such authority is a body corporate entitled to hold land and in all other cases the charge shall be in favour of the Minister and the local authority or the Minister shall have all powers and remedies conferred on mortgagees by the Deeds Registration Act and any other law for the time being in force. Cap. 58:02

(3) The local authority shall, prior to the commencement of any work the cost of which will constitute a charge on the land on or in respect of which the same is done, serve on the Deeds Registrar a notice stating that such work is about to be commenced and specifying the property that will be the subject of such charge and thereupon the Registrar shall enter such notice in the appropriate Volume and Folio of the Register Book (hereinafter referred to as "the Register").

(4) On the completion of such work the said local authority shall serve on the Deeds Registrar a further notice specifying the amount in respect of which such land by virtue of subsection (1) stands charged and thereupon the Deeds Registrar shall protect the interest of the said local

authority or of the Minister, as the case may be, on the Register in such manner as shall appear to him appropriate.

(5) A notice or entry on the Register pursuant to subsection (3) or (4) shall be deemed to constitute actual notice to all persons that a charge against the land comprised in the Volume and Folio of the Register in which such notice or entry appears is pending or existent but such charge shall be void as against a bona fide purchaser for money or moneys worth of a legal estate in such land unless the notice referred to in subsection (3) has been served on the Deeds Registrar before the date of lodgment with him of the instrument of transfer executed in pursuance of such purchase.

(6) In making any entry on the Register pursuant to subsection (4) the Deeds Registrar shall accept as conclusive the statement in writing relating to such charge of any duly constituted officer of any such local authority.

(7) Any person having any registered estate in land in respect of which any such notice or entry appears on the register or any interest protected by the entry of a caveat may summon such local authority, or the Attorney General on behalf of the Minister as the case may be, to appear before the High Court and show cause why such notice or entry should not be removed from the Register and such Court may make such order in the premises either ex parte or otherwise and as to costs as to it seems fit.

(8) A local authority may, subject to the approval of the Minister of Finance, or some other officer whom the Minister may charge with such duty, agree that any expenses recoverable by the authority under this section shall be payable with interest by instalments within such period as it thinks fit, until the whole amount is paid. Any such instalments and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, if recovered from the occupier, may be deducted by him from the rent of the premises:

Provided that an occupier shall not be required to pay at any time any sum in excess of the amount which was due from him on account of rent, or has become due from him on account of rent since the date on which he received a demand from the authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

(9) The rate of interest chargeable under subsection (1) or subsection (8) shall be such rate as the Minister may determine.

(10) Every local authority shall keep at its offices a register of all expenses incurred and advances made under this section, and shall show in such register the total amounts thereof, the instalments in which the same are payable, the land or premises in respect of which the same have been incurred or made, and the balances for the time being outstanding; and shall keep such register open at all reasonable times to the inspection of any person, free of charge. Such register and any extract therefrom, certified by any other person authorized by the local authority in that behalf, shall, in any proceedings for the recovery of such expenses, advances or interest thereon or any instalments thereof, be prima facie evidence of the matters contained therein.

Where under this Act a local authority is empowered to execute works and to recover from any person the expenses incurred by it in so doing, it may include in, and recover as part of, the expenses an additional sum to cover customs duties and other charges and departmental expenses on such scale or in such manner as may be prescribed or as the Minister may direct.

[Ch3401s136]136. Recovery of expenses, etc.

(1) Any sum which a local authority is entitled to recover under this Act and with respect to the recovery of which no other provision is made, may be recovered as a simple contract debt in any court of competent jurisdiction.

(2) The time within which summary proceedings may be taken for the recovery of any such sums shall, except where otherwise expressly provided, be reckoned from the date of the service of a demand therefor.

[Ch3401s137]137. Protection of local authorities and their officers from personal liability

No matter or thing done and no contract entered into by any local authority, and no matter or thing done by any member of any such authority or by any officer of or acting on behalf of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract entered into bona fide for the purpose of executing this Act, subject any member, officer or person as aforesaid personally, to any action, liability, claim or demand whatsoever.

[Ch3401s138]138. Penalties where not expressly provided

Any person guilty of an offence against or contravention of, or default in complying with, any provision of this Act or any Rules made hereunder, shall, if no penalty is expressly provided for such offence, contravention or default, be liable to a fine of £100, and if the offence, contravention or default is of a continuing nature, to a further fine of £5 for each day during which he shall make default.

[Ch3401s139]139. Liability of secretary or manager of company

Where a contravention of any of the provisions of this Act or any Rule made hereunder is committed by any company or corporation, the secretary or manager thereof may be summoned and may be held liable for such contravention and the consequences thereof.

[Ch3401s140]140. Proceedings against several persons

Where proceedings under this Act are competent against several persons in respect of the joint act or default of such persons, it shall be sufficient to proceed against on or more of them without proceeding against the others.

[Ch3401s141]141. Prosecution

(1) A local authority may, by any of its officers or by any person generally or specially authorized in writing by such local authority, prosecute for any contravention of, offence against, or

default in complying with, any provision of this Act or any Rule made or deemed to be made hereunder, if the contravention, offence, or default is alleged to have been committed within or affects its district.

(2) Where an officer or person authorized by a local authority has under subsection (1) prosecuted any person for any contravention of, offence against or default in complying with any provision of this Act, or any Rule made or deemed to be made hereunder and the accused has been convicted of a contravention, offence or default, all fines and penalties imposed may be recovered by such officer or person authorized by a local authority as a civil judgment debt.

[Ch3401s142]142. Power of local authority outside its district

Nothing in any law specially governing any local authority shall be construed as preventing such local authority from exercising any power or performing any duty under this Act by reason only that in exercising such power or performing such duty it must do some act or thing or incur expenditure outside its district.

[Ch3401s143]143. Power to make Rules for purposes of this Act

(1) The Minister may make Rules for any purpose having as its object the preservation of health or prevention of disease, and generally for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the Minister may make rules regarding the following matters—

- (a) the licensing, regulation and inspection of the premises of hairdressers;
- (b) the licensing, regulation and inspection of laundries and wash-houses;
- (c) the regulation, inspection and control of cemeteries and crematoria;
- (d) the disposal and burial of corpses;
- (e) the fixing of fees and the prescribing of forms in regard to any matters prescribed.

[Ch3401s144]144. Saving

5 of 1932All Rules, orders, proclamations, notices and appointments made under the Public Health Ordinance, 1932 (now repealed) shall, in so far as they are not inconsistent with this Act, be deemed to have been made hereunder, and shall continue in force until replaced by Rules, orders, proclamations, notices and appointments made under this Act.

SUBSIDIARY LEGISLATION

APPLICATION OF ACT NOTICES

under s. 2

G.N. 144/1948

230/1949

127/1950

211/1950

178/1952

268/1970

88/1971

It has been directed that the provisions of the Act specified in the first column of the Schedule hereto shall apply in whole or in part to Malawi as specified in the second column of the said Schedule—

SCHEDULE

Provisions of the Act	Malawi, or part thereof
The whole, except section 120	Those areas which are within a radius of two miles from the Monkey Bay Hotel, in the Mangochi District
PART I	The whole of Malawi
PART II	The whole of Malawi
PART III	The whole of Malawi
PART IV	The whole of Malawi
PART V	The whole of Malawi
PART VI	The whole of Malawi
PART VII	The whole of Malawi
PART VIII	The whole of Malawi
PART IX—	Sections 59–61 inclusive; 62 subsections (1)–(4) inclusive, (9), (10), (13), (15), (17), (19), and (23); 63–70 inclusive; and 72–77 inclusive
	The whole of Malawi
	Section 62 subsections (5)–(8) inclusive, (11), (12), (14), (16), (18), (20), (21), and (22); and 71
	All Municipalities, Townships and the settled areas of Chinteche, Mzimba, Nkhotakota, Kasungu, Ncheu, Chiradzulu, Mulanje, Luchenza, Chikwawa
PART X—	Sections 79–94 inclusive
	Those areas which are within a radius of four miles from the District Commissioner's office at Zomba in the Zomba District
PART XI—	Sections 96–100 inclusive and 102
PART XV—	Sections 120, 121, 124 and 125
	The settled areas of the Thyolo District

PART X—	Sections 78 and 95	The whole of Malawi
PART XI—	Sections 96–100 inclusive and 102	Those areas which are within a radius of one mile from the Cape Maclear Hotel in the Mangochi District
	Section 101	The whole of Malawi
PART XII		The whole of Malawi
PART XIII		The whole of Malawi
PART XIV		The whole of Malawi
PART XV—	Sections 122,123 and 126	The whole of Malawi
PART XVI		The whole of Malawi

PUBLIC HEALTH (INFECTED AREAS) (HUMAN TRYPANOSOMIASIS) RULES

under s. 31

G.N. 196/1952

197/1954(F)

224/1963

1. Citation

These Rules may be cited as the Public Health (Infected Areas) (Human Trypanosomiasis) Rules.

2. Interpretation

In these Rules, the expression “infected area” means any part of Malawi which has been declared by the Minister to be an infected area by reason of the disease of human trypanosomiasis under section 31 of the Act.

3. Powers of officials

The Secretary for Health, a medical officer, and any person authorized in writing by the Secretary for Health or a medical officer, may—

(a) require any person residing in an infected area who is suffering or suspected to be suffering from human trypanosomiasis to submit to medical examination;

(b) require any person who enters or leaves an infected area to submit to medical examination;

(c) cause any person found to be suffering from human trypanosomiasis or who has been in contact with any person suffering from human trypanosomiasis to be removed to a hospital or to any other place designated by the Secretary for Health for the reception of such persons;

(d) require any person found to be suffering from human trypanosomiasis to undergo medical treatment for that disease for such period of time and at such place as a medical officer may direct;

(e) provide any medical aids which may be required for the treatment of persons suffering from human trypanosomiasis, including the provision of emergency hospitals, camps and stations;

(f) require all persons resident in an infected area or in any part thereof to attend at such place as may be specified by the Secretary for Health for registration;

(g) require the owner of any vehicle normally kept in an infected area to register such vehicle at such place and in such manner as may be specified by the Secretary for Health;

(h) restrict the movement of vehicles or animals within an infected area;

(i) specify the areas in which wood may not be cut in an infected area;

(j) prohibit or control the entry of persons into an infected area who are not normally resident therein;

(k) prohibit or control any hunting within an infected area;

(l) require vehicles and persons to stop at any place indicated for the purpose and to submit to disinsectization to prevent the spread of tsetse flies.

4. Entrance into places within infected area

The Secretary for Health, a medical officer and any person authorized in writing by the Secretary for Health or a medical officer, may at all times enter into any building or place within an infected area for any purpose connected with the performance of any power conferred by rule 3.

5. Offences

Any person who—

(a) obstructs the Secretary for Health, a medical officer, or a person duly authorized by the Secretary for Health or a medical officer under these Rules, in the exercise of any power conferred by these Rules; or

(b) fails, neglects or refuses to comply with any requirement made under these Rules;
or

(c) does any act or thing which under these Rules is forbidden to be done,

shall be liable to a fine of £25.

APPLICATION OF RULES

under s.31

G.N. 196/1952

197/1952

It has been ordered in terms of section 31 of the Act that the Public Health (Infected Area) (Human Trypanosomiasis) Rules shall apply to the whole of the area declared to be an infected area by Government Notice 195 /1952 (below).

DECLARATION OF INFECTED AREA

under s. 31

G.N. 195/1952

Whereas it appears that the area of Chief Chapananga, the boundaries of which area are described in the Schedule hereto, is a part of Malawi which is threatened by human trypanosomiasis, such area has been declared to be an infected area.

SCHEDULE

Commencing at beacon No. 39 on the Malawi-Mozambique Border, by the Chikwawa District northern boundary in an easterly direction to a point on the summit of Kapirimbewe Hill; thence by a straight line in a southerly direction to the source of Mtumba Stream; thence by the Mtumba Stream downstream to the point where it is crossed by the Blantyre-Tete telegraph line; thence by a straight line in a south-westerly direction to a point on the Mwanza River half a mile west of Mwazaonga Village; thence by the Mwanza River downstream to a point one mile west of the south-western corner of the Kasindula Estate of the Central Africa Company, Limited (Deed No. 12496); thence by a straight line in a southwesterly direction to the confluence of the Nkombezi-wa-Fodia and Makanga Rivers; thence by the Makanga River upstream to its source; thence by a straight line due west to the Malawi-Mozambique Border; thence by the Malawi-Mozambique Border in a general north-westerly direction to the point of commencement.

YELLOW FEVER (PREVENTION OF INTRODUCTION) ORDER

under s.38

G.N. 182/1951

224/1963

1. Citation

This Order may be cited as the Yellow Fever (Prevention of Introduction) Order.

2. Interpretation

For the purposes of this Order—

(a) “sanitary authority” means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority;

(b) an aircraft shall be deemed to have been in contact with another aircraft if, prior to its arrival at any place in Malawi, it has been on an aerodrome while such other aircraft was on that aerodrome;

(c) “sanitary aerodrome” means an aerodrome which has been declared as such by notice in the Gazette;

(d) “authorized aerodrome” means any one of the aerodromes mentioned in the First Schedule;

(e) “scheduled place” means any country or part of a country within an endemic zone as delineated in the Second Schedule;

(f) “valid inoculation certificate” means a certificate in the form prescribed in the International Sanitary Regulations, 1965, which certifies—

(i) that the certificate is valid only if the vaccine used has been approved by the World Health Organization and if the vaccinating centre has been designated by the health administration for the territory in which that centre is situated;

(ii) that the validity of the certificate shall extend for a period of 10 years beginning 10 days after the date of vaccination or in the event of a revaccination, within such period of 10 years from the date of that revaccination.

3. Application

This Order shall apply to every aircraft, vessel, road or railway vehicle, and to the passengers and crew thereof arriving at any place in Malawi from any scheduled place.

4. Aircraft

(1) Every aircraft to which this Order applies shall make its first landing in Malawi at a sanitary or authorized aerodrome and together with the crew and passengers may be subject to inspection by the sanitary authority.

(2) No member of the crew and no passenger of any such aircraft shall have access to the public or leave the aerodrome until authorized by the sanitary authority.

(3) No person shall be deemed to have contravened or failed to comply with this part of this Order if the pilot or person in charge of the aircraft proves that accident, stress of weather or other unavoidable circumstances prevented him from making his first landing at a sanitary or authorized aerodrome provided that—

(a) the pilot or person in charge of any aircraft making its first landing at a place other than a sanitary or authorized aerodrome forthwith reports the facts of the situation by the most expeditious means to the nearest district officer or Medical Officer of the Ministry of Health or police officer; and

(b) the pilot or person in charge of such aircraft if so ordered by a district officer or Medical Officer of the Ministry of Health or police officer shall proceed with such aircraft to a sanitary or authorized aerodrome as soon as possible; and

(c) the crew and passengers of such aircraft comply with the instructions of a district officer or Medical Officer of the Ministry of Health or police officer.

5. Pilot's duties

The pilot or person in charge of every aircraft to which this Order applies shall, at the request of the sanitary authority—

(a) give the names and addresses at destination of all persons carried;

(b) state the place where and the date on which each person was taken on board;

(c) state whether the aircraft has, within the six days preceding arrival at any place in Malawi, been on the ground in any scheduled place;

(d) produce his journey logbook for inspection; and

(e) furnish any other information of a public health nature in his possession regarding persons, animals, articles or things on board.

6. Furnishing of information

Every person to whom this Order applies shall, at the request of the sanitary authority, furnish any information of a public health nature concerning himself that may be required by such authority.

7. Inspection of vehicle and medical examination

The sanitary authority may—

(a) inspect any aircraft and any road or railway vehicle and any vessel to which this Order applies and the cargo thereof to ascertain whether they contain mosquitoes, and may subject the aircraft or road or railway vehicle or vessel to disinsectization; and

(b) conduct or cause to be conducted a medical examination of the passengers and crew of such aircraft or road or railway vehicle or vessel to ascertain whether they are free from symptoms of yellow fever.

8. Examination and detention

Every person to whom this Order applies shall, if so required by the sanitary authority, submit himself to medical examination and shall be dealt with by the sanitary authority as follows—

(a) if such person is not in possession of a valid inoculation certificate he may be detained and subjected to observation in a place and under conditions approved by the sanitary authority for a period not exceeding six days reckoned from the date of leaving any scheduled place;

(b) if such person is in possession of a valid inoculation certificate he shall be allowed to proceed without being subjected to observation.

9. Inoculation

When in his opinion such action is necessary for the protection against yellow fever of Malawi or of any part thereof, the Secretary for Health may order any person or group of persons in Malawi to be inoculated against yellow fever.

FIRST SCHEDULE para. 2 (d)

AUTHORIZED AERODROMES

Blantyre Airport (Chileka) Lilongwe Mzimba
Zomba Karonga Mangochi

and such other aerodromes as may from time to time be notified in the Gazette.

SECOND SCHEDULE para 2 (e)

ENDEMIC ZONE

The delineation is as follows:

From the mouth of the River Senegal along that river eastwards to the 15° North parallel of latitude; thence eastwards along that parallel to the western border of the Sudan; thence southwards along that border to the 12° North parallel; thence eastwards along that parallel to the eastern border of the Sudan; thence northwards along that border to the Red Sea coast; thence southwards along the eastern coast of Africa to the northern boundary of the French Territory of the Afars and the Issas; thence along that boundary successively westwards, southwards and eastwards to the southern boundary of Somalia (Northern Region) and along that boundary eastwards and northwards to the eastern coast of Africa and thence along this coast to the southern boundary of Tanzania (Tanganyika); thence westwards along that boundary to its junction with the eastern boundary of the Congo (Democratic Republic); thence westwards and southwards along the boundary of the Congo (Democratic Republic) to the 10° South parallel of latitude; thence westwards along that parallel to the eastern border of Angola; thence southwards along that border and then along the eastern boundary of Balovale District** and Barotse Province** (Zambia) to the northern border of South-West Africa; thence westwards along that border to the west coast of Africa; thence northwards along the west coast of Africa to the mouth of the River Senegal, including the islands of the Gulf of Guinea. Excluded from the endemic zone are: the French Territory of the Afars and the Issas and the Northern Region of Somalia; Assab, Massawa, an area of 10 kilometers in radius from the centre of Asmara and an area of 20 kilometres in radius from the centre of Addis Ababa (Ethiopia); Kisumu airport, Nairobi airport, Mombasa port and Mombasa airport (Kenya). The continued exclusion of these areas is, however, contingent on their maintenance of an Aedes

aegypti index not exceeding 1 per cent.* in Assab and Massawa, in and around Asmara, in Jibuti, Berbera and Hargeisa, in the airports of Kisumu and Nairobi and in the port and airport of Mombasa, as reported quarterly to the World Health Organization.

PREVENTION OF THE INTRODUCTION OF SMALLPOX PROCLAMATIONS

deemed to be made under s. 38

[made under Part VI of the Public Health Ordinance, 1932, No. 5 of 1932 (now repealed)]

The following requirements and conditions have been proclaimed and declared for the purpose of preventing the introduction of smallpox into Malawi:

1. With respect to Southern Rhodesia and South Africa—

(a) All persons arriving by train at Nsanje from Southern Rhodesia or the Republic of South Africa and intending to enter Malawi may be required by the sanitary authority to be medically examined. Any such person so required shall submit himself to medical examination. G.N. 50/1944, 199/1954(F)

(b) Any such person who on medical examination shows no evidence of previous successful vaccination may be required to be vaccinated and shall, if so required, submit himself to vaccination.

(c) For the purpose of this notice “sanitary authority” means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority.

2. With respect to Tanzania and Zambia— G.N. 90/1944, 200/1954(F)

(a) All persons coming from Tanzania or Zambia and intending to enter the Karonga or Mzimba District of Malawi may be required by the sanitary authority to be medically examined. Any such person so required shall submit himself to medical examination.

(b) Any such person who on medical examination shows no evidence of previous successful vaccination may be required to be vaccinated and shall, if so required, submit himself to vaccination.

(c) For the purpose of this notice “sanitary authority” means the Secretary for Health or any person authorized by him to perform the duties of sanitary authority.

PUBLIC HEALTH (VACCINATION POSTS) RULES

deemed to be made under s. 51

[made under s. 54 of the Public Health Ordinance, 1932, No. 5 of 1932 (now repealed)]

G.N. 93/1938

25/1939

224/1963

88/1971

1. Citation

These Rules may be cited as the Public Health (Vaccination Posts) Rules.

2. Vaccination posts

The posts set out in the Schedule hereto shall be vaccination posts for the purposes of these Rules.

3. Examination and vaccination

Any person passing a vaccination post may be required by the vaccinator in charge of such post to submit himself for examination and if such person, in the opinion of the vaccinator, requires vaccination, he may then and there be vaccinated.

4. Offences

Any person who, when called upon by the vaccinator to submit himself for such examination or vaccination refuses to do so, or obstructs the vaccinator in his duties of examination and vaccination, shall be guilty of an offence against these Rules.

5. Penalty

Any person who is convicted of an offence against these Rules may be sentenced to a fine of K10.00 and to imprisonment for three months.

SCHEDULE

Vaccination post	District
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Muloza	Mulanje
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Mariyela	Mulanje
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Phalombe	Mulanje
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Ifumba	Karonga
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Kaporo	Karonga
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PUBLIC HEALTH (MINIMUM BUILDING STANDARDS FOR TRADITIONAL HOUSING AREAS) RULES

under s.75

G.N. 10/1960

21/1960

48/1963

224/1963

89/1971

1. Citation and application

These Rules may be cited as the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules, and shall apply to such areas (hereinafter referred to as Traditional Housing Areas) as the Minister may, by Order published in the Gazette, declare.*

2. Interpretation

In these Rules, unless the context otherwise requires—

“building line” means a line drawn across a plot so that no building or structure, except a boundary wall or fence of approved design enclosing the plot, may be erected within the area contained between the line and the plot frontage;

89/1971“controlling authority” means, in relation to a Traditional Housing Area, the local authority, corporation, or other body or person authorized by the Minister to administer such Area;

“dwelling house” means a building used exclusively or partly for the purpose of human habitation; and

“plot” means any piece or parcel of land whether demarcated by survey or not.

3. Application of Rules in Planning Areas

When any area, to which these Rules shall be applied, is included in a planning area declared under the Town and Country Planning Act, these Rules shall not apply where the dwelling house to be erected on a plot is intended to be of permanent construction or is to be constructed of permanent building materials; but the relevant provisions of such Act shall apply thereto. Cap. 23:01

4. Building line

No building shall be sited on a plot otherwise than in accordance with any building line approved by the controlling authority.

5. Size of plots

89/1971No plot shall be less than 4,000 square feet and the maximum area of any plot which may be built on shall be one third of the total area.

6. Side boundaries

No building shall be erected within 10 feet of any side boundary of the plot on which it stands:

Provided that a latrine may be sited up to the line of the back boundary of the plot.

7. Latrines

Every latrine shall be sited in accordance with the directions of the controlling authority.

8. Minimum area specifications

(1) Every dwelling house shall have a minimum floor area of 40 square feet for each person to be accommodated therein.

(2) No round house or rondavel shall have an internal diameter less than 12 feet.

(3) Rectangular houses shall not be smaller than 180 square feet total floor area, and no single wall shall be less than 10 feet in length. Each occupant of a house shall have at least 40 square feet of floor area in rooms used for sleeping purposes.

(4) When thatch is the roof material the height from the floor to the top of the wall shall be not less than six feet, and when the roof is of iron or aluminium the minimum height of wall shall be not less than eight feet.

(5) Where the window space which opens does not equal or exceed one twentieth of the floor area, an air space four inches in height shall be provided between all the walls and the roof.

9. Specifications for latrines

(1) Every dwelling house shall be provided with a latrine, the doorway of which shall be suitably screened from view.

(2) A pit latrine shall be at least 15 feet in depth from ground level to the bottom of the pit and shall be provided with a roof, the height of which shall be at least six feet from the floor to the underside of the roof or ceiling:

Provided that when the surface of the water table is less than 15 feet below ground level a depth of 10 feet from ground level to the bottom of the pit shall be permitted.

(3) A pit latrine shall be provided with a concrete stance and with a fly-proof cover.

10. External doors

Every dwelling house shall be provided with an external door or doors to the satisfaction of the controlling authority.

11. Drainage

Storm water drainage shall be provided and the filling of holes and clearing of the site shall be completed by the house owner to the satisfaction of the controlling authority on or before the date of completion of the building.

12. Kitchen

Each dwelling house shall be provided with a kitchen of not less than 24 square feet floor area and with adequate ventilation to the satisfaction of the controlling authority.

13. Foundations

Foundations shall be adequate to support the load transmitted to them and shall be constructed in such a manner as the controlling authority may approve. Every foundation shall be laid on ground of such compressive strength as will carry the total loads imposed.

14. Walls

89/1971 Walls shall be constructed of materials approved by the controlling authority. They shall have a smooth internal finish and external protection in accordance with best local customs except where the controlling authority may require any other form of finish.

15. Floors

Every floor shall have a smooth finish and shall be at least four inches above the surrounding ground level. A floor may be constructed of well compacted earth or of such materials as will provide a smooth hygienic finish.

16. Roofs

Every roof shall be of thatch or of asbestos, tiles, corrugated iron or aluminium or of such other material as may be approved by the local authority.

17. Screens

Screening of bathrooms and latrines may be in reed fencing or other material approved by controlling authority.

18. Notice to be given

Every person proposing to erect any dwelling house to which these Rules apply shall give notice to the controlling authority, or to any representative thereof appointed under rule 22, of his intention to build and shall supply such particulars of the proposed building and materials as the controlling authority or such representative shall require. No person shall commence any building operations until the written authority of the controlling authority or any such representative has been obtained.

19. Restriction on right to occupy

No person shall occupy or permit the occupation of any dwelling house to which these Rules apply until he has obtained from the controlling authority a permit in writing authorizing occupation of such premises, which permit shall not be issued unless the controlling authority is satisfied that the construction of the dwelling house is to a standard not lower than is required by these Rules.

20. Restriction of numbers

Where rooms are used for the housing of employees without their families, no more than eight persons shall be permitted to sleep in any one room without the permission in writing of the controlling authority.

21. Entry and inspection

(1) Any person authorized by a controlling authority may with or without workmen or others at all reasonable times enter upon the site of any building for the purpose of the inspection of such building whether under construction or already constructed, or for the purpose of securing compliance with any of these Rules.

(2) Every person shall comply forthwith with any written notice given by a controlling authority, or by any representative thereof appointed under rule 22 requiring any such person to carry out any works, repairs or operations, or to do or to refrain from doing anything for the purpose of securing compliance with any of these Rules.

22. Controlling authority representative

A controlling authority may, and shall when so directed by the Minister, appoint a person or persons approved by the Minister to act as its representative for the purposes of these Rules, and any act, matter or thing done by any such representative on behalf of the controlling authority shall be deemed to have been done by such controlling authority.

23. Penalties

Any person who contravenes any of the provisions of these Rules shall be guilty of an offence and shall be liable to the penalties prescribed in section 138 of the Act.

APPLICATION OF PUBLIC HEALTH (MINIMUM BUILDING STANDARDS FOR TRADITIONAL HOUSING AREAS) RULES

under rule 1

G.N. 90/1971

253/1971

263/1971

It has been ordered under rule 1 of the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules that such Rules shall apply to the following areas—

(a) ALL THAT piece or parcel of land situate at Bangwe in the Blantyre District (City of Blantyre) known as the Bangwe Traditional Housing Area and consisting of the area surveyed as plots BL/46, BL/57 and BL/378 which are shown upon Surveys Department Plans numbered SD4435 and SD4672 and upon Surveys Department Deed Plans numbered DP174/66, DP/175/66 and DP/73/70.

(b) ALL THAT piece of land commencing at a point on the Liwonde-Balaka road some two miles from the west bank of the Shire River, thence in 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 the 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 shown on Surveys Department Plan No. 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 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 northwesterly direction for approximately 6,400 feet; thence by a straight line in a northerly direction for 500 feet to the point of commencement.

(c) ALL THAT piece or parcel of land situate at South Lunzu in the Blantyre District known as the South Lunzu Traditional Housing Area and consisting of the area surveyed as Lunzu South-Ntawira Block, Lot 1 Ntawira Estate, Lot 2 Ntawira Estate, Lot 3 Ntawira Estate, Lot 4 Ntawira Estate, Remainder of Ntawira Estate, and Sandford Estate which are shown upon Survey Departments Plans numbered SD/1956 and SD/5124.

PUBLIC HEALTH (CONDENSED MILK) RULES

deemed to be made under s.109

[made under s. 74 of the Public Health Ordinance, 1932, No. 5 of 1932 (now repealed)]

G.N. 47/1940

201/1954(F)

224/1963

166/1967

1. Citation

These Rules may be cited as the Public Health (Condensed Milk) Rules.

2. Interpretation

In these Rules unless the context otherwise requires—

“condensed milk” means milk, or skimmed milk which has been concentrated by the removal of part of its water, with or without the addition of sugar, and includes the article commonly known as “evaporated milk” but does not include the article commonly known as “dried milk” or “milk powder”;

“skimmed milk” includes separated or machine skimmed milk;

“net weight” means the weight of the contents exclusive of the tin or other receptacle;

“owner” in respect of goods includes any person being, or holding himself out to be, the owner, importer, exporter, consignee, agent or person in possession of or beneficially interested in, or having any control of, or power of disposition over, the goods;

“percentage” means percentage calculated by weight.

3. Conditions on disposal of condensed milk

No person shall sell or expose for sale or deposit in any place for the purpose of sale, or despatch or deliver to any purchaser, broker or agent any condensed milk intended for human consumption unless the condensed milk—

(a) is contained in a tin or other receptacle which is labelled in the manner prescribed in and complies with all the conditions laid down in the First Schedule; and

(b) contains not less than the appropriate percentage of fat and milk solids as specified in the Second Schedule: Provided that—

(i) this rule shall not apply in any case where the condensed milk is contained in a tin or other receptacle whose net weight exceeds fifteen pounds;

(ii) in any refreshment room, restaurant room or other place in which food or drink is sold for consumption on the premises, the receptacle containing condensed milk so sold shall not be required to be labelled in the manner prescribed by these Rules;

(iii) this rule shall not apply in any case where condensed milk is imported for re-exportation and remains under control of public officers responsible for Customs and Excise until exported from Malawi to any other place.

4. Analysis of sample

Any medical officer, health inspector, police officer of the rank of sub-inspector or above or any other person authorized by the medical officer or by a local authority in writing may procure any sample of condensed milk, and, where an analysis is required for the purpose of these Rules, shall submit the sample to the officer for the time being exercising the duties of Pathologist of the Ministry of Health and shall forthwith notify to the seller or his agent selling the condensed milk his intention of having the same analysed by the Pathologist of the Ministry of Health.

5. Taking of samples

Any medical officer, health inspector or police officer of the rank of sub-inspector or above and any other person authorized by the medical officer or by a local authority in writing may when exercising the powers of entry on to land or into premises conferred by section 131 of the Act, take samples of any article used or capable of being used in the preparation of condensed milk and of any labels designed to be used for affixing to tins or other receptacles of condensed milk.

6. Importation

No person shall import into Malawi condensed milk intended for sale for human consumption unless the same contains not less than the appropriate percentages of milk fat and milk solids as specified in the Second Schedule and is contained in a tin or other receptacle labelled in the manner prescribed in the First Schedule:

Provided that this rule shall not apply in any case—

(a) where the condensed milk is contained in a tin or other receptacle whose net weight exceeds fifteen pounds;

(b) where the condensed milk is imported for re-exportation and remains under control of the public officers responsible for Customs and Excise until exported from Malawi to any other place.

7. Samples of imported milk

A public officer responsible for Customs and Excise may take such samples of consignments of imported condensed milk as may be necessary for the purpose of analysis by the Pathologist of the Ministry of Health.

8. Offences

Any person who is guilty of an offence against, or who acts in contravention of, or who fails to comply with, any of these Rules shall be liable to a penalty of £25 and, in the case of a continuing offence, to a further penalty of £3 for every day during which the offence continues.

9. Limit on application

These Rules shall not apply to supplies of condensed milk which are in Malawi at the time of the coming into operation of these Rules until a period of six months from the date of such coming into operation has elapsed.

FIRST SCHEDULE rr. 3 (a) and 6

REGULATIONS WITH RESPECT TO THE LABELLING OF CONDENSED MILK

1. Every tin or other receptacle containing condensed milk shall bear a label upon which is printed such one of the following declarations as may be applicable—

(1) In the case of full cream milk (unsweetened):

CONDENSED FULL CREAM MILK (UNSWEETENED)

This tin contains the equivalent of (a) Pints of milk.

(II) In the case of full cream milk (sweetened):

CONDENSED FULL CREAM MILK (SWEETENED)

This tin contains the equivalent of (a) Pints of milk, with sugar added.

(III) In the case of skimmed milk (unsweetened):

CONDENSED SKIMMED MILK (UNSWEETENED)

UNSUITABLE AS A SOLE FOOD FOR BABIES

(Vernacular translation)

This tin contains the equivalent of (a) Pints of skimmed milk.

(IV) In the case of skimmed milk (sweetened):

CONDENSED SKIMMED MILK (SWEETENED)

UNSUITABLE AS A SOLE FOOD FOR BABIES

(Vernacular translation)

This tin contains the equivalent of (a) Pints of skimmed milk, with sugar added

2. The declaration shall in each case be completed by inserting at (a) the appropriate number in words and figures, e.g. "one and a half (1 ½)," any fraction being expressed as eighths, quarters or half. For the purposes of these Rules "milk" means milk which contains not less than 12.4 per centum of milk solids (including not less than 3.6 per centum of milk fat) and "skimmed milk" means milk which contains not less than 9 per centum of milk solids other than milk fats.

3.(a) in the case of full cream condensed milk the prescribed declaration shall be printed in dark block type upon a light coloured ground.

(b) In the case of condensed skimmed milk the prescribed declaration shall be printed in white block type upon a black ground.

(c) There shall be a surrounding line enclosing the declaration and in the cases in which the words "unsuitable as a sole food for babies" and the vernacular translation are required to be used there shall be another such line enclosing these words.

(d) The distance between any part of the words "unsuitable as a sole food for babies" and the vernacular translation and the surrounding line enclosing these words shall not be less than one sixteenth of an inch.

(e) No matter other than that hereinbefore prescribed shall be printed within either surrounding line.

(f) The type used for the declaration shall not in any part be less than one-eighth of an inch in height (or if the net weight of the contents of the tin or other receptacle does not exceed twelve ounces, one-sixteenth of an inch in height) and the type used for the words "unsuitable as a sole food for babies" and the vernacular translation shall not be less than three-sixteenths of an inch in height (or if the net contents do not exceed two and three-quarter ounces, one-eighth of an inch in height.)

(g) In cases in which the words "unsuitable as a sole food for babies" and the vernacular translation are required to be used the entire panel in which the prescribed declaration is enclosed shall present an all-black background with the declaration in white block type and the surrounding lines in white; no colour nor shading medium shall appear on the panel and no decorative border round the panel of any kind or description shall be allowed.

4. The label shall in addition bear the name and address of the manufacturer of the condensed milk or of the dealer, merchant or importer in the territory for whom it is manufactured.

5. The label shall be securely affixed to the tin or other receptacle so as to be clearly visible. If there is attached to the tin or other receptacle a label bearing the name, trademark or design representing the brand of the condensed milk, the prescribed declaration shall be printed as part of such label.

6. The label shall in addition bear the net weight of the contents of the tin or other receptacle. The type to be used shall not in any part be less than one-eighth of an inch in height:

Provided that when the net weight of the contents of the tin or other receptacle does not exceed twelve ounces, the type shall be not less than one-sixteenth of an inch in height.

7. Wherever the word "milk" appears on the label of a tin or other receptacle of condensed skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the word "skimmed."

8. There shall not be placed on any tin or other receptacle containing condensed milk—

(a) any comment on, explanation of, or reference to either the statement of equivalence contained in the prescribed declaration or the words “skimmed” or “unsuitable as a sole food for babies” and the vernacular translation; or

(b) any instruction as to dilution, unless either—

(i) the fluid produced in accordance with such instructions would contain not less milk fat and not less milk solids than milk or skimmed milk as defined in paragraph 2 of this Schedule as the case may require; or

(ii) such instructions clearly specify that the fluid produced is not of equivalent composition to milk or skimmed milk as the case may be.

9. Where a tin or other receptacle containing condensed skimmed milk is required under these Rules to be labelled, no person shall expose or offer for sale or sell such a tin or receptacle in a paper or other wrapper unless such wrapper has printed on the outside thereof the words “unsuitable as a sole food for babies” and (here insert vernacular translation), such words being contained within a surrounding line. The type used for the words shall not be less than three-sixteenths of an inch in height (or if the net contents do not exceed two and three-quarter ounces, one-eighth of an inch in height) and the printing and colouring shall otherwise conform with the Rules prescribed for the printing and colouring of the same matter on the label affixed to the tin or other receptacle.

SECOND SCHEDULE rr. 3 (b) and 6

All condensed milk shall contain not less than the appropriate percentages of milk fat and milk solids as specified in the following table.

	Description of Milk	Percentage of milk fat	Percentage of all milk solids including fat
1.	Full cream, unsweetened	9	31
2.	Full cream, sweetened	9	31
3.	Skimmed, unsweetened-	20	
4.	Skimmed, sweetened -	26	

PUBLIC HEALTH (CONSTRUCTION OF TRADING STORES) RULES

deemed to be made under s. 109

[made under s. 74 of the Public Health Ordinance, 1932, No. 5 of 1932 (now repealed)]

G.N. 43/1946

1. Citation and application

These Rules may be cited as the Public Health (Construction of Trading Stores) Rules, and shall apply to all areas other than Municipalities and Townships.

2. Interpretation

In these Rules—

“store” means any building used wholly or in part as a trading store or for the storage of foodstuffs in connexion therewith;

“plot” means a piece of land on which one of the buildings is a store.

3. Size of plot

No store shall be erected on a plot which is less than $\frac{1}{4}$ of an acre in area without the permission of the local authority.

4. Building permit

No person shall erect any building on a trading plot until he has obtained from the local authority a building permit.

5. Form of application for a building permit

Every application for a building permit shall be accompanied by a plan of the building which it is proposed to erect together with a specification giving the following particulars—

- (a) depth of foundations and width of footings;
- (b) thickness of walls;
- (c) materials to be used in the construction of walls and roofs;
- (d) provision made for natural lighting, ventilation and drainage of storm water;
- (e) provision made for an ant-proof course;
- (f) the general layout of the building and other buildings (if any) on the plot.

6. Walls and foundations

(1) The walls of a store shall be of such width as will satisfy the local authority, but if built of brickwork an external wall shall in no case be less than 14 inches thick or an internal or party wall be less than 9 inches thick.

(2) No foundation shall be less than the following dimensions—

Width Depth

- | | | | |
|-----|-------------------------------|-------|-------|
| (a) | in the case of a 9 inch wall | 1' 2" | 1' 6" |
| (b) | in the case of a 14 inch wall | 2' 0" | 2' 0" |

(3) The above dimensions shall apply in the case of single storey stores; in the case of stores comprising more than one storey the dimensions shall be such as will satisfy the local authority.

7. Construction of walls

The walls of a store shall be made of burned brick, stone, or other hard and incombustible material, and shall be maintained properly plastered or otherwise free from cracks or crevices.

8. Height of walls

Every room in a store which is used for the purpose of trading or storing foodstuffs shall over its entire area, be of a mean average height of at least 9 feet from the floor to the underside of the ceiling or roof, and no part thereof (other than a part not exceeding in all 15 per centum of the whole in extent) shall be less than 7 feet 6 inches in height from the floors to the underside of the ceiling or roof.

9. Floors

Floors may be of concrete or cement plaster laid on brick or stone. If cement plaster is used it shall not be less than 3/4 inch thick, nor of a weaker mixture than four parts clean sand to one part cement.

10. Ant-proof course

Every store shall be provided with an effective ant-proof course to the satisfaction of the local authority. The ant-proof course shall be laid at least 12 inches above ground level.

11. Roofing

The roofing of every store shall be of corrugated iron, tiles, slate or other material approved by the local authority. Thatch shall not be used except as a covering for corrugated iron. If the roof is of corrugated iron a sun-proof cover shall be provided either above or below the corrugated iron.

12. Size of room used for trading

No room in a store used for the purposes of trading shall be of less than 18 feet by 12 feet in area, except with the consent of the local authority.

13. Windows

The window area in any room in a store shall be at least 10 per centum of the floor.

14. Ventilation

In every room in a store in which no fireplace is installed there shall be provided an opening for permanent ventilation, the area of which shall not be less than 1 per centum of the floor space with a minimum of 1 square foot.

15. Ratproofing

Any room in a store which is used wholly or in part for the storage of foodstuffs intended for sale to the public shall be effectively ratoroofed.

16. Storm water

Provision shall be made for the disposal of storm water and sullage so that no nuisance shall arise.

17. Dwellinghouse

No dwelling-house on a plot shall form part of the same building as a store unless such building consists of two storeys or more.

18. Living quarters

No part of a store which is used for the purpose of trading or for the storage of goods shall be used as a living room.

19. Whitewashing

To ensure cleanliness, the interior walls of every room in a store which is used for the purpose of trading shall be whitewashed at least once in every quarter.

20. Area of plot which may be built on

Not more than 50 per centum of the area of a plot may be built on:

Provided that where one of the buildings is of or exceeds two storeys, the local authority may permit up to 60 per centum of the area to be built on.

21. Space between walls and boundary of plot

A clear space at least 5 feet wide shall be left between the boundary of a plot and the walls of every building thereon.

22. Buildings constructed of grass, etc.

No building constructed wholly or in part of grass, reeds or similar material shall be erected on a plot.

23. Alteration or reconstruction of buildings

No reconstruction or alteration of or addition to any building on a plot shall be made without the consent in writing of the local authority who shall, so far as is possible in the circumstances of each case, apply these Rules to such building.

24. Latrines

Adequate latrine accommodation shall be provided for all persons who live or are employed in any building on a plot.

25. Position of pit latrines

(1) No pit latrine shall be sited on any plot unless it is at least 20 feet from the nearest kitchen or inhabited building and at least 5 feet from the boundary of the plot.

(2) No pit latrine shall be sited within 100 feet of any well, spring, stream or other source of natural water supply.

26. Depth of pit latrines

No pit latrine shall be brought into use until it has been excavated to a minimum depth of 15 feet and no latrine shall be maintained in use on a plot after the level of the contents has risen to 3 feet from ground level.

27. Construction of pit latrine

The platform of a pit latrine shall be constructed of impervious materials and the aperture to the pit shall be provided with a properly fitting cover. The walls of the superstructure shall be of not less than 6 feet to the wall plate and the buildings shall be provided with adequate permanent ventilation.

28. Earth-closets

In the case of earth-closets—

- (a) the door through which the receptacle for excreta is removed shall be of iron;
- (b) the receptacle shall be water-tight and of non-absorbent material;
- (c) a suitable container for dry earth shall be provided;
- (d) the floor shall be of impervious material.

29. Servants' quarters

Where quarters are provided on a plot for staff or servants employed thereon, no room therein shall have an area of less than 120 square feet. The mean height of the walls shall not be less than 7 feet 6 inches. In respect of lighting, ventilation and materials used in construction such quarters shall conform with the provisions of these Rules relating to the construction of stores.

30. When servants' quarters must be provided

All staff and servants employed on a plot shall be provided with suitable quarters unless it is established to the satisfaction of the local authority that they have homes in the neighbourhood of their place of employment to which they are in the practice of returning at night.

31. Servants' Kitchens

Where staff or servants are accommodated in quarters on a plot they shall also be provided with adequate kitchen accommodation.

32. Temporary trading stores

Notwithstanding anything contained in these Rules it shall be lawful for the local authority to grant to any person permission to erect and use a trading store constructed of temporary materials outside an established trading centre, on such conditions as to location and otherwise as the local authority may in writing specify:

Provided that no trading store erected under this rule shall be used for a period in excess of four years from the date of erection.

AUTHORIZATION OF CEMETERIES

under ss. 113 and 114

BLANTYRE CEMETERIES G.N. 206/1951

The following cemeteries have been authorized under section 114 of the Act for the City of Blantyre—

- (a) the European Cemetery, Church of Central Africa Presbyterian;
- (b) the African Cemetery, Church of Central Africa Presbyterian;
- (c) the Catholic Cemetery, Montfort Marist Mission;
- (d) the Moslem Cemetery, Napere;
- (e) the European Public Cemetery.

EUROPEAN PUBLIC CEMETERY, BLANTYRE G.N. 207/1951

The place described in the Schedule hereto has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Blantyre, and shall be deemed an authorized cemetery under section 114 of the Act

SCHEDULE

DESCRIPTION OF THE BOUNDARIES OF THE EUROPEAN PUBLIC CEMETERY, BLANTYRE

ALL THAT piece of land containing an area of 2 ½ acres approximately the boundaries whereof are as follows:

Commencing at a beacon situate 17 ½ feet from the north-western boundary of the existing European Cemetery of the Church of Central Africa Presbyterian in Blantyre as measured at right angles thereto the boundary runs by a straight line in a south-westerly direction for a distance of 325

½ feet parallel to and 17 ½; feet distant from the said north-western boundary of the said cemetery to a beacon demarcating the southern corner of the said piece of land; thence by a straight line at right angles and in a north-westerly direction for a distance of 400 feet; thence by a straight line in an easterly direction for a distance of 350 feet; thence by a straight line in a south-easterly direction for a distance of 270 feet to the beacon being the point of commencement.

AFRICAN PUBLIC CEMETERY, BLANTYRE G.N. 93/1953, 262/1971

The place described in the Schedule was selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the African Public Cemetery, Blantyre, and deemed to be an authorized cemetery under section 114 of the Act. The same was, however, closed under section 118 of the Act with effect from the 1st of December, 1971 (see G.N. 282/1971).

SCHEDULE

DESCRIPTION OF THE BOUNDARIES OF THE AFRICAN PUBLIC CEMETERY, BLANTYRE

ALL THAT piece or parcel of land containing an area of 3.960 acres or thereabouts situate in the Nyambadwe Ward area of the City of Blantyre, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 86/71.

EUROPEAN PUBLIC CEMETERY, LIMBE G.N. 174/1956

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Limbe, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

ALL THAT plot of land comprising three acres or thereabouts near Limbe having a frontage of 400 feet on the Thyolo Road and a depth of 326.70 feet measured from the frontage line which is 25 feet from the centre of the road; the south-eastern beacon of the plot is distant 52 feet to the south from a culvert which passes under the road at one mile and thirteen chains approximately from Limbe, all as delineated on the plan annexed to an Indenture made the 10th day of January, 1928, between The Imperial Tobacco Company (of Great Britain and Ireland) Limited of the one part and The Limbe Town Council of the other part; which block of land forms part of a larger block of land vested in the Company in virtue of an Indenture dated the 10th day of February, 1913 and made between Grace Bisset Lindsay formerly of Limbe of the one part and the Company of the other part (Registered No. 2415).

EUROPEAN PUBLIC CEMETERY, LILONGWE G.N. 118/1952

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the European Public Cemetery, Lilongwe, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

DESCRIPTION OF THE BOUNDARIES OF THE EUROPEAN PUBLIC CEMETERY, LILONGWE

ALL THAT piece of land containing an area of 2.25 acres known as Plots Nos. 8A and 8B situate in the European Residential Area of the Lilongwe Township the boundaries whereof are as follows:

Commencing at a beacon which is also the north corner beacon of Plot No. 8 the boundary runs on a bearing of $46^{\circ} 00' 00''$ for a distance of 389.6 feet to a beacon demarcating the northern corner of the said piece or parcel of land; thence on a bearing of $134^{\circ} 24' 50''$ for a distance of 239.5 feet to a beacon demarcating the eastern corner of the said piece or parcel of land; thence on a bearing of $223^{\circ} 42' 50''$ for a distance of 403.1 feet to a beacon demarcating the southern corner of the said piece or parcel of land; thence on a bearing of $136^{\circ} 30' 00''$ for a distance of 239 feet to the said beacon demarcating the western corner of the said piece or parcel of land being the point of commencement.

MAHOMEDAN CEMETERY, ZOMBA G.N. 195/1953

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Mahomedan Cemetery, Zomba, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

DESCRIPTION OF THE BOUNDARIES OF THE MAHOMEDAN CEMETERY, ZOMBA

ALL THAT piece or parcel of land containing an area of 1.69 acres the boundaries whereof are as follows:

Commencing at a beacon being the most southerly corner beacon of the parcel of land known as Plot No. 33 in Zomba Township and distant 25 feet from the north-eastern edge of the road leading from the Blantyre-Zomba main road to the Abattoir and distant 104.3 feet on a bearing of $147^{\circ} 30'$ from the centre line of the said main road the boundary runs on a bearing of $147^{\circ} 30''$ for a distance of 231.9 feet to a beacon demarcating the most southerly corner of the said cemetery which said beacon is distant 58.6 feet on a bearing of $272^{\circ} 10'$ from the north-eastern corner beacon of the plot occupied by The Bata Shoe Company Limited; thence on a bearing of $59^{\circ} 17'$ for a distance of 306.2 feet to a beacon demarcating the most easterly corner of the said cemetery; thence on a bearing of $334^{\circ} 50'$ for a distance of 231.6 feet to a beacon demarcating the most northerly corner of the said cemetery; thence on a bearing of $239^{\circ} 31'$ for a distance of 332.5 feet to the beacon demarcating the most westerly corner of the said cemetery being the point of commencement.

THE CHURCH OF SAINT PAUL, BLANTYRE (BISHOP MACKENZIE) CEMETERY G.N. 147/1961

The Church of Saint Paul, Blantyre, within the boundary of Plot No. 324 has been selected and appointed, under section 113 of the Act, to be used as a cemetery for the purpose of re-interring the remains of Bishop F. Charles Mackenzie and the said church shall be deemed to be authorized, under section 114 of the Act, for such purpose only.

CHITAWILA PUBLIC CEMETERY, BLANTYRE G.N. 99/1969

The place described in the Schedule hereto has been selected and appointed, under sections 113 and 114 of the Act, to be the site of a cemetery to be known as the Chitawila Public Cemetery, Blantyre, and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

ALL the piece or parcel of land containing an area of 3.21 (three decimal point two one) acres or thereabouts situate in the Naperi Ward of the Soche Area of the City of Blantyre the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 64/62.

BANGWE PUBLIC CEMETERY G.N. 121/1973

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Bangwe Public Cemetery and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

FIRST ALL THAT piece or parcel of land containing an area of one decimal point two two nought (1.220) acres or thereabouts situate at Blantyre the boundaries whereof are more particularly described and delineated on Survey Department Deed Plan No. 293/72 and are thereon edged with red colour.

SECONDLY ALL THAT piece or parcel of land containing an area of two decimal point seven nought two (2.702) acres or thereabouts situate at Blantyre the boundaries whereof are more particularly described and delineated on Survey Department Deed Plan No. 406/71 and are thereon edged with red colour.

AREA 30 PUBLIC CEMETERY, CITY OF LILONGWE G.N. 141/1975

The place described in the Schedule has been selected and appointed, under section 113 of the Act, to be the site of a cemetery to be known as the Area 30 Public Cemetery, City of Lilongwe and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

ALL THAT piece of land known as Plot No. 1 containing an area of 17.940 hectares or thereabouts, situate in Area 30 of the City of Lilongwe, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 328/1974.

POOR CLARES PRIVATE CEMETERY, LILONGWE G.N. 40/1977

The place described in the Schedule has been selected and appointed under section 113 of the Act, to be the site of a cemetery to be known as the Poor Clares Private Cemetery, Lilongwe and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

POOR CLARES PRIVATE CEMETERY, LILONGWE

ALL THAT piece of land containing an area of 2,280 sq. feet or thereabouts within plot No. 4001, situated in area 7 of the City of Lilongwe, the boundaries whereof as demarcated by Survey beacons are more particularly described and delineated on Deed No. 26657/1961.

SAINT MARY'S CEMETERY, ZOMBA G.N. 137/1977

The place described in the Schedule has been selected and appointed under section 113 of the Act, to be the site of a cemetery to be known as the Saint Mary's Cemetery, Zomba and shall be deemed an authorized cemetery under section 114 of the Act.

SCHEDULE

SAINT MARY'S CEMETERY, ZOMBA

ALL THAT piece of land containing an area of six decimal point one seven nine (6.179) hectares or thereabouts situate at and known as Plot No. 360, Zomba Township in the Zomba District, the boundaries whereof as demarcated by survey beacons are more particularly described and delineated on Survey Department Deed Plan No. 31/75 for a public cemetery.

QUEEN ELIZABETH CENTRAL HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 11/1966

110/1967

64/1972

1. Citation

These Rules may be cited as the Queen Elizabeth Central Hospital Advisory Committee Rules.

2. Interpretation

In these Rules, unless inconsistent with the context—

“Central Hospital” means the Queen Elizabeth Central Hospital;

“the Advisory Committee” and “Committee” mean the Central Hospital Advisory Committee;

“Senior Medical Superintendent” means the Senior Medical Superintendent for the time being in charge of the Central Hospital.

ESTABLISHMENT AND MEMBERSHIP OF ADVISORY COMMITTEE

3. Establishment

The Minister hereby establishes an Advisory Committee for the Queen Elizabeth Central Hospital.

4. Membership

(1) The Committee shall consist of 9 members who shall be appointed as follows—

5 members who shall be appointed by the Minister;

2 members who shall be appointed by the City Council;

1 member who shall be appointed by the Malawi Medical Association;

1 member who shall represent the Social Welfare Department of the Ministry of Community Development and Social Welfare, appointed by the Minister of Community Development and Social Welfare after consultation with the Minister of Health.

(2) Where any of the above bodies shall fail to appoint its member or members within 30 days from the date on which it was requested to do so, the Minister may proceed to make the appointment, without any such nomination, of any person he deems suitable.

5. Term of office

(1) A member of the Advisory Committee shall hold office for two years only, provided that, at the end of the first year of the existence of the Advisory Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Resignation, termination and replacement of officers

(1) If any member of the Advisory Committee fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may cancel the appointment of that member.

(2) Any member of the Advisory Committee may at any time tender his resignation to the Minister.

(3) Where an appointment is cancelled, or a resignation accepted by the Minister in accordance with subrules (1) and (2), the Minister may either permit the replacement of the Member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PROCEDURE FOR MEETINGS OF THE ADVISORY COMMITTEE

7. Time of meetings

The first meeting of the Advisory Committee shall be held not later than one month from the appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business at any meeting will be four Members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Advisory Committee shall elect a Chairman and Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman, or any three members of the Advisory Committee or the Senior Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been convened.

11. Appointment and duties of Secretary

The Minister shall appoint a Secretary to the Advisory Committee from Central Hospital administrative staff. The appointed Secretary shall keep a record of the attendance of members and of the Minutes of each meeting and shall transmit a copy of this record to the Senior Medical Superintendent and to the Minister of Health as soon as possible after each meeting.

12. Persons to participate in meetings

The Senior Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each Meeting and shall be entitled to speak but not to vote. The Advisory Committee, with the approval of the Senior Medical Superintendent, shall have the right to call any

member of the Hospital Staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders

The Advisory Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

DUTIES OF THE ADVISORY COMMITTEE

14. Complaints

It shall be the duty of the Advisory Committee:—

(a) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(b) to make such recommendations as it deems advisable to the Senior Medical Superintendent on the provision and disposition of nursing and serving staff.

15. Investigation of complaints

Every complaint or representation in writing by the complainant or his representative shall be laid before the Advisory Committee and, after investigation, the Committee shall forward to the Senior Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Senior Medical Superintendent shall inform the Committee as soon as possible of its own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Advisory Committee may appoint at least two of its members to form a Visiting Committee to the Central Hospital. This Visiting Committee may enter the Central Hospital premises daily between the hours of 10.30 a.m. and 4 p.m. by arrangement with the Senior Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are Justified.

17. Recommendations on diet and equipment

The Advisory Committee shall recommend to the Senior Medical Superintendent such alterations or additions to the scale of diets and the provision of domestic equipment as it may deem necessary.

18. Expenditures

No expenditure shall be incurred, nor any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits

The Advisory Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Central Hospital. Such benefits can only be accepted by the Advisory Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. Influence or interference

The Advisory Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of hospital staff.

21. Control by Senior Medical Superintendent

Nothing in these Rules relating to the duties of the Advisory Committee shall restrict the right of the Senior Medical Superintendent to exercise such control as is normally permitted him over persons enjoying the privilege of access to the Central Hospital as either visitors or patients.

GENERAL

22. Submission of sketch-plans

The Senior Medical Superintendent shall submit to the Advisory Committee the sketch-plans which he has received from the Secretary for Health of any proposed new hospital building or of any proposed extensions or alterations to existing hospital buildings before the final plans are prepared.

23. Return of plans by Advisory Committee

The Advisory Committee shall return the plans to the Senior Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Senior Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

ZOMBA GENERAL HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 240/1967

PART I—PRELIMINARY

1. Citation

These Rules may be cited as the Zomba General Hospital Advisory Committee Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Zomba General Hospital established under these Rules;

“Hospital” means the Zomba General Hospital;

“Medical Superintendent” means the Medical Superintendent for the time being in charge of the Hospital;

“member” means member of the Committee.

PART II—ESTABLISHMENT OF ADVISORY COMMITTEE

3. Establishment of Committee

The Minister hereby establishes an Advisory Committee for the Zomba General Hospital.

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—

three members shall be appointed by the Minister;

two members shall be appointed by the Town Council of Zomba;

one member shall be appointed by the Malawi Medical Association.

(2) Where either the Zomba Town Council or the Malawi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment, without any such nomination, of any person he deems suitable.

5. Tenure of office

(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with subrules (1) and (2), the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1) or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III—PROCEDURE OF THE ADVISORY COMMITTEE

7. Times of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of both, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from General Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Superintendent and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Superintendent and Hospital staff at meetings

The Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Superintendent, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV—DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(a) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(b) to make such recommendations as it deems advisable to the Medical Superintendent on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Medical Superintendent shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours of 10.30 a.m. and 4 p.m. by arrangement with the Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets etc.

The Committee shall recommend to the Medical Superintendent such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

21. Control by Medical Superintendent

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Superintendent to exercise such control as is normally permitted over persons enjoying the privilege of access to the General Hospital as either visitors or patients.

PART V—GENERAL

22. Duty of Medical Superintendent to submit sketch-plans

The Medical Superintendent shall submit to the Committee the sketch-plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new buildings or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

23. Comments on sketch-plans by the Committee

The Committee shall return the sketch-plans to the Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

DOWA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 122/1974

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Public Health (Dowa District Hospital Advisory Committee) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Dowa District Hospital established under rule 3;

“Hospital” means the Dowa District Hospital;

“Medical Officer” means the Medical Officer for the time being in charge of the Hospital;

“member” means member of the Committee.

PART II

ESTABLISHMENT OF ADVISORY COMMITTEE

3. Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Dowa District Hospital (hereinafter referred to as the “Committee”).

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—

three members shall be appointed by the Minister;

two members shall be appointed by the Dowa District Council;

one member shall be appointed by the Malawi Medical Association.

(2) Where either the Dowa District Council or the Malawi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

5. Tenure of office

(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

PROCEDURE OF THE COMMITTEE

7. Times of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Officer and Hospital staff at meetings

The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the hospital staff;

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The

Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises, by arrangement with the Medical Officer, for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets, etc.

The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. No such benefit shall be accepted by the Committee save with the prior approval of the Minister. Any benefit received by the Committee in accordance with this regulation shall be applied by it as directed or agreed by the Minister.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

21. Control by Medical Officer

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the District Hospital as either visitors or patients.

PART V

GENERAL

22. Duty of Medical Officer to submit sketch plans

Whenever the Medical Officer receives from the Secretary for Health, any sketch plans of any proposed new building or of any proposed extensions to or alterations of existing buildings, he shall, before the final plans are prepared, submit the said sketch plans to the Committee for its comments and recommendations thereon.

23. Comments on sketch plans by the Committee

The Committee shall return the said sketch plans to the Medical Officer as soon as is practicable, with such comments or recommendations thereon as it may wish to make. Thereafter the Medical Officer will keep the Committee informed on any action taken in respect of such plans, whether in accordance or otherwise with the Committee's comments or recommendations.

KASUNGU DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 103/1973

PART I

PRELIMINARY

1 Citation

These Rules may be cited as the Kasungu District Hospital Advisory Committee Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Kasungu District Hospital established under rule 3;

“Hospital” means the Kasungu District Hospital;

“Medical Officer” means the Medical Officer for the time being in charge of the Hospital;

“Member” means member of the Committee.

PART II

ESTABLISHMENT AND MEMBERSHIP OF ADVISORY COMMITTEE

3 Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Kasungu District Hospital (hereinafter referred to as the Committee).

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—Four members shall be appointed by the Minister; and two members shall be appointed by the Kasungu District Council.

(2) Where the Kasungu District Council shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

5. Tenure of office

(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may, at any time, tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

PROCEDURE OF THE COMMITTEE

7. Times of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Officer and Hospital staff at meetings

The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff.

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The Medical officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets, etc.

The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

21. Control by Medical Officer

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the Hospital as either visitors or patients.

PART V

GENERAL

22. Duty of Medical Officer to submit sketch plans

The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

23. Comments on sketch plans by the Committee

The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

LILONGWE GENERAL HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 111/1973

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Lilongwe General Hospital Advisory Committee Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Lilongwe General Hospital established under rule 3;

“Hospital” means the Lilongwe General Hospital;

“Medical Superintendent” means the Medical Superintendent for the time being in charge of the Hospital;

“member” means member of the Committee.

PART II

ESTABLISHMENT OF ADVISORY COMMITTEE

3. Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Lilongwe General Hospital (hereinafter referred to as the Committee).

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—

three members shall be appointed by the Minister;

two members shall be appointed by the Lilongwe Municipal Council;

one member shall be appointed by the Malawi Medical Association.

(2) Where either the Lilongwe Municipal Council or the Malawi Medical Association shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

5. Tenure of office

(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

PROCEDURE OF THE COMMITTEE

7. Times of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Superintendent may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from General Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Superintendent and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Superintendent and Hospital staff at meetings

The Medical Superintendent or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Superintendent, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff;

(ii) to make such recommendations as it deems advisable to the Medical Superintendent on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Superintendent an account of the complaint or representation together with the Committee's findings relating to it. The Medical Superintendent shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Superintendent for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets, etc.

The Committee shall recommend to the Medical Superintendent such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff or the Hospital.

21. Control by Medical Superintendent

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Superintendent to exercise such control as is normally permitted over persons enjoying the privilege of access to the General Hospital as either visitors or patients.

PART V

GENERAL

22. Duty of Medical Superintendent to submit sketch plans

The Medical Superintendent shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

23. Comments on sketch plans by the Committee

The Committee shall return the plans to the Medical Superintendent as soon as possible with such comments or recommendations as it may wish to make. The Medical Superintendent will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

RUMPHI DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 104/1973

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Public Health Rumphi District Hospital Advisory Committee Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Rumphi District Hospital established under rule 3;

“Hospital” means the Rumphi District Hospital;

“Medical Officer” means the Medical Officer for the time being in charge of the Hospital;

“Member” means member of the Committee.

PART II

ESTABLISHMENT AND MEMBERSHIP OF ADVISORY COMMITTEE

3. Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Rumphi District Hospital (hereinafter referred to as the Committee).

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—

Four members shall be appointed by the Minister; and two members shall be appointed by the Rumphi District Council.

(2) Where the Rumphi District Council shall fail to appoint its member or members within 30 days from the date on which it is requested by the Minister to do so, the Minister may proceed to make the appointment of any person he deems suitable.

5. Tenure of office

(1) A member shall hold office for two years only, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation tendered to the Minister in accordance with the provisions of paragraphs (1) and (2) of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

PROCEDURE OF THE COMMITTEE

7. Times of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their number to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The appointed secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Officer and Hospital staff at meetings

The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the nursing staff.

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaint or representation together with the Committee's findings relating to it. The Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises daily between the hours 10.30 a.m. and 4 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets, etc.

The Committee shall recommend to the Medical Officer such alterations or additions to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure, without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or to interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of the staff of the Hospital.

21. Control by Medical Officer

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the Hospital as either visitors or patients.

PART V

GENERAL

22. Duty of Medical Officer to submit sketch plans

The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of Health of any proposed new building or of any proposed extensions or alterations to existing buildings of the Hospital before the final plans are prepared.

23. Comments on sketch plans by the Committee

The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

SALIMA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 106/1975

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Public Health (Salima District Hospital Advisory Committee) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Salima District Hospital established under Rule 3;

“Hospital” means the Salima District Hospital;

“Medical Officer” means the Medical Officer for the time being in charge of the Hospital;

“member” means member of the Committee.

PART II

ESTABLISHMENT OF ADVISORY COMMITTEE

3. Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Salima District Hospital (hereinafter referred to as the “Committee”).

4. Appointment of members

(1) The Committee shall consist of six members who shall be appointed as follows—

- (a) Three members shall be appointed by the Minister;
- (b) Two members shall be appointed by the Salima District Council;
- (c) One member shall be appointed by the Malawi Medical Association.

(2) Where the Salima District Council or the Malawi Medical Association, respectively fail to exercise its power of appointment in respect of any member pursuant to subrule (1) within 30 days from the date on which it is requested by the Minister to do so, the Minister may exercise such power of appointment and in so doing may appoint as such member any person whom he deems suitable.

5. Tenure of Office

(1) A member shall hold office for two years, provided that, at the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4 above.

(2) Any retiring member may be re-appointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which may be granted by the Committee for up to seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where any member who was appointed pursuant to paragraph (b) or (c) of rule 4 (1) resigns or his membership is terminated under these rules the Minister may either direct the relevant appointing authority under rule 4 (1) (b) or 4 (1) (c), as the case may be, to proceed to appoint a new member in the place and stead of the said member who has resigned or whose membership has been terminated, or he may, without giving any such direction, as aforesaid, himself appoint such new member. Any member appointed under this paragraph shall hold office during the unexpired residue of the term of the member he has replaced.

PART III

PROCEDURE OF THE COMMITTEE

7. Time of meetings

The first meeting of the Committee shall be held not later than one month from the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of business of the Committee at any meeting will be four members.

9. Election of Chairman and Vice-Chairman

At its first meeting in any year, the Committee shall elect a Chairman and Vice-Chairman from amongst its members. In the absence of either, the remaining members shall appoint one of their members to preside.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Officer may call a special meeting at any time, at which business will be confined to the item or items on account of which the meeting has been called.

11. Appointment and duties of secretary

The Minister shall appoint a secretary to the Committee from District Hospital Administrative staff. The secretary shall keep a record of the attendance of members and of the minutes of each meeting and transmit a copy of this record to the Medical Officer and to the Minister as soon as possible after each meeting.

12. Attendance of Medical Officer and Hospital staff at meeting

The Medical Officer or an officer appointed by him in writing shall have the right to be present at each meeting and shall be entitled to speak but not to vote. The Committee, with the approval of the Medical Officer, shall have the right to call any member of the Hospital staff to its meetings to assist the Committee in matters of which he has specialized knowledge.

13. Standing Orders for meetings

The Committee shall consider and approve within six months of its appointment, Standing Orders for the further regulation of its meetings.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(i) to receive and enquire into complaints of patients or of their relatives or friends as to nursing, diet or treatment of patients and into allegations of misconduct or negligence on the part of the hospital staff;

(ii) to make such recommendations as it deems advisable to the Medical Officer on the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every complaint or representation by any person or persons shall be laid before the Committee in writing and, after investigation, the Committee shall forward to the Medical Officer an account of the complaints or representation together with the Committee's findings relating to it. The Medical Officer shall inform the Committee as soon as possible of his own conclusions on the complaint or representation and of any action taken by him in regard to it.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee to visit the Hospital premises by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the Hospital is managed and in order to ascertain whether complaints made by or on behalf of patients are justified.

17. Recommending alterations to diets, etc.

The Committee shall recommend to the Medical Officer such alteration or addition to the scale of diets and provision of domestic equipment as it may deem necessary.

18. Approval for expenditure

No expenditure shall be incurred, or any action taken which may involve expenditure without the approval of the Minister.

19. Benefits to be approved by Minister

The Committee shall inform the Minister of any benefit donated, bequeathed, offered or promised to the Committee for the use of the Hospital. Such benefits can only be accepted by the Committee with the approval of the Minister and must be employed in a manner agreed by him.

20. No interference with treatment or staff

The Committee shall in no way attempt to influence or interfere with the medical treatment of patients nor shall it concern itself with the appointment, promotion, transfer or dismissal of staff of the Hospital.

21. Control by Medical Officer

Nothing in these rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is normally permitted over persons enjoying the privilege of access to the District Hospital as either visitors or patients.

PART V

GENERAL

22. Duty of Medical Officer to submit sketch

The Medical Officer shall submit to the Committee the sketch plans which he has received from the Permanent Secretary for the Ministry of any proposed new building or of any proposed extensions or alterations to existing buildings of the hospital before the final plans are prepared.

23. Comments on sketch plans by the Committee

The Committee shall return the plans to the Medical Officer as soon as possible with such comments or recommendations as it may wish to make. The Medical Officer will thereafter keep the Committee informed of any action taken either in accordance with or contrary to the Committee's wishes.

CHITIPA DISTRICT HOSPITAL ADVISORY COMMITTEE RULES

under s. 143

G.N. 13/1980

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Public Health (Chitipa District Hospital Advisory Committee) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Committee” means the Advisory Committee for the Chitipa District Hospital established under rule 3;

“Hospital” means the Chitipa District Hospital;

“Medical Officer” means the Medical Officer for the time being in charge of the Hospital;

“Member” means member of the Committee.

PART II

ESTABLISHMENT AND MEMBERSHIP OF THE ADVISORY COMMITTEE

3. Establishment of Advisory Committee

The Minister hereby establishes an Advisory Committee for the Chitipa District Hospital (hereinafter referred to as the Committee).

4. Appointment of members

(1) The Committee shall consist of six members of whom four shall be appointed by the Minister and two shall be appointed by the Chitipa District Council.

(2) If the Chitipa District Council shall have failed to appoint any or either such member within thirty days from the date on which it was requested by the Minister to do so, the Minister may appoint any person he deems suitable as such member.

5. Tenure of office

(1) At the end of the first year of the existence of the Committee, one half of its members, as determined by lot, shall retire and be replaced in the manner described in rule 4.

(2) Subject to subrule (1), a member shall hold office for two years.

(3) Any retiring member may be reappointed with the approval of the Minister.

6. Termination of appointment and resignation

(1) If any member fails to attend two consecutive meetings without leave of absence (which at any time may be granted by the Committee for any period of not more than seven months) the Minister may terminate the appointment of that member.

(2) Any member may at any time tender his resignation to the Minister.

(3) Where an appointment is terminated, or a resignation is tendered to the Minister, in accordance with the provisions of this rule, the Minister may either permit the replacement of the member concerned in accordance with rule 4 (1), or proceed to nominate a replacement in accordance with rule 4 (2), as he deems appropriate, for the remainder of the unexpired term of office.

PART III

PROCEDURE OF THE ADVISORY COMMITTEE

7. Time of meetings

The first meeting of the Committee shall be held before the expiry of one month after the date of the first appointment of its members; thereafter it shall meet not less than once in every two months.

8. Quorum

The quorum necessary for the transaction of the business of the Committee at any meeting is four members.

9. Election of Chairman and Vice-Chairman

(1) At its first meeting in any year, the Committee shall elect a Chairman and a Vice-Chairman from amongst its members.

(2) The Chairman or, in his absence, the Vice-Chairman shall preside at meetings of the Committee; in the absence of both the Chairman and the Vice-Chairman at any meeting, the members of the Committee present may appoint any one of their number to preside thereat.

10. Special meetings

The Chairman or any three members of the Committee or the Medical Officer may call a special meeting of the Committee at any time, at which business shall be confined to the purpose for which the meeting has been called.

11. Appointment and duties of Secretary

The Minister shall appoint a Secretary to the Committee from the Hospital Administrative staff. The Secretary shall keep a record of the attendance of members and of the minutes of each meeting and shall transmit a copy of such record to the Medical Officer and to the Minister as soon as practicable after each meeting.

12. Attendance of Medical Officer and Hospital staff at meetings

The Medical Officer or an officer appointed by him in writing shall be entitled to be present at each meeting and to speak but not to vote. The Committee, with the approval of the Medical Officer, may summon any member of the Hospital staff to its meetings to assist the Committee in matters of which such member of staff has specialized knowledge.

13. Standing Orders or meetings

The Committee shall, within six months of its appointment, consider and approve Standing Orders for the regulation of its meetings in any manner not inconsistent with the provisions of these Rules.

PART IV

DUTIES OF THE ADVISORY COMMITTEE

14. Investigation of complaints and recommendations

It shall be the duty of the Committee—

(a) to receive and enquire into any complaints made by patients or by the relatives or friends of patients as to the nursing, diet or treatment administered to patients at the hospital, and into any allegations of misconduct or negligence on the part of the nursing staff;

(b) to make such recommendations to the Medical Officer as it deems advisable with respect to the provision and disposition of nursing and serving staff.

15. Procedure relating to complaints and representations

Every such complaint or allegation shall be laid before the Committee in writing and, after due enquiry, the Committee shall forward to the Medical Officer a report thereon which shall contain the Committee's findings in relation thereto. The Medical Officer shall inform the Committee as soon as possible thereafter of his own conclusions with regard to such complaint or allegation and of any consequent action taken by him.

16. Visiting Committee

The Committee may appoint at least two of its members to form a Visiting Committee whose duty it shall be to visit the hospital premises daily between the hours 10:30 a.m. and 4.00 p.m. by arrangement with the Medical Officer for the purpose of inspecting the conditions under which the hospital is being managed and ascertaining whether any such complaints or allegations appear to be justified.

17. Recommending alteration to diets, etc.

The Committee may recommend to the Medical Officer any alterations or additions to the scale of diets or to the domestic equipment of the hospital as it thinks necessary.

18. Approval for expenditure

No expenditure shall be incurred by the Committee, nor any action taken by the Committee which may involve expenditure, without the approval of the Minister.

19. Donations and bequests first to be approved by Minister, etc.

The Committee shall notify the Minister of any donation or bequest that may have been offered or promised to the Committee for the use of the hospital. No such donation or bequest shall be accepted by the Committee unless the approval of the Minister has first been obtained, and every such donation and bequest shall be devoted only to such purpose for the benefit of the hospital as he shall direct.

20. No interference with treatment of staff

The Committee shall not, in any way, whether directly or indirectly, influence or interfere with the medical treatment of patients nor attempt to do so, nor concern itself with the appointment, promotion, transfer or dismissal of the staff of the hospital.

PART V

GENERAL

21. Control by Medical Officer

Nothing in these Rules relating to the duties of the Committee shall restrict the right of the Medical Officer to exercise such control as is customary over visitors to the hospital and patients therein.

22. Duty of Medical Officer to submit sketch plans

The Medical Officer shall submit to the Committee any sketch plans, received by him from the Secretary for Health, of any proposed new building or of any proposed extensions or alterations to existing buildings, of the hospital, before final plans are prepared.

23. Comments on sketch plans by the Committee

The Committee shall consider and return such sketch plans to the Medical Officer as soon as possible with such comments or recommendations thereon as it may wish to make. The Medical Officer shall thereafter keep the Committee informed of any consequent action taken whether or not such action is at variance with any such comment or recommendation.

PUBLIC HEALTH (GOVERNMENT HOSPITALS) (FEES) RULES

under s. 143

G.N. 90/1993

38/1997

15/1998

1. Citation

These Rules may be cited as the Public Health (Government Hospitals) (Fees) Rules.

2. Fees

(1) Subject to sub-rule (2), the fees prescribed in the Schedule shall be payable in respect of the matters specified therein in relation to such fees.

(2) Where a patient is a member of a medical insurance scheme, the fees payable in respect of matters specified in the Schedule shall be in accordance with the fees prescribed in the Schedule, or the fees schedule of the medical insurance scheme, whichever is the higher.

SCHEDULE r. 2

FEES PAYABLE BY PRIVATE PATIENTS AT GOVERNMENT HOSPITALS G.N. 38/1997, 15/1998

Matter Fees payable

K t

1. OUT-PATIENTS, per attendance—

(a) Specialists:

(i) for first attendance 60 00

(ii) for subsequent attendance for the same episode of illness, or acute exacerbation of chronic illness 30 00

(b) General practitioners—

(i) for first attendance 40 00

(ii) for subsequent attendance for the same episode of illness, or acute exacerbation of chronic illness 20 00

2. IN-PATIENTS—

(a) Central and General Hospitals—

(i) single self-contained room, per day 300 00

(ii) shared room, per day 150 00

(iii) deposit payable on admission 600 00

(iv) ICU bed 400 00

(b) District Hospitals, per day 75 00

(c) Doctor's visits on request, per visit—

(i) specialists 100 00

(ii) general practitioners 50 00

3. SURGERY INCLUDING OBSTETRICS, GYNAECOLOGY, OPHTHALMOLOGY AND DENTISTRY—

(a) major operation 1,500 00

(b) minor operation with general anaesthesia 650 00

(c) minor operation without general anaesthesia 300 00

4. MATERNITY SERVICES—

(a) Antenatal and postnatal out-patient care, for the entire period 200 00

(b) Delivery:

(i) normal delivery

by midwife 300 00

by general practitioner 400 00

by obstetrician/gynaecologist 750 00

(ii) caesarean section 750 00

5. DIAGNOSTIC PROCEDURES—

(a)	Lumber puncture	50	00	
(b)	Paracentesis:			
	(i) chest with drain	100	00	
	(ii) chest without drain	50	00	
	(iii) pericardium with drain	100	00	
	(iv) pericardium without drain	60	00	
	(v) abdomen	50	00	
	(vi) aspiration of joint	50	00	
(c)	Electrocardiogram	250	00	
(d)	Liver biopsy	75	00	
(e)	Sigmoidoscopy, with general anaesthesia		200	00
(f)	Sigmoidoscopy, without general anaesthesia		60	00
(g)	Gastroscopy	200	00	
(h)	Colonoscopy	260	00	
(i)	Bronchoscopy	200	00	
(j)	Complete abdominal ultrasound scan	300	00	
(k)	Obstetrical and gynaecological scan	100	00	
(l)	Fine needle aspiration	60	00	

OUT-PATIENT DEPARTMENT II (OPD II)

6. LABORATORY TESTS—

(a)	Parasitology:			
	(i) stool (microscopy)	20	00	
	(ii) urine (microscopy)	20	00	
	(iii) urine (sugar)	20	00	
	(iv) urine and stool (full report)	50	00	
	(v) urine bile	30	00	

(vi)	malaria parasites smear	30	00
(vii)	stool occult blood	55	00
(b)	Serology:		
(i)	VDRL	60	00
(ii)	widal	60	00
(iii)	weil felix	60	00
(iv)	brucellosis	20	00
(v)	HIV ordered by doctor	free	
(vi)	HIV (ELISA) test on request by individual	85	00
(vii)	HIV on request by insurance company	450	00
(viii)	HIV (western blot) test	450	00
(ix)	hepatitis B surface antigen	147	00
(ix)	slide test	40	00
(ix)	antistreptolysin (ASO) titre	100	00
(xii)	rheumatoid factor	100	00
(c)	Bacteriology:		
(i)	culture only	50	00
(ii)	culture and sensitivity	100	00
(iii)	AAFB (x3)	100	00
(iv)	cerebrospinal fluid:		
	gram stain	30	00
	cell count	30	00
	sugar	30	00
	protein	30	00
	wet preparation	30	00
(d)	Haematology:		
(i)	haemoglobin	25	00

- (ii) WBC 25 00
- (iii) ESR 110 00
- (iv) full blood count 65 00
- (v) full blood count and differential 95 00
- (vi) LE cells 85 00

(e) Electrophoresis:

- (i) haemoglobin 65 00
- (ii) serum 65 00
- (iii) urine 65 00
- (iv) cerebrospinal fluid 65 00
- (v) prothrombin time 100 00
- (vi) clotting time 20 00
- (vii) bone marrow examination 100 00
- (viii) bone marrow aspiration and examination by pathologist 150 00
- (ix) fibrinogen 170 00
- (x) coombs test, direct and indirect 50 00
- (xi) grouping and cross matching 65 00
- (xii) grouping alone 25 00
- (xiii) cross matching 60 00

(f) Biochemistry:

- (i) blood glucose 40 00
- (ii) serum protein 40 00
- (iii) electrolytes (sodium, potassium, calcium chloride, bicarbonate and lithium),
per electrolyte 100 00
- (iv) acid phosphate 70 00
- (v) alkaline phosphate 40 00
- (vi) amylase 45 00
- (vii) cholesterol 40 00

(viii)	creatine phosphokinase (CPK)	130	00
(ix)	creatinine	40	00
(x)	urea	20	00
(xi)	uric acid	40	00
(xii)	glucose-6-phosphate dehydrogenase (G6PD)	80	00
(g)	Liver function tests:		
(i)	complete	200	00
(ii)	total protein	40	00
(iii)	SGOT	40	00
(iv)	SGPT	55	00
(v)	A/G ratio	55	00
(vi)	albumin	55	00
(vii)	bilirubin	50	00
(h)	Pregnancy tests:		
(i)	qualitative	50	00
(ii)	quantitative	75	00
(i)	Histology and cytology:		
(i)	histology	65	00
(ii)	extra fee for special stains	25	00
(iii)	cytology by technician	40	00
(iv)	cytology by pathologist	50	00
(v)	semen analysis	50	00
(vi)	buccal smear	65	00
(vii)	bar bodies	50	00

7. X-RAYS—

(a)	upper or lower limbs, per limb	45	00
(b)	skull, plain	55	00

(c)	skull with contrast media	180	00
(d)	chest	60	00
(e)	angiogram	160	00
(f)	intravenous urogram	160	00
(g)	salpingogram	100	00
(h)	barium meal	170	00
(i)	barium enema	170	00
(j)	barium shallow	140	00
(k)	abdomen, plain film	45	00
(l)	whole gastrointestinal tract contrast media	200	00
(m)	pelvis	60	00
(n)	vertebral column:		
	(i) per section	60	00
	(ii) whole spine	95	00

OUT-PATIENT DEPARTMENT 1 (OPD 1)

8. DENTAL PROCEDURES other than major and minor operations made in paragraph 3 above—

(a)	Diagnosis—		
	(i) clinical examination, advice, charting (including monitoring of periodontal status and report), per course of treatment	60	00
	(ii) full case assessment treatment planning by dentist	100	00
	(iii) for oral and maxillofacial assessment by dental specialist	150	00
	(iv) for orthodontic assessment by dentist	100	00
	(v) for orthodontic assessment by dental specialist	150	00
	(vi) radiographic examination and report:		
	(A) small films under 16 cm ²	40	00
	(B) medium film between 16 cm ² and 50 cm ²	70	00

- (C) large film over 50 cm² except panoral and lateral skull 150 00
- (D) panoral film 200 00
- (E) lateral head plate 300 00
- (F) cephalometric analysis 400 00
- (vi) study models:
 - (A) per set 200 00
 - (B) per duplicate set 150 00
 - (C) per single cast 100 00
- (vii) colour photographs:
 - (A) per film 30 00
 - (B) per additional film 15 00
- (viii) biopsy:
 - (A) excisional 300 00
 - (B) incisional 250 00
- (b) Preventive care—
 - (i) intensive instruction in the prevention of dental disease including advice on diet and on oral hygiene techniques 50 00
 - (ii) application of fissure sealants as a primary preventive measure to pits and fissure per tooth 50 00
 - (iii) application of flourides, per tooth 60 00
- (c) Periodontal treatment—
 - (i) simple scaling and polishing including oral hygiene instruction 50 00
 - (ii) treatment of periodontal disease requiring more than 1 visit including oral hygiene instruction, scaling, polishing and marginal correction of fillings 150 00
 - (iii) non-surgical treatment of chronic periodontal diseases requiring a minimum of three visits treatment to include root-planning, deep scaling and where required marginal correction of restorations, syringing of periodontal pockets, subgingival curettage and/or gingival packing of affected teeth 300 00
- (d) Conservation treatment—

- (i) amalgam fillings:
 - (A) one surface 50 00
 - (B) two surfaces 80 00
 - (C) three or more surfaces 100 00
- (ii) composite fillings:
 - (A) one surface 250 00
 - (B) two surfaces 400 00
 - (C) three or more surfaces 500 00
 - (D) additional fee for light cure 50 00
- (iii) glass ionomer, silicate or solico phosphate filling, per tooth 100 00
- (iv) glass ionomer/composite sandwich filling, per tooth 200 00
- (v) pin or screw retention of above treatment, per pin or screw 50 00

- (e) Endodontic treatment—
 - (i) root canal treatment with radio opaque filling material:
 - (A) per incisor or canine tooth 190 00
 - (B) per upper premolar tooth 250 00
 - (C) per lower premolar tooth 200 00
 - (D) per molar tooth 350 00
 - (E) each additional canal 62 00
 - (ii) vital pulpotomy and dressing 150 00
 - (iii) apicetomy of permanent teeth—
 - (A) per incisor or canine tooth 250 00
 - (B) per premolar tooth 350 00
 - (C) per buccal tooth of upper molar, per tooth 400 00

- (f) Porcelain veneers facing or refacing of a permanent anterior tooth to the first premolar and including acid etch retention, per tooth 600 00

- (g) Inlays and crowns—

	(i)	in alloys containing 60 per cent or fine gold:		
		(A)	surface cavity inlay	400 00
		(B)	two surface cavity inlay	500 00
		(C)	three or more surfaces cavity inlay	600 00
	(ii)	cast three-quarter crown		800 00
	(iii)	cast full crown		700 00
	(iv)	in other alloys:		
		(A)	full crown cast in precious metal alloy	800 00
		(B)	full crown in non-precious metal alloy	500 00
	(v)	porcelain jacket crown		800 00
	(vi)	bonded crowns:		
bonded porcelain		(A)	full crown cast in alloy of fine gold or previous metal with thermally bonded porcelain	1,500 00
		(B)	full crown cast in non-precious metal alloy with thermally bonded porcelain	1,200 00
		(C)	porcelain jacket crown bonded to wrought platinum coping	1,000 00
		(D)	jacket crown in synthetic resin	300 00
		(E)	core and post both cast in previous metal alloy	500 00
		(F)	core and post prefabricated in non-precious metal alloy	200 00
		(G)	pin or screw retention for a core fabricated in mouth	100 00
		(H)	provision of a facing with silicate, silicatephosphate glass ionomer, synthetic resin or composite resin	70 00
		(I)	temporary crown provided prior to preparation of a permanent crown as an immediately necessary palliative	100 00
		(J)	removal of a post fractured at or below a root face necessitating the modification of the existing canal form	100 00 70 00
		(K)	crown or inlay repair	
		(L)	refixing or recementing on inlay or crown	70 00

	(M)	laboratory fees	500	00
(h)	Provision of bridges—			
	(i)	per pontic:		
	(A)	acidetch retained bridge	800	00
	(B)	cast in alloy containing 60 per cent or more fine gold	1,500	00
	(C)	other precious metal	1,200	00
	(D)	non-precious metal	1,100	00
	(E)	porcelain	1,000	00
	(F)	bonded porcelain	1,200	00
	(G)	porcelain bonded to an alloy	1,500	00
	(ii)	retainers for other than acidetch retained bridges:		
	(A)	cast in alloy containing 60 per cent or more fine gold	1,300	00
	(B)	in other alloys	1,500	00
	(C)	porcelain full crown, per retainer	1,650	00
	(D)	full bonded crown cast in an alloy of fine gold or precious metal themally bonded procelain	2,500	00
	(iii)	additional items on retainers, per abutment tooth:		
	(A)	core and post both cast in precious metal	500	00
	(B)	core and post both cast in non-precious metal	250	00
	(C)	pin or screw retention for a core fabricated in mouth	100	00
	(iv)	temporary bridge (maryland)	200	00
	(v)	recedementing or refixing bridge	200	00
	(vi)	laboratory fees	500	00
(i)	Provision of dentures—			
	(i)	preprothetic treatment including synthetic resin addition to occlusal surface of existing dentures to restore vertical dimensions tissue conditioning with auto-polymerising tissue conditioner		
			200	00

		(ii)	provision of denture in sythetic resin including all necessary backing and tagging:		
		(A)	full upper and full lower dentures	2,000	00
		(B)	full upper or full lower only	1,000	00
		(C)	partial dentures bearing up to three teeth	800	00
		(D)	partial dentures bearing four to eight teeth	1,100	00
		(E)	partial denture bearing more than eight teeth	1,500	00
		(iii)	additional fee for stainless steel lingual bar or palatal bar, per unit	300	00
		(iv)	provision of metal based dentures which may not be provided until such period after extraction (normally not less than three months) as the dentist thinks fit:		
per denture	3,500	(A)	full upper or full lower denture in chrome combalt or stainless steel,		
		(B)	plate design partial denture bearing up to three teeth	3,600	00
	3,700	(C)	plate design partial denture bearing between four to eight teeth		00
	3,800	(D)	plate design partial denture bearing more than eight teeth		00
		(v)	skeleton design partial denture with single connexion bearing:		
		(A)	up to three teeth	3,700	00
		(B)	four to eight teeth	3,800	00
		(C)	more than eight teeth	3,900	00
		(vii)	additional fee for provision of soft liners	500	00
impressions	200	(viii)	additional fee for use of laboratory constructed special trays for taking		00
		(ix)	impression fees	50	00
		(x)	denture repair	50	00
		(xi)	replacement of one tooth	65	00

	(xii)	relining or renewal of soft-liner	500	00
	(xiii)	rebasing	600	00
	(xiv)	addition of a clasp (stainless steel)	170	00
	(xv)	addition of a tooth	210	00
(j)		Obturators, splints and other non-ortontic applications—		
	(i)	obturators	500	00
	(ii)	repair to obturators	100	00
	(iii)	provision of emergency splinting for luxated or mobile teeth	150	00
	(iv)	provision of acid etch retained composite splint	200	00
	(v)	provision of laboratory fabricated heat cured acrylic splint designed to be retained normally for more than six weeks	300	00
	(vi)	provision of heat cured acrylic acclusal appliance for diagnostic and herapentic purpose	400	00
	(vii)	laboratory fees	500	00
(k)		Orthodontic treatment—		
	(i)	intra oral appliances:		
	(A)	removable spring type appliance	1,000	00
	(B)	removable appliance with screws	1,500	00
	(C)	retainer	500	00
	(D)	simple fixed appliance	1,500	00
	(E)	fixed multiband or multibracket appliance	2,000	00
	(F)	functional appliance	1,300	00
	(G)	bite plane appliance	600	00
	(H)	additional fee for extra oral traction or anchorage reinforcement		
350			00	
	(ii)	repairs to orthodontic appliances:		
	(A)	repairing cracks or fracture in the acrylic of a removable appliance		
150			00	

(B) refixing a metal component or providing and fixing a replacement metal component on a removable appliance 200 00

(C) repairing a functional appliance 250 00

(D) repairing a fixed appliance involving replacing two or more blanketsm, band arcluwires or auxilliaries 350 00

(iii) replacement of appliances lost or damaged beyond repair:

(A) space maintainer or retention appliance 190 00

(B) removable spring or screw type appliance 190 00

(C) simple fixed type appliance 700 00

(D) fixed multiband or multibracket appliance 1,000 00

(l) Exodontics—

(i) simple extraction, per tooth 50 00

(ii) surgical extraction 190 00

(iii) removal of buried roots, per quadrant 300 00

(iv) removal of unerupted or impacted tooth 400 00

(v) clearance at least five teeth removal per jaw 500 00

(vi) local treatment of post extraction 20 00

(vii) haemorrhage 20 00

(viii) treatment of septic socket 20 00

(m) Oral infection treatment—

(i) intra oral incision and drainage of pyogenic abscess 500 00

(ii) sequestrectomy-intra oral 400 00

(n) Para-orthodontic surgical procedure—

(i) surgical exposure of unerupted tooth 500 00

(ii) surgical re-implantation of tooth plus 500 00

(iii) laboratory fees and splinting 500 00

(iv) surgical transplantation plus laboratory fees and splinting 900 00

- (o) Theatre charges—
 - (i) dental theatre fees—first fifteen minutes, each 200 00
 - (ii) fifteen minutes thereafter or part thereof (Actual theatre time must be shown on chart form) 50 00
- (p) Periodontal treatment (by dental therapist), simple scaling and polishing 25 00
- (q) Conservation treatment (by dental therapist)—
 - (i) one surface filling 25 00
 - (ii) two surfaces filling 40 00
 - (iii) three surfaces filling 50 00
- (r) Prosthesis, obturators and other appliances (by dental technologist)—
 - (i) dentures, these are limited to removable acrylic dentures as follows:
 - (A) partial denture, up to four teeth 200 00
 - (B) fees, per additional tooth 20 00
 - (C) full denture, upper or lower only 350 00
 - (D) full denture, upper and lower 700 00
 - (E) denture repair 50 00
 - (ii) orthodontics:
 - (A) removable appliance 260 00
 - (B) removable appliance with screws 310 00
 - (C) retainer 190 00
 - (iii) laboratory fees 300 00
 - (iv) impression fees 30 00

9. PHYSIOTHERAPY for both in-patients and out-patients per session—

- (a) one mode therapy:
 - (i) for first attendance 45 00

(ii) for subsequent attendance for same episode of illness or acute exacerbation
of chronic illness 25 00

(b) combination therapy:

(i) for first attendance 60 00

(ii) for subsequent attendance for the same episode of illness or acute
exacerbation of chronic illness 40 00

10. MISCELLANEOUS CHARGES—

(a) death report 100 00

(b) full examination for insurance purpose (all hospitals) 450 00

(c) medical report to insurance companies and private sectors (all hospitals) 350
00

(d) Ambulance hire charge per km 8 00

(e) embalming:

(i) for local 400 00

(ii) for international 1,000 00

(f) Postmortem 1,000 00

(g) washing of body 30 00

(h) vaccination for travelling 30 00

11. OUT-PATIENT DEPARTMENT II

(a) Diagnosis free

(b) Preventive care free

(c) Exodontics free

(d) Obstructors and splints free

(e) Children five years old and below free

PUBLIC HEALTH (MARKETING OF INFANT AND YOUNG CHILD FOODS) RULES

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G.N. 8/2004

PUBLIC HEALTH (MARKETING OF INFANT AND YOUNG CHILD FOODS) RULES

under s. 143

PART I

PRELIMINARY

1. Citation and commencement

These Rules may be cited as the Public Health (Marketing of Infant and Young Child Foods) Rules.

2. Application

The Rules shall be applicable in the whole country and shall affect all breast-milk substitutes and other designated products whether locally made or imported and the practices related thereto, including their quality, availability and information concerning their use.

3. Interpretation

In these Rules, unless the context otherwise requires—

“advertising” means to make any representation for the purpose of promoting directly or indirectly sell of a designated product and includes every form of advertising or information dissemination by—

- (a) written publications, television, radio, film, video or telephone;
- (b) display of signs, billboards, notices or goods;
- (c) exhibition of pictures or models;
- (d) e-mail and internet; or
- (e) any other means;

“Advisory Committee” means a Committee set up under rule 7;

“complimentary food” means any food suitable or presented as suitable addition to breast-milk, infant formula or follow-up formula;

“container” means any form of packaging of product for sale as a retail unit, including wrappers;

“designated product” includes—

- (a) infant formula including special formulas for premature babies and those with metabolic diseases;
- (b) any other food or milk marketed or otherwise presented as suitable for feeding infants for the first six (6) months of life;
- (c) feeding bottles, teats, pacifiers, cups with spouts and similar receptacles; and
- (d) such other products as the Minister may, from time to time, declare to be designated products for purposes of these Rules by notice in the Gazette;

“distributor” means a person engaged in the business, whether wholesale or retail, of marketing any designated product and includes any person engaged in the business of providing information, or public relations services in relation to any designated product;

“follow-up formula” means an animal or vegetable-based milk product intended for infants and young children older than six (6) months and industrially formulated in accordance with Malawi standards or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission;

“health care facility” means a public or private institution, non-governmental organization or private practitioner engaged directly or indirectly in the provision of health care or in health care education, day-care centres, nurseries or other infant-care facilities;

“health professional” includes a medical practitioner, nurse, clinical officer, midwife, dietician, nutritionist and environmental health officer;

“health worker” includes a person working, or in training to work in a health care facility, whether professional or non-professional including voluntary unpaid workers;

“infant” means a child from birth up to the age of twelve (12) months;

“infant formula” includes an animal or vegetable-based milk product; industrially formulated in accordance with Malawi standards, or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission, to satisfy some or all of the nutritional requirements of infants up to the age of six (6) months;

“Inspector” means a person appointed as an inspector under rule 15;

“label” includes a tag, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, attached or otherwise appearing on or displayed near a container of a designated product;

“manufacturer” means a person engaged in the business of producing a designated product whether directly, or through an agent, controlled by or under an agreement;

“marketing” means any method of introducing or selling a designated product, including promotion, distribution, advertising, distribution of samples, public relations and information services;

“pacifier” means an artificial teat for babies to suck, also referred to as a “dummy”;

“sample” means a single or small quantity of a designated product provided without cost;

“young child” means a person from the age of twelve (12) months up to the age of three years (36 months).

4. Objective

These Rules intend to ensure safe and adequate nutrition for infants and young children by—

(a) promoting, protecting and supporting exclusive breast-feeding for six (6) months and breast-feeding with adequate complementation with locally available foods up to about two (2) years or beyond; and

(b) regulating the marketing of designated products.

PART II

ADMINISTRATION

5. Implementation

(1) The Minister shall be responsible for the implementation of these Rules.

(2) The Minister shall, when necessary, call upon other ministries to ensure the proper implementation of these Rules.

6. Powers and functions of the Minister

For the purpose of implementing these Rules, the Minister shall have the following powers and functions—

(a) to call for consultations with Government agencies and other interested parties to ensure implementation and strict compliance with the provisions of these Rules;

(b) to ensure the enforcement of these Rules; and

(c) to exercise such other powers and functions as may be necessary for or incidental to the attainment of the purposes and objectives of these Rules.

7. Advisory Committee

(1) There shall be an Advisory Committee which shall be responsible for the promotion, protection and support of breast-feeding.

(2) The Advisory Committee shall consist of the following members—

- (a) the Minister of Health or his representative who shall be the ex officio chairman;
- (b) two representatives from the Ministry of Health and Population responsible for nutrition, food and hygiene;
- (c) two persons representing non-governmental organizations in the field of child welfare and development, infant nutrition or consumer protection;
- (d) a representative from Malawi Bureau of Standards;
- (e) the Secretary for Commerce and Industry or his designated representative;
- (f) the Secretary for Ministry of Justice or his designated representative; and
- (g) the Secretary for Gender and Community Services or his designated representative.

(3) No person shall be appointed a member of the Advisory Committee who has any direct or indirect financial interest in any designated product.

(4) The Minister shall appoint the members of the Advisory Committee within thirty (30) days after these Rules come into force.

(5) The members of the Advisory Committee other than the ex officio members, shall hold office for a term of three years and shall be eligible for re-appointment for one more term.

8. Vacation of member

(1) The office of a member of the Advisory Committee, other than an ex officio member shall be vacated—

- (a) upon the expiry of the period of his appointment;
- (b) upon his death;
- (c) upon notice in writing to the Minister of his intention to resign his office;
- (d) if a member acquires direct or indirect financial interest in any designated product;

or

(e) if he is absent, without valid reasons, from three consecutive meetings of the Advisory Committee of which he has had notice.

(2) A vacancy shall be filled in the same manner as the original appointment for the remaining unexpired term.

9. Invited persons

The Advisory Committee may invite any person to attend any deliberations of the Committee but such person shall not be entitled to vote on any matter at any meeting of the Advisory Committee.

10. Sub-committees of the Advisory Committee

The Advisory Committee may establish sub-committees to carry out any special or general functions determined by the Advisory Committee.

11. Administration of the Advisory Committee

(1) The Minister shall appoint, within his Ministry, a secretary to the Advisory Committee and such other officers as he deems necessary for the purposes of the implementation of these Rules.

(2) The Secretary shall—

- (a) convene meetings of the Advisory Committee at the direction of the Chairman;
- (b) maintain minutes of the meetings; and
- (c) perform such other duties as may be directed by the Advisory Committee.

12. Meetings of the Advisory Committee

(1) The Advisory Committee shall meet as often as it deems necessary, but not less than twice a year at such time and place as the Secretary shall indicate.

(2) Five (5) members of the Advisory Committee shall constitute a quorum for a meeting.

(3) At any meeting the decision for the Advisory Committee on any matter shall be that of the majority of the members present and voting at that meeting and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberate vote.

(4) The Advisory Committee may make such other administrative rules as may be required for its proper functioning.

(5) An extraordinary meeting of the Advisory Committee—

- (a) may be convened by the Chairman at any time; and
- (b) shall be convened by the Chairman within seven days after receipt by him of a request in writing signed by not less than three members of the Advisory Committee and specifying the purpose for which the meeting is to be convened.

13. Powers and functions of the Advisory Committee

The Advisory Committee shall have the following powers and functions—

- (a) to review reports of violation or other matters concerning these Rules;
- (b) to issue instructions to inspectors on what actions to be taken, or take such other actions, as the case may be, against any person found violating the provisions of these Rules;
- (c) to examine and approve materials submitted in accordance with rule 21 (4) and recommend appropriate actions to be taken in the case of a violation of Part V; and

(d) such other powers and functions, as are conferred on it by the provisions of these Rules.

PART III

REGISTRATION AND INSPECTION

14. Registration of designated products

(1)(a) Every manufacturer, importer, wholesaler or retailer of designated products shall apply annually to the Ministry for registration as a manufacturer, importer, wholesaler or retailer of designated products; and

(b) the application for registration shall be accompanied by non-refundable registration fees specified in the Schedule hereto.

(2) The Minister shall, by notice in the Gazette, specify the date prohibiting the importation, manufacturing or sale of any designated product that is not registered.

(3) A person applying for registration as a manufacturer, importer, wholesaler or retailer of a designated product shall furnish such information and samples as specified in the registration form.

(4) Once the registration has been approved, a Certificate of Registration shall be issued by the Ministry.

(5) No Certificate of Registration shall be granted unless the designated product is—

(a) in accordance with the Malawi Standards, or in the absence of such standards, in accordance with standards elaborated by the Codex Alimentarius Commission; and

(b) every label of designated product is in accordance with the requirements of Part VI of these Rules.

15. Inspectors

The Minister shall appoint such persons as he sees fit, who have the prescribed qualifications, to be inspectors for the purposes of these Rules within such limits as may be assigned to them respectively:

Provided that no person who has any direct or indirect financial interest in any designated product shall not be appointed as an inspector.

16. Powers of Inspectors

An Inspector may—

(a) inspect any premises where any designated product is imported, manufactured, sold, stocked, exhibited for sale, advertised or otherwise promoted;

(b) inspect all relevant records and documents related to designated products; and

(c) exercise such other relevant powers.

17. Procedure for inspection

(1) Inspectors shall inspect, as regularly as possible but in any case not less than four times a year, the premises which are used as a factory, warehouse, distribution or selling point of any breast-milk substitute or other designated product.

(2) After each inspection, the Inspector shall submit a report including any kind of violation of these Rules and recommendations to the Minister and seek instructions as to the action to be taken in respect of such violation.

PART IV

PROHIBITIONS

18. Sale, etc., of designated product

No person shall distribute for sale, sell, stock or exhibit for sale any designated product that—

- (a) is not in compliance with these Rules;
- (b) has reached its expiration date; or
- (c) is not in its original container.

19. Promotion prohibited

(1) No manufacturer or distributor shall promote any designated product.

(2) Prohibited promotional practices include—

- (a) advertising;
- (b) sales devices including but not limited to rebates, special sales, discount coupons, prizes and gifts;
- (c) the giving of one or more samples of a designated product to any person;
- (d) distribution of any information or educational material regarding infant or young child feeding, except in accordance with these Rules; and
- (e) direct or indirect contact between marketing personnel and members of the public in furtherance of or for the purposes of their business.

(3) For the purposes of this rule, “promote” means to employ any method of directly or indirectly encouraging a person to purchase or use a designated product.

20. Prohibition of donations, gifts, etc.

(1)(a) No manufacturer or distributor shall donate or sell at lower than eighty (80) per cent of retail price any quantity of a designated product to a health care facility:

Provided that such donations or low-price sales may be offered to orphanages or institutions devoted exclusively to caring for abandoned children; and

(b) when such donations or low-priced sales are made, they shall be in a quantity sufficient to feed the infants concerned for a period of at least six (6) months.

(2) No manufacturer or distributor shall donate to or distribute within a health care facility materials, other than those specified in subrule (1) of this rule.

(3)(a) No manufacturer or distributor of any designated product shall offer any gifts to a health worker, including but not limited to pens, calendars, posters note pads, growth charts or toys;

(b) a manufacturer or distributor of any designated product may make contribution to a health worker for the purpose of funding the health worker's attendance at meetings, seminars, conferences, continuing education courses, or giving fellowships, study grants or for similar purposes:

Provided that the manufacturer or distributor informs the Advisory Committee and the institution to which the health worker is affiliated of the contribution; and

(c) manufacturers or distributors shall not make direct contributions to individual health workers for such purposes.

(4)(a) No manufacturer or distributor shall fund research by a health worker, including clinical research on a designated product, unless such research conforms to a protocol that has been approved by the Advisory Committee;

(b) the disclosure should include the source of funding and the name of the recipient of the research grant; and

(c) any publication resulting from such research must include a statement disclosing the source of funding.

(5) No manufacturer or distributor shall provide payments to any personnel employed within a health care facility.

PART V

INFORMATION AND EDUCATION

21. Information and education about infant-feeding

(1) Information or educational materials, whether written, audio or visual, on the topic of infant and young child feeding shall—

(a) clearly and conspicuously explain each of the following points—

(i) the importance, benefits and superiority of breast-feeding;

(ii) how to prepare for and maintain breast-feeding including maternal nutrition;

- (iii) how and why early introduction of complementary foods interferes with breast-feeding;
 - (iv) how and why bottle-feeding interferes with breast-feeding;
 - (v) why it is difficult to return to breast-feeding after a period of bottle-feeding even if limited to a few feeds; and
 - (vi) the adverse effects of the use of pacifiers on breast-feeding;
- (b) contain only factual and current information and shall not use any pictures or text that discourage breast-feeding;
 - (c) be written in English and Chichewa; and
 - (d) not make reference to the brand name of any designated product nor contain the name or logo of any manufacturer or distributor of the designated product, except by way of designating a copyright:

Provided that this paragraph shall not be applicable to information about designated products intended for health professionals.

(2) If the material referred to in subrule (1) includes the topic of feeding infants with infant formula or any other food or drink by feeding bottle, it must also include the following points—

- (a) instructions for the proper preparation and use of the product including cleaning and sterilization of feeding utensils;
- (b) the approximate financial cost of feeding an infant with the product for a period of six (6) months;
- (c) the health hazards of bottle-feeding;
- (d) the health hazards of improper preparation of the product; and
- (e) how to feed infants with a cup.

(3) If the material referred to in subrule (1) includes the topic of feeding infants with complementary foods it must also explain the following points—

- (a) the health hazards of introducing complementary foods before six (6) months or late; and
- (b) that complementary foods can easily be prepared at home using local ingredients.

(4) Any person who produces or distributes any material referred to in this Part shall submit copies to the Advisory Committee.

PART VI

LABELS ON DESIGNATED PRODUCTS

22. Labels of designated products

The label of every designated product shall—

- (a) not contain any text that may tend to discourage breast-feeding;
- (b) contain the following notice, on the front, in bold and conspicuous characters, not less than 50 per cent the size of the largest words on the label and not more than 2 mm in height: “BREAST-MILK IS THE BEST FOOD FOR YOUR BABY”;
- (c) contain instructions for appropriate preparation in words and in easily understood graphics;
- (d) indicate the age for which the product is recommended;
- (e) explain clearly the health hazards of introducing the product prior to the recommended age;
- (f) be written in Chichewa and English;
- (g) indicate the ingredients, specifying the origin of any milk product, the composition and analysis of the product, the required storage conditions, the batch number, the date of manufacture and date before which the product is to be consumed, taking into account climatic and storage conditions;
- (h) contain the name and address of the manufacturer and the distributor; and
- (i) be in distinct characters and contrasting colour to the back ground.

(2) The label of every container of infant formula, in addition to the requirements specified in subrule (1) of this rule shall—

(a) not use the terms “humanized” or such similar terms nor contain any comparison with breast-milk;

(b) contain the following notice in bold characters no less than 1.5 mm in height:

“FOLLOW THE PREPARATION INSTRUCTIONS CAREFULLY OR YOUR BABY MAY BECOME ILL OR MALNOURISHED”;

(c) not show any photographs of an infant or child, drawings or other graphics representation other than for illustrating method of preparation and, in no case, shall depict a feeding bottle; and

(d) in the case of infant formula, indicate the number of containers required to feed the infant during the first six months of life.

(3) The label of every container of the following products in powder or liquid form shall contain the following notices in characters no less than 2 mm in height—

(a) skimmed or condensed milk:

“THIS PRODUCT SHOULD NOT BE USED TO FEED AN INFANT OR A YOUNG CHILD”;

(b) standardized milk:

“THIS PRODUCT SHOULD NOT BE USED AS THE SOLE SOURCE OF NUTRITION FOR AN INFANT OR ANY YOUNG CHILD”

(c) whole cow’s milk:

“THIS PRODUCT SHOULD NOT BE USED AS THE SOLE SOURCE OF NUTRITION FOR AN INFANT OR A YOUNG CHILD, UNLESS ADVISED BY A MEDICAL PRACTITIONER OR A NUTRITIONIST”.

(4) The label of containers of every bottle and teat shall, in addition to the requirements specified in subrule (1) in paragraphs (a), (d), (e), (f), (h) and (i) of this rule contain—

(a) “YOUR BABY MAY BECOME ILL BY USING A FEEDING BOTTLE, FEEDING WITH A CUP IS MUCH SAFER, FOLLOW THE PREPARATION INSTRUCTIONS CAREFULLY”; and

(b) instructions for proper cleaning and sterilization in words and in easily understood graphics.

(5) The label of every pacifier shall contain the following notice in characters no less than 2 mm in height—

“WARNING: USE OF A PACIFIER CAN INTERFERE WITH BREAST-FEEDING”.

PART VII

HEALTH WORKERS

23. Promotion of breast-feeding

(1) Heads of health facilities, national and local health authorities shall take measures—

(a) to promote, protect and support breast-feeding;

(b) to promote these Rules; and

(c) to give information and advice to health workers regarding their responsibilities and particularly ensure that health workers are familiar with all of the information specified in Part V.

(2) Health workers shall promote, protect and support breast-feeding and know the provisions of these Rules, particularly the information specified in Part V.

(3) Health workers shall work to eliminate practices that directly or indirectly retard the initiation and continuation of breast-feeding, such as prelacteal feeds.

24. Prohibitions

Health workers shall not—

(a) accept any gift or benefit, financial or otherwise of whatever value from a manufacturer or distributor;

(b) accept nor give samples of designated products from or to any person, except in accordance with the provision of these Rules; and

(c) promote, in any way, any designated product.

25. Written report

A health worker shall submit a written report to the head of a health facility, regarding any offer they receive of a sample or gift or other benefit from a manufacturer or distributor or any contravention of the provisions of these Rules and the head of the facility shall in turn report the matter to the Advisory Committee.

PART VIII

PENALTIES, PROCEDURES

26. Penalties

(1) Any person who contravenes the provisions of these Rules commits an offence and shall, upon conviction, be liable to a fine of K2,000 and to imprisonment for six months.

(2) Any person convicted of an offence under subrule (1) and who is again convicted of an offence under that subrule shall be liable to a fine of not less than K2,000 and to imprisonment for six (6) months.

27. Suspension or cancellation of Certificate of Registration

(1) The Minister shall have the power to make cease and desist orders upon receiving a report from an Inspector or the Advisory Committee of a violation of the provisions of these Rules.

(2) Where a person contravenes any of the provisions of these Rules the Minister may, upon written recommendation of the Advisory Committee and after giving the person an opportunity to be heard, suspend or cancel any Certificate of Registration issued to that person pursuant to these Rules.

28. Appeal

Any person aggrieved by the decision of the Minister may apply to the High Court for judicial review within thirty-five days after the decision is made.

29. Strict liability for officers directors, etc.

Where the person, guilty of an offence under these Rules is a corporation, company, partnership, firm, etc., or other association, every director, officer, partner and employee of the corporation, company, partnership, firm or other association, shall also be liable for that offence unless he proves that the offence was committed without his knowledge or consent.

30. Institution of prosecution

The Minister may refer, a matter to the Director of Public Prosecutions for prosecution where the contravention of these Rules constitutes a criminal offence.

31. Public enforcement

(1) Any person has the right to lodge a formal complaint to the Advisory Committee which may recommend that proceedings be instituted against any person relating to a violation of any provision that constitutes an offence under these Rules.

(2) Any person has the right to commence an action for damages in a court of law against any manufacturer or distributor or other person for any harm suffered as a result of violation of any provision that constitutes an offence under these Rules.

SCHEDULE

REGISTRATION FEES

Category	Amount to be paid annually
	K t
1. Manufacturers, importers or wholesalers	5,000 00
2. Retailers	1,000 00

[Chap3402]CHAPTER 34:02

MENTAL TREATMENT

ARRANGEMENT OF SECTIONS

SECTION

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3. Reception into a mental hospital

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14 of 1948

41 of 1953

30 of 1969

G.N.186/1954(F)

101/1956(F)

224/1963

219/1964(N)

166/1967

An Act to make provision for the care of persons who are suffering from mental disorder or mental defect, for the custody of their persons and the management of their estates, and for the management and control of mental hospitals in Malawi

[29TH JULY 1948]

[Ch3402s1]1. Short title

This Act may be cited as the Mental Treatment Act.

[Ch3402s2]2. Interpretation

In this Act unless the context otherwise requires—

“approved institution” means an institution declared by the Minister to be an approved institution under section 29;

“Court” means the High Court;

“magistrate” means a Resident Magistrate or a magistrate of the first or second grade;

“manager” means any person appointed under section 33;

“medical practitioner” means any medical practitioner who is registered or licensed as such under any law in force in Malawi governing the registration of medical practitioners;

“mental hospital” means any hospital or other place which has been authorized, or may hereafter be authorized by the Minister as a place for the reception, detention and treatment of two or more persons who are suffering from mental disorder or mental defect;

“person in charge” means any person appointed or approved by the Minister to be in charge of a mental hospital;

“person of unsound mind” means any person who has been so found under Part V or Part VII;

“reception order” means an order made under Part V or Part VII;

“visiting committee” means a committee of visitors to a mental hospital appointed under section 4.

PART I

RECEPTION OF PERSONS IN A MENTAL HOSPITAL

[Ch3402s3]3 Reception into a mental hospital

30 of 1969 Subject to the provisions of the Criminal Procedure and Evidence Code relating to persons found unfit to plead or not guilty by reason of insanity, no person shall be received, or detained for treatment in a mental hospital except under and in accordance with this Act. Cap. 8:01

PART II

VISITING COMMITTEE

[Ch3402s4]4 Appointment of visiting committees

The Minister shall appoint for every mental hospital a visiting committee which shall consist of not less than two male visitors and one female visitor, one of whom at least shall be a medical practitioner.

[Ch3402s5]5. Duty of visitors

(1) Two or more of the visitors, one of whom shall be a medical practitioner, shall, once at least in every month, inspect every part of the mental hospital of which they are visitors, and see and examine, as far as circumstances will permit, every patient therein, and the authority for the admission of every patient admitted since the last visitation of the visitors, and shall record in a minute book to be kept for that purpose any resolutions or remarks which they may deem proper to make in regard to the management and condition of the mental hospital and the patients therein.

(2) Any of the members of the visiting committee shall be at liberty to call at and inspect the mental hospital or any portion of it, at any hour of the day or night they or any of them shall deem proper, and shall see and examine any patient, if they shall think fit.

(3) A copy of all entries made in the minute book shall be made and forwarded monthly to the Minister.

PART III

VOLUNTARY PATIENTS

[Ch3402s6]6 Power to receive voluntary patients

(1) Any person who has attained the age of sixteen years or more who is desirous of voluntarily submitting himself to treatment for mental disorder or mental defect and who makes a written application in the form prescribed for the purpose, accompanied by a medical recommendation, to the person in charge may, without a reception order, be received as a voluntary patient into a mental hospital.

(2) Any person under the age of sixteen years whose parent or guardian is desirous of submitting him to treatment for mental disorder or mental defect may, if the parent or guardian makes to the person in charge of a mental hospital an application in the form prescribed for the purpose, accompanied by a medical recommendation, be received as a voluntary patient under this section, but such a person shall not be so received on his own application.

(3) The medical recommendation referred to in the preceding subsections shall—

(a) be signed by a medical practitioner, who shall be either the usual medical attendant of the patient to whom the application relates, or a medical practitioner who has been approved for the purpose of making such a recommendation by the Minister; and

(b) state the qualifications of the medical practitioner, the date or dates on which he examined the said patient and that the said patient is likely to be benefited by being received as a voluntary patient for treatment under this section.

(4) A medical recommendation shall cease to have effect for the purposes of this section upon the expiration of fourteen days from the last date on which the patient to whom the recommendation relates was examined by the medical practitioner for the purpose of making the recommendation.

(5) Any person received as a voluntary patient under this section may leave the mental hospital upon giving to the person in charge seventy-two hours' notice in writing of his intention to do so, or, if he is a person under the age of sixteen, upon such notice being given by his parent or guardian.

(6) For the purposes of this Part, the expression "guardian" in relation to a person under the age of sixteen includes any person having the charge of the person under sixteen.

[Ch3402s7]7. Notification of reception or death or departure of voluntary patient to visiting committee

Where a person is received into a mental hospital as a voluntary patient under section 6, or where a person so received dies in or departs from a mental hospital, information of his reception, death, or departure shall be given by the person in charge to the visiting committee at their next meeting.

[Ch3402s8]8. Voluntary patient not to be detained for more than forty days

(1) If any person received into a mental hospital as a voluntary patient under section 6 becomes at any time incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be retained as a voluntary patient for a longer period than forty days thereafter, and shall be discharged on or before the expiration of that period, unless, in the meantime, he has again become capable of so expressing himself, or an application has been made under section 9 or a reception order has been made under Part V or Part VII.

(2) If a patient who is under the age of sixteen and who has been received as aforesaid ceases to have any parent or guardian, or if his parents or guardians are incapable of performing, or refuse or persistently neglect, to perform their duty as such, the person in charge shall inform the

visiting committee at its next meeting of the circumstances of the case and the condition of the voluntary patient, and the visiting committee shall forthwith consider the report and give such directions for the retention or discharge of such patient as they may think fit.

PART IV

TEMPORARY TREATMENT WITHOUT RECEPTION ORDER

[Ch3402s9]9. Provision for temporary treatment without certificate of certain persons

(1) Subject to this section, a person who is suffering from mental disorder or mental defect and is likely to benefit by temporary treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive such treatment may, on a written application duly made in accordance with this section but without a reception order, be received into a mental hospital as a temporary patient for the purpose of treatment.

(2) An application under this section shall be made in the form prescribed, to the person in charge of the mental hospital and shall, if possible, be made by the husband or wife, or by a relative of the person to whom it relates; and, if the application is not so made, it shall contain a statement of the reason why it is not so made, of the connexion of the applicant with the person to whom it relates and of the circumstances in which he makes the application.

(3) The application shall be accompanied by a recommendation in the form prescribed signed by a medical practitioner who shall be either the usual medical attendant of the person to whom the application relates, or a medical practitioner who has been approved by the Minister for the purpose of making such a recommendation.

(4) The medical practitioner by whom a recommendation under this section is to be made shall, before signing the recommendation, examine the person to whom the recommendation relates and shall specify in the recommendation the date or dates on which he so examined the said person and the grounds on which he bases his recommendation.

(5) A recommendation shall cease to have effect on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.

(6) A person received as a temporary patient into a mental hospital may be detained therein for a period not exceeding twelve months but shall not be detained as such for any longer period.

(7) If a person who has been received as a temporary patient becomes capable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be detained for more than forty days thereafter unless, in the meantime, he has again become incapable of so expressing himself, or an application has been duly made by him under section 6, or a reception order has been made under Part V or Part VII.

(8) Where a person has been received into a mental hospital as a temporary patient under subsection (7), or if a patient so received dies in or departs from the mental hospital, information of the reception, death, or departure shall be given by the person in charge to the visiting committee at their next meeting.

[Ch3402s10]10. Minister's powers of discharge

When any person has been received into a mental hospital under Part III or this Part the Minister may at any time order that any such person shall be discharged, or otherwise dealt with under this Act.

PART V

RECEPTION ORDERS

[Ch3402s11]11. Application for reception order

(1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the magistrate within the local limits of whose jurisdiction the person alleged to be of unsound mind ordinarily resides, shall be in the form prescribed and shall be supported by a certificate from a medical practitioner.

(2) If the medical certificate is signed by any relative, partner or assistant of the person alleged to be of unsound mind or of the petitioner, the petition shall state the fact, and, where the person signing is a relative the exact manner in which he is related to the person of unsound mind or the petitioner.

(3) The petition shall also state whether any previous application has been presented for a judicial inquiry into the mental capacity of the person alleged to be of unsound mind in any court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

[Ch3402s12]12. Application by whom to be presented

(1) The petition shall be presented, if possible, by—

- (a) the husband or wife of the person alleged to be of unsound mind; or
- (b) if there is no such husband or wife, or such husband or wife is absent or incapacitated, or neglects or is unwilling to act, by any other relative of his.

(2) If the petition is not so presented, it shall contain a statement of the reasons why it is not so presented, and of the connexion of the petitioner with the person alleged to be of unsound mind, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority and has, within fourteen days before the presentation of the petition, personally seen the person alleged to be of unsound mind.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

[Ch3402s13]13. Procedure upon petition for reception order

(1) Upon the presentation of the petition the magistrate shall consider the allegations in the petition and the evidence of unsound mind appearing from the medical certificate.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the person alleged to be of unsound mind unless, for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that the person is of unsound mind and that a reception order may properly be made forthwith, he may adjudge him to be of unsound mind and may make a reception order in the form prescribed for the admission of such person into a mental hospital accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the person alleged to be of unsound mind as he may think fit.

[Ch3402s14]14. Detention of person alleged to be of unsound mind pending inquiry

Upon the presentation of the petition, the magistrate may make such orders as he may think fit for the suitable custody of the person alleged to be of unsound mind pending the conclusion of the inquiry.

[Ch3402s15]15. Consideration of petition

The petition shall be considered in private in the presence of the petitioner, the person alleged to be of unsound mind (unless the magistrate in his discretion otherwise directs), any person appointed by the person alleged to be of unsound mind to represent him and such other persons as the magistrate may think fit.

[Ch3402s16]16. Order

(1) At the time appointed for the consideration of the petition, the magistrate may either adjudge the person to be of unsound mind and make a reception order in the form prescribed for the admission of such person into a mental hospital, or may dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the person alleged to be of unsound mind if found to be of unsound mind, or otherwise as he may think fit.

(2) If the petition is dismissed, the magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

[Ch3402s17]17. Powers and duties of police in respect of wandering or dangerous persons of unsound mind and such persons cruelly treated or not under proper care and control

(1) Every officer in charge of a police station, administrative officer or Chief may take into his safe-keeping any person whom he has reason to believe to be suffering from mental disorder or mental defect and who is found, within the limits of his jurisdiction, wandering at large and shall take into safekeeping any person within the limits of his jurisdiction whom he has reason to believe to be dangerous to himself or to others, or who acts in a manner offensive to public decency so as to

be a public nuisance, by reason of such mental disorder or mental defect. Any person so taken into safe-keeping shall be taken forthwith before the nearest magistrate.

(2) Every officer in charge of a police station, administrative officer or Chief who has reason to believe that any person within the limits of his jurisdiction is suffering from mental disorder or mental defect and is not under care and control, or is being cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the nearest magistrate who may order such person to be brought before him.

[Ch3402s18]18. Duty of custodian of person of unsound mind

Where any person, having the care and control of a person apparently of unsound mind, is, for any reason, no longer able properly to control such person or to prevent such person from doing injury to himself or others or from acting in a manner offensive to public decency so as to be a public nuisance, it shall be the duty of such first-mentioned person to make due application to a magistrate under section 11 or to report the circumstances of the case to a police officer or an administrative officer or to a Chief in order that proceedings under this Act may be taken in regard to such person.

[Ch3402s19]19. Power of magistrate

Where a magistrate is satisfied by information on oath or affirmation that any person suspected of being of unsound mind is at large or is dangerous to himself or others or is acting in a manner offensive to public decency so as to be a public nuisance or is not under proper care and control or is cruelly treated or neglected by any relative or other person having the care or charge of him, such magistrate may, by order under his hand, require a person specified in such order to bring before him the person suspected of being of unsound mind.

[Ch3402s20]20. Reception order in case of wandering and dangerous persons

Where any person is brought before a magistrate under section 17 or section 19, the magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause the person concerned to be examined by a medical practitioner and may make such other inquiries as he may think fit; and, if the magistrate is satisfied by examination and inquiries and by a medical certificate issued under section 22, that such person is a person of unsound mind and a proper person to be placed under care and treatment, he may adjudge such person to be of unsound mind or may make a reception order in the form prescribed for the admission of such person into a mental hospital:

Provided that, instead of making a reception order, the magistrate may, if he thinks fit, make such person over to the care of any relative or friend upon such relative or friend entering into a bond, with or without sureties, for such sum of money as the magistrate may think fit, that such person shall be properly taken care of and prevented from doing injury to himself or others or from becoming a public nuisance.

[Ch3402s21]21. Detention of person alleged to be of unsound mind pending report by medical practitioner

Where any person is brought before a magistrate under section 17 or section 19, the magistrate may, by order in writing, authorize the detention of such person in a mental hospital, or in any place which the magistrate deems suitable for the purpose, for such time not exceeding thirty days as may, in his opinion, be necessary to enable a medical practitioner to determine whether or not such person is a person in respect of whom a medical certificate of unsound mind may properly be given:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

[Ch3402s22]22. Issue of medical certificates

(1) Every medical certificate given under this Part shall be signed by a medical practitioner and shall be in the form prescribed.

(2) Every such medical certificate shall state the facts upon which it is founded, distinguishing facts observed by the medical practitioner giving such certificate from the facts communicated to him by others, and no reception order shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate purporting to be given under, and in accordance with, this Part shall, for the purpose of this Act, be received in evidence without further proof and be prima facie evidence of the facts and the opinion therein appearing.

[Ch3402s23]23. Detention of person alleged to be of unsound mind pending removal to mental hospital

When any reception order has been made under this Part, the magistrate may, for reasons to be recorded in writing, direct that the person, pending his removal to a mental hospital, be detained in suitable custody in such place and for such time as the magistrate may think fit:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

[Ch3402s24]24. Power to summon custodian of person suffering from mental disorder

(1) In any case arising under section 17 (2) the magistrate may summon before him any person who has, or ought to have, the charge of the person who is suffering from mental disorder or mental defect; and if such person is legally bound to maintain the person who is so suffering from mental disorder or mental defect, the magistrate may make an order requiring such other person to cause the person who is suffering from mental disorder or mental defect to be properly cared for and treated.

(2) If such person fails to comply with such order, he shall be guilty of an offence against this Act.

[Ch3402s25]25. Time and manner of medical examination of person

A reception order shall not be made unless it appears from the medical certificate upon which such order is to be founded that the medical practitioner who signed the certificate personally examined the person to whom the certificate relates not more than seven clear days before the date of the order.

[Ch3402s26]26. Authority for reception

(1) A reception order, accompanied by a copy of the medical certificate upon which it is founded, shall be sufficient authority for any person authorized in the order to take the person of unsound mind and convey him to a mental hospital or to any other place of custody which is mentioned in the order, and for the person of unsound mind to be received and detained therein. Any such order may be acted upon without further evidence of the signature or of the jurisdiction of the person making the order.

(2) The reception order and copy of the medical certificate shall accompany the person of unsound mind to whatever mental hospital or other place of safe-keeping he may be sent, and no person shall be received into any mental hospital or other place of safe-keeping under a reception order unless so accompanied.

(3) No person shall be received into a mental hospital under a reception order which accompanies him if such reception order is dated more than forty days before the date upon which such person arrives at the mental hospital.

[Ch3402s27]27. Power to order detention outside jurisdiction

A magistrate may make a reception order for the detention, care and treatment of a person, adjudged to be of unsound mind, in a mental hospital which is situated in a place outside the ordinary limits of such magistrate's jurisdiction and a reception order shall authorize the detention, care and treatment of the patient at such mental hospital within Malawi at which it appears to the magistrate that sufficient accommodation is available, and where suitable treatment can be given, having regard to the circumstances of the particular case.

PART VI

DISCHARGE OF PATIENTS FROM, AND TRANSFERS TO, MENTAL HOSPITALS

[Ch3402s28]28. Order of discharge from mental hospital

The Minister or any three of the visitors of any mental hospital, of whom one at least shall be a medical practitioner, may, by order in writing, direct the discharge of any person detained in such mental hospital and such person shall thereupon be discharged:

Provided that no order shall be made under this section in the case of a patient detained under the Criminal Procedure and Evidence Code. Cap. 8:01

[Ch3402s29]29. Order of discharge to an approved institution

(1) Whenever it appears to the Minister that any person detained in a mental hospital under this Act is, by reason of his mental and physical condition and conduct, fit to be discharged

conditionally into the care of an approved institution, the Minister may, with the consent of the person in charge of such approved institution, and with the approval of any three of the visitors of the mental hospital concerned, of whom one at least shall be a medical practitioner, order that such person be discharged into the care of such person in charge upon such terms and conditions as the Minister may in his discretion direct.

(2) Where any person discharged into the care of a person in charge of an approved institution under subsection (1), leaves such approved institution in breach of any term or condition made by the Minister, a police officer may apprehend such person without an order from a magistrate and without a warrant and may take such person before a magistrate.

(3) Where any such person is brought before a magistrate because he has left an approved institution in breach of any such term or condition, the magistrate may, after consulting the Minister or some person on his behalf, direct that such person be returned in custody either to such approved institution or to a mental hospital and may make such other order as he may think fit.

(4) The Minister may by notice published in the Gazette declare any institution to be an approved institution for the purposes of this section.

[Ch3402s30]30. Appointment and report of medical inspector

The Minister may appoint a medical inspector to visit any approved institution and to report upon the condition of any person who has been discharged into the care of the person in charge of such institution under section 29. Upon receiving the report of any such inspector, the Minister may, should he think fit—

- (a) direct the discharge of any such person; or
- (b) direct the return of such person to a mental hospital there to be detained as if he had not been conditionally discharged; or
- (c) vary the terms and conditions under which such person has been conditionally discharged.

[Ch3402s31]31. Order of discharge and undertaking of relative for due care of the person of unsound mind

Where any relative or friend of a person detained in any mental hospital under a reception order made under this Act desires that such person shall be delivered over to his care and custody, he may for that purpose make an application to the person in charge, and, if the Minister or any three of the visitors, of whom one at least shall be a medical practitioner, consider that such application should be granted, he or they may order that the person be discharged into the care of such relative or friend upon such terms and conditions, as to entering into a bond or otherwise, as the Minister or such visitors may in his or their discretion direct.

[Ch3402s32]32. Transfer of patients

Any person detained in a mental hospital under this Act may be transferred by order of the Minister from one mental hospital to another. When a person is transferred under this section the

person responsible for conveying him shall produce to the person in charge of the mental hospital to which transfer is made a certified copy of the order of the Minister.

PART VII

JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS OF UNSOUND MIND OR IN A MENTAL HOSPITAL

[Ch3402s33]33. Safe-keeping and management of estates of persons in mental hospitals

(1) The Court may make orders—

(a) for the safe-keeping of any person found by inquiry by the Court to be of unsound mind, and for this purpose and without prejudice to any inherent powers of the Court, may exercise all or any of the powers conferred upon a magistrate by Part V;

(b) for the management of the estate of any such person; and

(c) for the guardianship of his person by any near relative or by any other suitable person; and may also make orders under paragraphs (b) and (c) in the case of any person in respect of whom a reception order has been made under Part V or in respect of any person who is undergoing treatment in a mental hospital.

(2) Where there is no near relative or other suitable person, the Administrator General of Malawi may be appointed manager of the estate and guardian of any such person.

(3) Where upon inquiry it is specially found that the person to whom the inquiry relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency so as to be a public nuisance, the Court may make such orders as it thinks fit for the management of the estate of such person including proper provision for the maintenance of him, and of such members of his family as are dependent upon him for maintenance, but it shall not be necessary to make any order as to the custody of the person of unsound mind.

[Ch3402s34]34. Power of manager in respect of estate

(1) Where a manager of the estate of a person is appointed under this Part, the Court may direct by the order of appointment, or by any subsequent order, that such manager shall have such general or special powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Provided that no manager so appointed shall without the special permission of the Court—

(a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of which the estate may consist;

(b) lease any such property for a term exceeding five years; or

(c) invest any funds in any securities the interest on which is for the time being guaranteed by the Parliament of the United Kingdom or by the Government, or in any public debentures issued under the authority of and guaranteed by any Act.

(2) If the person appointed to be manager of the estate, or the person appointed to be guardian of a person under this Part, is unwilling to discharge the trust gratuitously, the Court may fix such allowance or allowances to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the Court may think fit.

[Ch3402s35]35. Power to make order concerning any matter connected with the person

The Court may, upon application made to it by petition concerning any matter whatsoever connected with a person of unsound mind or a person undergoing treatment in a mental hospital or with his estate, make such order, subject to this Part, respecting the application as in the circumstances of the case the Court may think fit.

[Ch3402s36]36. Power to apply property for maintenance of person of unsound mind without appointing manager in certain cases

(1) If it appears to the Court that, having regard to the situation and condition of life of a person of unsound mind or who is suffering from mental disorder or mental defect and of his family and the other circumstances of the case, it is expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager or notwithstanding such appointment, order that the property if money, or if any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

(2) If it appears to the Court that the unsoundness of mind, or the mental disorder or mental defect is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance the Court may in like manner as under subsection (1) direct his property or a sufficient part of it to be applied for the purpose aforesaid.

(3) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the person of unsound mind or of the person suffering from mental disorder or mental defect to the person so appointed.

[Ch3402s37]37. Powers of Court in regard to property of person where no manager is appointed

In cases where no manager is appointed the Court may if it appears to be just or for the benefit of the person of unsound mind or of the person suffering from mental disorder or mental defect, order that any property, whether movable or immovable, of such person and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied, or which has been applied to all or any of the following purposes—

- (a) the payment of the debts or engagements of such person;
- (b) the discharge of any incumbrance on his property;
- (c) the payment of any debt or expenditure incurred for the maintenance of such person or otherwise for his benefit;
- (d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Malawi if he shall be so removed, and all expenses incidental thereto;
- (e) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the Court.

[Ch3402s38]38. Power to order transfer of property of person of unsound mind residing out of Malawi

Where any movable or immovable property is standing in the name of or vested in, any person residing out of Malawi, the Court, upon being satisfied that such person has been declared to be of unsound mind, and that a manager has been appointed for his estate according to the law of the place where he is residing, may order some fit person to pay, deliver or transfer the property, or any part thereof, to the name of the person so appointed, as the Court may think fit.

[Ch3402s39]39. Execution of conveyances and powers by manager under order of Court

The manager, or such other person as the Court may appoint for the purpose, shall, in the name and on behalf of the person of unsound mind or of the person suffering from mental disorder or mental defect, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of such person's estate as the Court may order, and any conveyance or other instrument executed by the manager, or any other person appointed by the Court as aforesaid, with the sanction of the Court shall be as valid and effectual in all respects as if it had been executed by the person of unsound mind while he was of sound mind or, in the case of a person suffering from mental disorder or mental defect, before he was so suffering.

[Ch3402s40]40. Carrying on business of person of unsound mind

(1) Where a person of unsound mind has been engaged in business, the Court may, if it appears to be for the benefit of the person of unsound mind, order the manager to continue such business for such period and on such conditions as the Court may direct.

(2) The manager continuing a business under an order made by virtue of this section shall not be personally liable in respect of any debt or other contractual obligation incurred by him in the proper conduct of the business.

[Ch3402s41]41. Managers to furnish inventory and annual accounts

(1) Every person appointed by the Court to be manager of the estate of a person under this Part shall, within six months after the date of his appointment, deliver to the Court an inventory of the property belonging to the person of whose estate he has been appointed manager and of all such sums of money, goods and effects as he shall receive on account of the estate together with a statement of all debts due by or to the same, and every such manager shall furnish to the Court annually, within three months of the close of the year, an account of the property in his charge, showing the sums received and disbursed on account of the estate and the balance remaining on his hands.

(2) Where any relative of the person of unsound mind or of the person suffering from mental disorder or mental defect, or any public officer, by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager, and inquire summarily into the matter and make such order thereon as it thinks proper, or the Court, at its discretion, may refer any such petition to any Resident Magistrate or magistrate of the first or second grade having jurisdiction in the place wherein the property belonging to the person concerned is situate.

Removal of managers and guardians

(3) The Court may, for any cause which seems to it sufficient, remove any manager appointed by it under this Part, and may appoint any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(4) The Court may also for any sufficient cause, remove any guardian of a person so appointed by it, and may appoint any other fit person in his place.

[Ch3402s42]42. Termination of appointment of manager

(1) On the termination of the appointment of any manager for any reason whatsoever, such manager shall deliver his accounts of the property in his hands to the Court who made his appointment.

(2) It shall be the duty of the Registrar of the Court to pass and approve of all such accounts.

(3) Any manager who neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court shall be guilty of an offence against the Act.

[Ch3402s43]43. Proceedings to cease or to be set aside if Court finds that the unsoundness of mind has ceased

(1) Where any person has been found under this Act to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for the purpose of inquiring as to whether or not such person is still of unsound mind and incapable of managing himself or his affairs.

The inquiry shall, as far as may be, be conducted in the manner prescribed in this Act for any inquiry into the unsoundness of mind of a person alleged to be of unsound mind.

(2) Where it is found that the unsoundness of mind has ceased, or where the Court is satisfied, in the case of any person who is suffering from mental disorder or mental defect, that it is no longer necessary for his estate to be managed, the Court shall order all proceedings under this Part to cease, or to be set aside, on such terms and conditions as to the passing of accounts or otherwise as to the Court may seem fit.

[Ch3402s44]44. Examination of females

Women, alleged to be of unsound mind, who, according to the customs and manners of their community ought not to be compelled to appear in public, shall be exempt from personal appearance in Court under this Act, but may be examined by such persons and in such manner as the Court may direct.

[Ch3402s45]45. Court procedure

Wherever possible the Court or a magistrate when hearing applications under this Act where a person alleged to be of unsound mind is before the Court or magistrate, as the case may be, shall sit in camera.

PART VIII

SPECIAL PROVISIONS RELATING TO MAINTENANCE

[Ch3402s46]46. Application of property in the possession of a person of unsound mind found wandering

Any money in the possession of a person of unsound mind found wandering at large may be applied by the magistrate towards the payment of the cost of maintenance of such person or of any other expenses incurred on his behalf, and any movable property found on the person of unsound mind may be sold by the magistrate, and the proceeds thereof similarly applied.

[Ch3402s47]47. Application to civil court for order for the payment of cost of maintenance out of the estate of the person of unsound mind

(1) If a person detained in a mental hospital under a reception order made under this Act has an estate available for his maintenance, or if any person legally bound to maintain such person has the means to maintain him, the Court which, or the magistrate who, made the reception order may, after summary inquiry, make an order against such estate or such person, as the case may be, for payment of the costs of maintenance of such person so detained together with the costs of the inquiry.

(2) If a person received in a mental hospital under Part III or Part IV has an estate available for his maintenance, or if any person legally bound to maintain such patient has the means to maintain him, a magistrate may, on application by the Minister or by any person authorized by him in that behalf, after summary inquiry make an order for the payment of the costs of maintenance of such person together with the costs of the inquiry.

(3) Such orders shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a judgment given by the said court in a suit in respect of the property or person therein mentioned.

[Ch3402s48]48. Certain maintenance costs to be met from public funds

If and so far as the costs, or any portion thereof, of the maintenance of a person detained in a mental hospital under a reception order made under this Act are not provided for by an order under this Act, such costs, or portion thereof, shall be paid out of moneys provided by Parliament.

[Ch3402s49]49. Saving of liability of relatives to maintain person of unsound mind

The liability of any relative or person to maintain any person who is suffering from mental disorder or mental defect shall not be taken away or affected by any provision contained in this Act.

[Ch3402s50]50. Pension of person of unsound mind payable by Government

When any sum is payable in respect of salary, pension, gratuity or other similar allowance to any person by the Government and the Secretary for Health certifies that the person to whom the sum is payable is in a mental hospital and no proceedings for the appointing of a manager of his estate have been instituted under Part VII, the Government officer under whose authority such sum would be payable if the payee were not in a mental hospital may pay so much of the said sum as he thinks fit to the person having charge of such person, and may pay the surplus, if any, or such part thereof as he thinks fit for the maintenance of such members of the family of such person as are dependent upon him for maintenance.

PART IX

GENERAL

[Ch3402s51]51. Inquests on patients

The person in charge of any mental hospital shall give immediate notice of the death of any patient therein, to the coroner having jurisdiction in the District in which the mental hospital is situated, and thereupon the coroner shall hold an inquest upon the body of such patient in the manner provided by the Inquests Act. Cap. 4:02

[Ch3402s52]52. Death of person discharged to approved institution or breach of a condition by such person to be reported

The person in charge of any approved institution shall report, as soon as may be, the death of any person discharged into his care, under section 29, to the Secretary for Health and shall also report to the Secretary for Health the breach by any such person of any of the terms and conditions made by the Secretary for Health relating to his discharge.

[Ch3402s53]53. Letters of patients

(1) The person in charge of a mental hospital and every person having charge of any patient therein shall forward all letters written by any patient therein and addressed to the visiting

committee, or to any member of the visiting committee, of the mental hospital in which any patient writing such letters may be:

Provided that not more than one such letter a month be sent.

(2) Letters addressed by such patients to addressees other than those mentioned in subsection (1) shall be forwarded on, as the person in charge of the mental hospital may in his discretion decide.

(3) Every person in charge of a mental hospital and every person having charge of a single patient therein shall however be entitled to examine and, at his discretion, retain any letters addressed to persons other than the visiting committee.

[Ch3402s54]54. Power to refuse accommodation at mental hospital

Notwithstanding anything in this Act contained, the person in charge of a mental hospital may lawfully refuse to receive any person into such hospital on the ground that there is not sufficient accommodation available therein.

[Ch3402s55]55. No liability in respect of act done in good faith in pursuance of this Act

(1) A person who does any act in pursuance or in intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, if he has acted in good faith and with reasonable care.

(2) In any proceedings taken against any such person for any such act the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff or the prosecutor.

(3) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No such proceedings shall be commenced after the expiry of six months from the act complained of, or, in the case of a continuance of injury or damage, after the expiry of six months from the cessation thereof:

Provided that, in estimating the said period of six months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person alleged to be injured was under detention, lawfully or unlawfully, as a person of unsound mind or as a person suffering from mental disorder or mental defect, or was ignorant of the facts which constitute the cause of action.

(5) Nothing in this section shall be construed as depriving any person of any defence which he would have independently of this section.

[Ch3402s56]56. Who may not give certificates

No medical recommendation for admission to a mental hospital and no medical certificate for the purpose of Part V or Part VII shall be signed by any person in charge of, or by any person employed at the mental hospital where the patient is received, unless the person in respect of whom the recommendation or certificate is sought is at the time an inmate of the said mental hospital, or by any person owning a financial interest in the mental hospital.

[Ch3402s57]57. Amendment of order or certification

If, after the reception of any person into any mental hospital, it appears to the person in charge that the order under which he was received or the medical certificate upon which such order was founded or the medical recommendation upon which he was admitted is or are defective or incorrect, the order, certificate or recommendation, as the case may be, may, at any time within forty days after such reception, be amended by the person or persons signing the same, failing which the person in respect of whom the order, certificate or recommendation was made shall be discharged from the mental hospital.

[Ch3402s58]58. Person received into mental hospital to be detained until discharged

Every person received into a mental hospital under this Act shall be detained therein until he leaves, is removed, or discharged, in accordance with this Act; and if any person detained in a mental hospital under a reception order made under this Act escapes therefrom he may be retaken by any police officer, or by any person employed in such mental hospital or by any other person authorized in that behalf by the person in charge of any such mental hospital, and conveyed to and again received into such mental hospital.

PART X

OFFENCES

[Ch3402s59]59. Persons other than medical practitioner signing certificate

Any person who, not being a medical practitioner, knowingly and wilfully signs a medical certificate prescribed under this Act shall be guilty of an offence against this Act.

[Ch3402s60]60. False certificates

Any medical practitioner who knowingly or wilfully or recklessly in any certificate prescribed under this Act certifies anything untrue shall be guilty of an offence against this Act.

[Ch3402s61]61. Escape of person of unsound mind

Any person who wilfully assists the escape of any person of unsound mind being conveyed to, or from or while under care and treatment in a mental hospital, or who hides any person of unsound mind who has escaped from a mental hospital shall be guilty of an offence against the Act.

[Ch3402s62]62. Permitting patient to quit mental hospital unlawfully

Any person in charge, or any servant, of a mental hospital who through wilful neglect or connivance permits any patient in the mental hospital to quit such hospital other than in accordance

with this Act, or of any other law for the time being in force, shall be guilty of an offence against this Act.

[Ch3402s63]63. Ill-treatment of persons in mental hospital

Any person in charge of, or employed at, a mental hospital who strikes, ill-treats, abuses or wilfully neglects any patient in such mental hospital shall be guilty of an offence against this Act.

[Ch3402s64]64. Dealings with patients

Any person, who, without the consent of the person in charge of a mental hospital, gives, sells or barter any article or commodity of any kind to any patient in a mental hospital, whether inside or outside the grounds of the mental hospital, shall be guilty of an offence against this Act.

[Ch3402s65]65. Prohibition on publishing names of parties

Any person who when publishing in any newspaper any matter referring to any proceedings under this Act mentions by name any of the parties thereto shall be guilty of an offence against this Act.

[Ch3402s66]66. General penalty

Any person who is guilty of an offence against this Act or who contravenes or fails to comply with any of the provisions of this Act, or of any Rules made thereunder, shall, where no other penalty is expressly prescribed, be liable to a penalty of £50 and to imprisonment for six months.

PART XI

RULE MAKING POWERS

[Ch3402s67]67. Rules

The Minister may make Rules—

- (a) prescribing the forms to be used under this Act;
- (b) fixing the fees to be charged thereunder or under such Rules;
- (c) for the appointment of the staff of mental hospitals, and for the terms of service, discipline and control of such staff;
- (d) generally for regulating the administration, control and management of mental hospitals and any other matter to which this Act relates.

PART XII

SAVING

[Ch3402s68]68. Saving

17 of 1928, 18 of 1928 All Rules, orders, proclamations, notices, appointments and undertakings made or given under the Lunacy Ordinance, 1928 (now repealed) or the Asylums

Ordinance, 1928 (now repealed) shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf until replaced by Rules, orders, proclamations, notices, appointments and undertakings made or given under this Act.

SUBSIDIARY LEGISLATION

(Subsidiary legislation made under the Asylums Ordinance, 1928 (18 of 1928) and still in force by virtue of section 68 of the Mental Treatment Act is omitted as it is shortly to be replaced)

MENTAL TREATMENT (PRESCRIBED FORMS) RULES

under s. 67

G.N. 61/1949

224/1963

1. Citation

These Rules may be cited as the Mental Treatment (Pre-scribed Forms) Rules.

2. Forms

The Forms to be used for the purposes of the Act shall be the Forms prescribed in the Schedule hereto.

SCHEDULE r. 2

Form No. 1

THE MENTAL TREATMENT ACT

(Cap. 34:02)

APPLICATION FOR RECEPTION ORDER

(under section 11 of the Act)

In the Subordinate Court of The petition of
..... of

1. I hereby make application for the reception into a Mental Hospital of
..... of as a person of unsound
mind.

2. I am over 21 years of age and I have personally seen the said
within fourteen days immediately prior to the date hereof.

3. (a) I am the husband/wife of the said

or

(b) I am related to the said in the following manner

.....

and

the said is unmarried

or

the husband/wife of the said is absent, incapacitated, has neglected, is unwilling to present a petition

or

(c) I am not related to the said

I am connected with the said in the following manner:

The reasons why this petition is not presented by a relative of the said are as follows—

.....

4. I submit herewith a medical certificate signed by who is/is not a relative, partner, or assistant of the said or of the petitioner.

The said is related to the said or to the petitioner in the following manner:

5. No previous application has been presented in any Court for a judicial inquiry into the mental capacity of the said or

A previous application was presented on the day of 19 in the Court for a judicial inquiry into the mental capacity of the said A certified copy of the order made thereon is attached hereto.

The Petitioner therefore prays that the Court will be pleased to make a reception order as prayed.

I certify that the above statements are true.

Dated

Signature

Petitioner

STATEMENT OF PARTICULARS

(If any of the particulars in this statement are not known, the fact to be so stated.)

The following is a statement of particulars relating to the said person:

Name of patient at length

.....

Sex and age

Married, single or widowed

Occupation

Tribe and religious belief, as far as known

Residence

Names of relatives

When first showed signs of unsoundness of mind.....

Age (if known) on first attack

Whether previously under care and treatment

Supposed cause

Whether the patient is subject to epilepsy

Whether suicidal

Whether he is known to be suffering from phthisis or any form of tubercular disease

.....

Whether dangerous to others, and in what way

Whether he is capable of looking after himself

With whom he has been living

Whether the patient is addicted to the use of any drug or intoxicant

Whether any near relative (stating the relationship) has been afflicted with insanity

I certify that the above statements are true.

Date

.....

Signature of person making the Statement

Form No. 2

THE MENTAL TREATMENT ACT

(Cap. 34:02)

MEDICAL CERTIFICATE

(under section 22 of the Act)

In the matter of

In the District of

I, do hereby certify as follows—

1. On the day of

..... 19, at in the

District of I personally examined the said and

I am of opinion that the said is of unsound mind

and a proper person to be taken charge of and detained under care.

2. I formed this conclusion on the following grounds—

(a) Facts indicating insanity observed by myself:—

(Here state observations)

(b) Other facts, if any, indicating insanity communicated to me by others.

(Here state information and from whom)—

Here state whether the person giving the certificate is a registered or a licensed medical practitioner.

Signed

Qualifications

Form No. 3

THE MENTAL TREATMENT ACT

(Cap. 34:02)

RECEPTION ORDER

(under section 16 of the Act)

In the Subordinate Court of

Whereas has been brought before this Court (on the petition of)
under section of this Act.

And whereas * has examined the said
..... and furnished me with a certificate as to mental state.

Now I, Magistrate of the
Class Subordinate Court at having considered the certificate and being
satisfied after due inquiry that the said is of unsound mind and is a proper person to be
taken charge of and detained under care, hereby direct you to receive the
..... said into your mental hospital.

Dated the day of 19

.....

Magistrate

To the person in charge of the Mental Hospital at

Form No. 4

BOND ON THE MAKING OVER OF A PERSON OF UNSOUND MIND TO THE CARE OF RELATIVE OR
FRIEND

(section 20)

THE MENTAL TREATMENT ACT

WHEREAS has been brought before the Magistrate of the
..... Subordinate Court at and has been found of unsound mind:

Now, I, do hereby bind myself that on the said
..... being made over to my care, I will have the said
..... properly taken care of and prevented from doing injury to himself
or to others; and in case of my making default therein, I hereby bind myself to forfeit to the Minister
the sum of pounds.

Dated this day of 19

(Signed)

(Where a bond with sureties is to be executed, add)—

We do hereby declare ourselves sureties for the above-named that he will, on the aforesaid being made over to his care have the said properly taken care of and prevented from doing injury to himself or to others; and in case of the said making default therein, we bind ourselves, jointly and severally, to forfeit to the Minister the sum of pounds.

Dated this day of 19

(Signatures)

.....

.....

Form No. 5

BOND ON THE DISCHARGE OF A PERSON OF UNSOUND MIND FROM A MENTAL HOSPITAL INTO THE CARE OF RELATIVE

(section 31)

THE MENTAL TREATMENT ACT

WHEREAS of is now detained in the Mental Hospital at , under a reception order made by the Magistrate of the Subordinate Court at under the Mental Treatment Act; and whereas I, have applied that the said may be delivered to my care and custody:

I hereby bind myself that on the said being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to the Minister the sum of pounds.

Dated this day of 19

(Signed)

(Where a bond with sureties is to be executed, add)—

We do hereby declare ourselves sureties for the above-named that he will, on the aforesaid being delivered to his care and custody, have the said properly

taken care of and prevented from doing injury to himself or to others; and in case of the said making default therein, we bind ourselves, jointly and severally, to forfeit to the Minister the sum of pounds.

Dated this day of 19

(Signatures)

.....
.....

[Chap3403]CHAPTER 34:03

ANATOMY

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation

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AUTHORITY FOR ANATOMICAL EXAMINATION OF THE BODY OF A DECEASED PERSON

3. Authority for anatomical examination of the body of a deceased person
4. Inquests, postmortems, etc.
5. Persons who may give authority in respect of bodies lying in hospitals, etc.
6. Examination of bodies to be under supervision of a medical practitioner or a dentist
7. Conditions to be complied with before a body is examined
8. Disposal of body examined anatomically
9. Illegal taking or removing of parts of a body of a deceased person
10. Postmortem examination of a body

11. Removal of tissue from bodies of living persons

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CONDUCT OF ANATOMICAL EXAMINATIONS AND APPROVED SCHOOLS OF ANATOMY

12. Conduct of anatomical examinations of bodies
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14. Acquisition, preservation, receiving, use, etc., by authorized institutions
15. Control over the body or tissue
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17. Prohibition of publication of identity of donor or of recipient of body or tissue
18. Offences and penalties
19. Documentation
20. Inspection
21. Dispatch of bodies or tissue between Malawi and other countries
22. Prohibition against unauthorized exportation of tissue
23. Regulations
24. Repeal of Cap. 34:03

34 of 1990

G.N. 39/1991

An Act to make provision for the donation, examination and use of bodies, or parts of bodies, of deceased persons for educational, scientific, research, therapeutic or diagnostic purposes; to re-enact the law dealing with human tissue and to provide for matters incidental thereto or connected therewith

[1ST APRIL 1991]

PART I

PRELIMINARY

[Ch3403s1]1. Short title

This Act may be cited as the Anatomy Act.

[Ch3403s2]2. Interpretation

In this Act, unless the context otherwise requires—

“approved school of anatomy” means any school, college, hospital or other institution authorized under this Act to receive, acquire, preserve, issue or use the bodies of deceased persons for educational, scientific, therapeutic or diagnostic purposes;

“body” means the human body;

“dentist” means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

“examine anatomically” includes dissection of a body;

“medical practitioner” means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

“scientific purposes” means—

- (a) any medical or dental education or research; or
- (b) the advancement of medical or dental science;

“therapeutic purposes”, in relation to the use of tissue removed from the body of a person, means therapy of, including use in, the body of any other living person;

“tissue” means any human tissue including any human flesh, organ, bone, body fluid or derivative of any human tissue.

PART II

AUTHORITY FOR ANATOMICAL EXAMINATION OF THE BODY OF A DECEASED PERSON

[Ch3403s3]3. Authority for anatomical examination of the body of a deceased person

(1) If any person, either in writing signed by him at any time or orally in the presence of two or more witnesses during the illness from which he died—

(a) has directed or expressed the wish that his body after his death be examined anatomically; or

(b) has nominated any person to examine his body anatomically after his death,

the person lawfully in possession of that person’s body after his death shall, if such direction, wish or nomination is made known to him before he has disposed of the body, in writing authorize that the

body be examined anatomically or, in the case of nomination, shall in writing authorize the person nominated to examine the body anatomically, in either case, in an approved school of anatomy, unless the person lawfully in possession of the body has reason to believe that the direction or nomination was withdrawn by the deceased, or that the surviving spouse or a close relative of the deceased person objects to the body being examined anatomically.

(2) No authority shall be given under subsection (1) in respect of a body of a deceased person by a person lawfully in possession of the body for the purpose only of its cremation or interment.

[Ch3403s4]4. Inquests, postmortems, etc.

Where a person has reason to believe that, in accordance with any written law—

- (a) an inquest may be required to be held on a body of a deceased person; or
- (b) a postmortem may be required to be carried out on a body of a deceased person; or
- (c) a body of a deceased person or any part of the body may be required to be dealt with or disposed of in any other manner prescribed by or under such written law or any other written law,

he shall not give authority under section 3 in respect of that body or part thereof or act on such authority given by any other person.

[Ch3403s5]5. Persons who may give authority in respect of bodies lying in hospitals, etc.

Where the body of a deceased person which is to be examined anatomically lies in a hospital, nursing home, prison or other institution, authority required to be given under section 3 may be given by the person having the control and management of that institution or by a person duly authorized to act on behalf of such person or by a medical practitioner serving at, or visiting, the institution.

[Ch3403s6]6. Examination of bodies to be under supervision of a medical practitioner or a dentist

(1) No examination of the body of a deceased person or any part thereof required to be conducted in accordance with authority given under this Act, shall be carried out otherwise than by or in accordance with the instructions of, and under supervision by, a medical practitioner or dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.

(2) No removal of a part of the body of a deceased person in accordance with authority given under this Act shall be effected except by a medical practitioner or a dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.

[Ch3403s7]7. Conditions to be complied with before a body is examined

(1) The body of a deceased person shall not be examined anatomically or removed for anatomical examination from the place where the person died unless—

(a) written notice of the intended anatomical examination has been given to the person who is in lawful possession of the body; and

(b) the person to examine the body or any part thereof or the person to remove the body for anatomical examination, has first obtained a death certificate in accordance with subsection (2); and

(c) the person removing the body or any part thereof has first placed it in a decent coffin or in a manner acceptable under the culture or religion of the deceased person.

(2) The death certificate required for the purpose of subsection (1) (b) shall—

(a) state the cause of the death;

(b) be signed by the medical practitioner who was present at the death of the deceased or attended the deceased person during his last illness, not being the person referred to in subsection (1) (b); or

(c) where there is no such medical practitioner as is referred to in paragraph (b) be signed by a medical practitioner called in soon after the death of the deceased to view the body who shall state in the certificate the manner or cause of death according to the best of his knowledge and belief.

(3) Where the death certificate is obtained by the person who removes the body for anatomical examination, such person, on delivering the body for anatomical examination, shall deliver a copy of the certificate to the person who receives the body.

[Ch3403s8]8. Disposal of body anatomically examined and notice thereof

(1) Any person who receives the body of a deceased person for anatomical examination shall, except as provided in subsection (3), make provision for such body, after having been examined anatomically, to be decently cremated or decently interred in consecrated ground or in some public burial ground devoted to persons of the deceased person's culture or religion, or in any other manner provided by law.

(2) After a body has been cremated or interred in accordance with subsection (1), the person who received the body for anatomical examination shall as soon as possible give written notice of such cremation or interment to the person who was in lawful possession of the body.

(3) Where a body which is examined anatomically is the body of a person who has been executed pursuant to death warrant, the person to whom the warrant was directed shall make provision for the body, after having been examined anatomically, to be disposed of in accordance with the directions contained in the warrant.

(4) A person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

[Ch3403s9]9. Illegal taking or removing of parts of a deceased person

(1) Where authority under this Act has been given for the body of a deceased person to be anatomically examined, no person shall—

(a) take or remove from that body any part thereof before the body is received into an approved school of anatomy;

(b) take or remove from an approved school of anatomy any part of the body except for cremation or burial or for educational, scientific, research, therapeutic or diagnostic purposes permissible under this Act;

(c) receive any part of the body taken or removed in contravention of paragraph (a) or (b).

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

[Ch3403s10]10. Postmortem examination of a body

Any medical practitioner may, with the prior approval of a close relative of the deceased person or, in case where a close relative is not known, the police officer in charge of a police station, carry out a postmortem examination on the body of a deceased person before its burial or examination in order to establish the cause of death.

[Ch3403s11]11. Removal of tissue from bodies of living persons

Any medical practitioner or any other authorized person may remove tissue from the body of a living person for educational, scientific, research, therapeutic or diagnostic purposes with the consent of—

(a) that person or his spouse or close relative;

(b) in the case of a minor or a mentally handicapped person, with the consent of a parent, guardian or close relative:

Provided that, in either case, the close relative is not himself a minor or a mentally handicapped person.

PART III

CONDUCT OF ANATOMICAL EXAMINATIONS AND APPROVED SCHOOLS OF ANATOMY

[Ch3403s12]12. Conduct of anatomical examination of bodies

(1) No anatomical examination in an approved school of anatomy shall be conducted, except by—

(a) a medical practitioner or dentist;

(b) a professor, lecturer or teacher of anatomy;

(c) a person registered as a student of any approved school of anatomy; or

(d) (d) a person who practises a profession or calling allied to medicine and whose work is concerned closely with the prevention or treatment of physical or mental ailment in human beings:

Provided that in the case of a person referred to in paragraphs (c) and (d) he shall at all times act under the supervision of a person specified in paragraph (a) or (b).

(2) Authority given under this section shall, subject to this Act, entitle the person to whom it is given to conduct anatomical examination in an approved school of anatomy and to receive for the purpose of such examination, the body of a deceased person.

(3) A person who—

(a) not being qualified under this section to do so, examines anatomically or receives for the purpose of anatomical examination any body of a deceased person;

(b) whether or not qualified under this section, examines anatomically the body of a deceased person at a place other than an approved school of anatomy; or

(c) practises anatomy in contravention, or not in accordance with the requirements, of this Act,

shall be guilty of an offence and liable to a fine of three thousand Kwacha and to imprisonment for a period of two years.

[Ch3403s13]13. Designation of schools of anatomy

(1) The Minister may, by order published in the Gazette, designate any school, college, hospital or any other similar institution to be an approved school of anatomy and may in such order prescribe any conditions or requirements to be fulfilled by an institution so designated.

(2) A person—

(a) in charge of any premises which are not an approved school of anatomy, who permits anatomy to be practised at such premises; or

(b) in charge of an approved school of anatomy who permits anatomy to be practised at such premises by any person not authorized in accordance with this Act to practise anatomy,

shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

PART IV

MISCELLANEOUS PROVISIONS

[Ch3403s14]14. Acquisition, preservation, receiving, use, etc., by authorized institutions

(1) The Minister may, by order published in the Gazette, authorize institutions specified in the order to receive, acquire, preserve, use or issue any tissue which has been lawfully removed from the body of a deceased person or a living person.

(2) An institution authorized under subsection (1) may at any time issue any tissue in its possession to an approved school of anatomy, a medical practitioner, a dentist or any person authorized under this Act for any educational, scientific, research, therapeutic or diagnostic purposes.

[Ch3403s15]15. Control over the body or tissue

A person to whom the body of a deceased person or tissue is donated or who acquires any body or tissue under this Act shall, upon delivery of the body or tissue to him, be vested, subject to this Act, with the exclusive control over the body or tissue.

[Ch3403s16]16. Prohibition of sale of body or tissue

A person who—

(a) sells or buys the body of a deceased person or a tissue removed from the body of a deceased or living person; or

(b) for gain or profit, supplies to any person for educational, scientific, research, therapeutic or diagnostic purposes, or any other purpose whatsoever, tissue removed from the body of a deceased or living person,

shall be guilty of an offence and liable to a fine of fifteen thousand Kwacha and to imprisonment for a period of ten years.

[Ch3403s17]17. Prohibition of publication of identity of donor or recipient of a body or tissue

(1) Subject to subsection (2), no person shall publish to any other person any fact whereby the identity of—

(a) the deceased person; or

(b) the donor of the body of a deceased person; or

(c) the donor of the tissue removed from the body of a deceased or living person; or

(d) the recipient of any tissue removed from the body of a deceased person or the body of a living person,

unless such donor, living person, recipient or, prior to his death, the deceased consented in writing to such publication:

Provided that where the recipient dies without giving consent or the deceased did not give consent but such recipient or deceased did not indicate that he would not be prepared to give consent, consent may be given in writing signed by a close relative who is himself not a minor or a mentally handicapped person.

(2) This section shall not apply in respect of any communication reasonably necessary in connexion with the removal, storage or use of the tissue or body.

[Ch3403s18]18. Offences and penalties

(1) A person who—

(a) removes any tissue from the body of a deceased person or the body of a living person otherwise than in accordance with this Act or any other written law or, in pursuance of a profession or calling he lawfully practises; or

(b) conducts a postmortem on the body of a deceased person otherwise than in accordance with this Act or any other written law; or

(c) not being the person empowered to do so under this Act, purports to give authority for the body of a deceased person or for any tissue to be examined anatomically;

(d) being lawfully in possession of the body of a deceased person or of any tissue, delivers up such possession to another person knowing or having reason to believe that the body or tissue will be examined anatomically otherwise than in accordance with this Act; and

(e) receives for anatomical examination or examines anatomically, the body of a deceased person or any tissue in respect of which authority under this Act has not been given, shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

[Ch3403s19]19. Documentation

(1) A person who sends to another person the body of a deceased person for anatomical examination under this Act shall, along with the body, send to such other person a copy of the death certificate referred to in section 7.

(2) A person who receives the body of a deceased person for anatomical examination under this Act shall enter or cause to be entered, in a book to be kept by him for that purpose, the following particulars—

(a) the day and hour he has received the body;

(b) the name and address of the person who delivered the body;

(c) the date and place of death;

(d) sex, name, age and last place of abode of the deceased person,

and shall send to the sender of the body a return showing all those particulars and shall forward a copy of the return to the Minister.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

[Ch3403s20]20. Inspection

(1) A person authorized by the Minister in writing to do so, or any police officer of or above the rank of sub-inspector may—

(a) upon production of his proper identity, enter and inspect at any reasonable time any approved school of anatomy and inspect any body of a deceased person which has been received for anatomical examination and inspect any book which is required to be kept under section 19 (2);

(b) require any person who authorized the body of a deceased person to be examined anatomically or any person who received such body for the purpose of examining it anatomically, to give such information and produce any relevant documents as he may reasonably require for the purpose of ascertaining that the provisions of this Act are complied with.

(2) A person who resists, hinders or obstructs any person acting in pursuance of subsection (1) or who wilfully withholds any information or gives any information which he knows or has reason to believe that it is false or misleading, shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

[Ch3403s21]21. Dispatch of bodies or tissue between Malawi and other countries

(1) Where the Minister is satisfied that arrangements of a reciprocal nature or effect have been or are to be made by the competent authority in a foreign country, he may make arrangements with that authority—

(a) for the dispatch from Malawi to that country of a body of a deceased person or any tissue for anatomical examination in a school of anatomy established under the laws of that country; or

(b) for the receipt in Malawi of the body of a deceased person or tissue dispatched from that country for anatomical examination in an approved school of anatomy in Malawi.

(2) Any arrangement made under subsection (1) shall include a requirement that—

(a) the person in charge of the school of anatomy where the body of a deceased person or tissue dispatched from Malawi be examined anatomically shall make provision that the body, after having been anatomically examined, be decently cremated or decently interred in consecrated ground or in some public burial ground in use for persons of the deceased person's culture or religion; and

(b) a written confirmation of the cremation or interment of the body or disposal of tissue shall be transmitted to the Minister soon after the body has been cremated or after the tissue has been disposed of.

(3) Any person in lawful possession of the body of a deceased person may in writing authorize any other person to receive the body for the purpose of—

(a) dispatching it to a foreign country; or

(b) conveying it to an approved school of anatomy, pursuant to arrangements made under this section:

Provided that no body of a deceased person shall be dispatched or conveyed by the person so authorized, unless it is accompanied with a death certificate given under section 7 or under any relevant written law of the foreign country concerned.

[Ch3403s22]22. Prohibition against unauthorized exportation of tissue

(1) No person shall dispatch to a person outside Malawi for histo-pathological examination any tissue removed from a person in Malawi except under the authority of a pathologist or of any person duly designated by a pathologist to act, in that respect, on his behalf.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

[Ch3403s23]23. Regulations

The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) the conduct, equipment, inspection and control of approved schools of anatomy;
- (b) prescribing the form of application, authority, certificate and return to be used under this Act;
- (c) prescribing the fees to be paid under this Act;
- (d) relating to the receipt, preservation, use, possession, issue or disposal of any tissue removed from the body of a deceased person or a living person under this Act;
- (e) prescribing the requirements with which an authorized institution shall comply; and
- (f) any other matters required to be prescribed under this Act.

[Ch3403s24]24. Repeal of Cap. 34:03

The Human Tissue Act is hereby repealed.

[Chap3501]CHAPTER 35:01

PHARMACY, MEDICINES AND POISONS

ARRANGEMENT OF SECTIONS

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G.N. 9/1991

An Act to provide for the establishment of the Pharmacy, Medicines and Poisons Board, the registration and disciplining of pharmacists, pharmacy technologists and pharmacy assistants, the training within Malawi of pharmacists, pharmacy technologists and pharmacy assistants, the licensing of traders in medicines and poisons and generally for the control and regulation of the profession of pharmacy in Malawi and for matters incidental to or connected therewith

[15TH JANUARY 1991]

PART I

PRELIMINARY

[Ch3501s1]1. Short title

This Act may be cited as the Pharmacy, Medicines and Poisons Act.

[Ch3501s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

“administer” means administer to a human being or an animal, whether orally, by injection or by introduction into the body in any other way, or by external application, whether by direct contact with the body or not; and any reference in this Act to administering a substance or article is a reference to administering it either in its existing state or after it has been dissolved or dispensed in, or diluted or mixed with, some other substance used as a vehicle for such administration;

“animal test certificate” has the meaning assigned to it by section 43 (c) (ii);

“assemble”, in relation to a medicinal product, means—

(a) enclosing the product, with or without other medicinal products of the same description, in a container which is labelled before the product is sold or supplied; or

(b) where the product, with or without other medicinal products of the same description, is already enclosed in the container in which it is to be sold or supplied, labelling the container before the product is sold or supplied in it; and

“assembly” has a corresponding meaning;

“authorized seller of poisons” is a person, other than a person lawfully conducting a retail pharmacy business, who may sell Part II poisons pursuant to section 55 (2) (b);

“Board” means the Pharmacy, Medicines and Poisons Board established by section 3;

“business” includes a professional practice and any activity carried on by a person or a body of persons, whether corporate or unincorporate;

“clinical officer” means a person duly registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

“clinical trial” and “clinical trial certificate” have the meaning assigned to them by section 42;

“composition”, in relation to a medicinal product, means the ingredients of which it consists and the proportions, and the degree of strength, quality and purity, in which those ingredients are contained in it;

“container” in relation to a medicinal product, means a bottle, jar, box, packet or other receptacle which contains or is to contain it, not being a capsule, cachet or other article in which the

product is or is to be administered, and, where any such receptacle is or is to be contained in another such receptacle, includes the former but does not include the latter receptacle;

“dentist” or “dental assistant” means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

“dispensing” means selling or supplying a medical product;

“dispensing licence” has the meaning assigned to it in section 35 (4);

“hospital” includes a clinic, dispensary or similar institution;

“ingredients” in relation to the manufacture or preparation of a substance, includes anything which is the sole active ingredient of that substance as manufactured or prepared;

“inspector” means a person appointed under section 59;

“labelling”, in relation to a container or package or medicinal products, means affixing to or otherwise displaying on the container or package a notice describing or otherwise relating to the contents thereof, and “label” has a corresponding meaning;

“leaflet” includes any written information;

“licensing authority” means the authority upon which responsibility for licensing has been conferred by section 34;

“manufacture”, in relation to a medicinal product, includes any process carried out in the course of making the medicinal product but does not include dissolving or dispensing the medicinal product in, or diluting or mixing it with, some other substance used as a vehicle for the purpose of administering it or the incorporation of the product in any animal feed;

“manufacturer’s licence” has the meaning assigned to it in section 35 (2);

“medical practitioner” or “medical assistant” means a person registered as such under the Medical Practitioners and Dentists Act; Cap. 36:01

“medicinal product” means any substance or article which is manufactured, sold, supplied, imported or exported for use wholly or mainly in either or both of the following ways—

(a) use by being administered to a human being or an animal for a medicinal purpose;

(b) use as an ingredient in the preparation of a substance or article which is to be administered to a human being or an animal for a medicinal purpose,

but it shall not include an instrument, apparatus or appliance;

“medicinal purpose” means any one or more of the following purposes—

(a) treating or preventing diseases;

(b) diagnosing disease or ascertaining the existence, degree or extent of a physiological conditions;

- (c) contraception;
- (d) inducing anaesthesia;
- (e) otherwise preventing or interfering with the normal operation of a physiological function whether permanently or temporarily and whether by way of terminating, reducing or postponing, or increasing or accelerating, the operation of that function or in any other way;

“nurse” or “midwife” means a nurse or midwife registered in any category of nurses or midwives under the Nurses and Midwives Act: Cap. 36:02

“package”, in relation to any medicinal products, means any box, packet or other article in which one or more containers of the medicinal products are or are to be enclosed, and where any such box, packet or other article is or is to be enclosed in one or more other boxes, packets or articles in question, the collective number thereof;

“pharmacist” means a person registered as such under Part III;

“pharmacy technologist” means a person registered as such under Part III;

“pharmacy assistant” means a person registered as such under Part III;

“poison” means a substance specified in the Poisons List prescribed under section 55 (1);

“product licence” has the meaning assigned to it in section 35 (1);

“Registrar” means the Registrar of the Board appointed under section 13 and includes any person duly acting as, or on behalf of, the Registrar;

“retail pharmacy business” means a business which consists of or includes the retail sale of medicinal products but does not include a professional practice carried on by a pharmacist;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“treatment” in relation to disease, includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of cure or not;

“veterinary surgeon” means a person registered as such under the Veterinary Surgeons Act; Cap. 53:04

“wholesale dealer’s licence” has the meaning assigned to it in section 35 (3);

(2) In this Act, any reference to a sale of medicinal products or poisons by way of wholesale dealing is a reference to the sale of medicinal products or poisons to a person who buys medicinal products or poisons for the purpose of—

- (i) selling or supplying medicinal products or poisons; or
- (ii) administering or causing to be administered any medicinal products or poisons to a human being or an animal,

in the course of business carried on by that person but it shall not include any such sale by the manufacturer of medicinal products or poisons.

(3) In this Act, any reference to a retail sale of medicinal products or poisons is a reference to the sale of medicinal products or poisons to a person who buys medicinal products or poisons otherwise than for a purpose specified in subsection (2).

PART II

ADMINISTRATION

[Ch3501s3]3. Establishment of a pharmacy, medicines and poisons Board

30 of 1991There is hereby established a board to be known as the Pharmacy, Medicines and Poisons Board (in this Act referred to as the "Board") which shall be a body corporate having perpetual succession and a common seal and shall under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of doing or performing all such acts and things as bodies corporate may by law perform.

[Ch3501s4]4. Composition of the Board

(1) Subject to subsection (3), the Board shall consist of the following eight members appointed by the Minister each of whom shall, except in case of an ex officio member, be a citizen of Malawi—

- (a) the Chief of Health Services, who shall be a member ex officio whether or not he is a citizen of Malawi;
- (b) the Chief Pharmacist, who shall be a member ex officio whether or not he is a citizen of Malawi;
- (c) three members, representing pharmacists;
- (d) one member, representing medical practitioners;
- (e) one member, representing veterinary surgeons; and
- (f) one member, representing nurses and midwives.

(2) A member of the Board, not being a member ex officio, shall hold office for three years.

(3) The Minister may appoint to the Board, for a period not exceeding three years, such other persons not exceeding three in number, as he considers suitably qualified to assist the Board in its work and deliberations and such persons shall not have the right to vote at any meeting of the Board.

(4) Upon the appointment to the Board of any member, the Minister shall cause notice of such appointment to be published in the Gazette and shall in such notice specify the current membership of the Board resulting upon such appointment.

(5) Members of the Board shall not, by virtue only of their appointment to the Board, be deemed to be officers of the public service.

[Ch3501s5]5. Vacation, etc., of members from office

(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member—

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors; or

(b) has been absent from three consecutive meetings of the Board, of which he has had notice, without the leave of the Chairman of the Board; or

(c) has been disqualified under this Act from carrying on his profession or calling; or

(d) has been convicted of an offence under this Act or the Act repealed by this Act or any law relating to drugs; or

(e) has been convicted—

(i) within Malawi of a criminal offence; or

(ii) outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(f) is mentally or physically incapable of efficiently performing his duties as a member of the Board.

(2) The Minister may suspend from office a member of the Board against whom—

(a) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

(b) the Board has instituted an inquiry into his professional conduct or considers the removal of his name from the register under section 24 (1);

and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Board may resign his office by notice in writing to the Minister and if the Minister accepts such resignation.

[Ch3501s6]6. Filling of vacancies on the Board

(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 4 (1) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

[Ch3501s7]6. Co-opted persons

The Board may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting.

[Ch3501s8]8. Chairman and ViceChairman

(1) The Minister shall, by writing under his hand, designate one member of the Board who is a pharmacist to be the Chairman thereof.

(2) The Board shall elect a Vice-Chairman from amongst its members who are pharmacists. The Vice-Chairman shall, subject to subsection (3), hold office for the duration of his membership on the Board.

(3) The office of the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Board; or
- (b) if the holder of the office ceases to be a member of the Board; or
- (c) if the Board so determines.

(4) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

[Ch3501s9]9. Meetings of the Board

(1) Subject to this Act, the Board shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Board—

- (a) may be convened by the Chairman at anytime;
- (b) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than any three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Board—

- (a) the Chairman or, in his absence the Vice-Chairman, shall preside;

(b) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by any five members.

(4) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

[Ch3501s10]10. Functions of the Board

The Board shall be the sole registering authority of all persons required to be registered under this Act and shall have the following further functions—

(a) to assist in the promotion and improvement of the health of the population of Malawi;

(b) to exercise discipline and control over the professional conduct of all persons registered under this Act and practising in Malawi;

(c) to control and exercise authority affecting the training of persons in the profession of pharmacy;

(d) to promote liaison in the field of training in the profession of pharmacy both within Malawi and elsewhere and to promote the standards of such training in Malawi;

(e) to advise the Minister on any matter falling within the scope of this Act.

[Ch3501s11]11. Powers of the Board

30 of 1991For the better performance of its functions, the Board shall, subject to this Act, have power—

(a) to remove any name from any register or, subject to such conditions as the Board may impose, restore it thereto;

(b) to approve of institutions in Malawi and of the curriculum for the training of pharmacists, pharmacy technologists and pharmacy assistants;

(c) to acquire, hire or dispose of property, and borrow money on the security of the assets of the Board and accept and administer any trust or donation;

(d) to consider any matter affecting the profession of pharmacy and make representations thereon to the Minister or take such action in connexion therewith as the Board considers necessary;

(e) to keep and maintain separate registers in the prescribed form—

- (i) of all pharmacists registered under this Act;
 - (ii) of all pharmacy technologists registered under this Act;
 - (iii) of all pharmacy assistants registered under this Act;
 - (iv) of all pharmacy premises registered under this Act;
- (f) to advise the licensing authority on matters relating to medicinal products and poisons;
- (g) upon application by any person, to recognize any qualifications held by that person (whether such qualifications have been obtained in Malawi or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;
- (h) to perform such other functions as may be assigned to the Board by the Minister;
- and
- (i) generally, to do and perform all such acts or things as the Board deems necessary or expedient to achieve the objects of this Act.

[Ch3501s12]12. Committees of the Board

(1) In addition to the Pharmacy Committee, Medicines Committee and Poisons Committee and save as otherwise provided in relation to those three committees, the Board may establish any number of other committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as the Board may consider expedient.

(2) The Chairman of the Board shall by reason of his office be a member of every committee established under subsection (1).

(3) The chairman of each committee shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may co-opt as members of such committee persons who are not members of the Board and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Board may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Board of its activities and shall conduct its proceedings in such manner as the Board may direct.

(8) A member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Board, such allowances as the Board may determine.

[Ch3501s13]13. Appointment of Registrar and other staff

(1) Subject to this section, the Board—

- (a) shall appoint a Registrar upon terms and conditions approved by the Minister; and
- (b) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Registrar, after consultation with the Chairman of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Board at its next meeting.

(3) The Registrar shall be the secretary to the Board and to every committee thereof.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any officer of the Board shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairman of the Board may designate.

(5) Subject to any general or special directions of the Board, the Registrar shall be the chief executive officer of the Board and as such he shall be responsible to the Board for the administration and management of its affairs, including the supervision of other staff of the Board.

[Ch3501s14]14. Funds, accounts and audit

(1) The funds of the Board shall consist of—

- (a) such sums as may be appropriated by Parliament for the purposes of the Board;
- (b) all fees payable under this Act;
- (c) such other moneys and assets as may vest in or accrue to the Board, whether in the course of its functions or otherwise;
- (d) the levy imposed under section 15.

(2) The Board shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Board shall be examined and audited annually by auditors appointed by the Board and approved by the Minister.

[Ch3501s15]15. 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 registered under this Act and such levy shall be appropriated for the general operations of the Board or for such operations of the Board as the Minister may specify in the order.

[Ch3501s16]16. Remuneration and expenses of members of the Board

Members of the Board shall be paid from the funds of the Board such allowances as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee in connexion with the business of the Board or the committee.

PART III

PHARMACY

[Ch3501s17]17. No person to carry on pharmacy business unless registered

(1) Except as is provided by this Act, no person other than a person registered as a pharmacist under this part shall—

- (a) conduct a retail pharmacy business;
- (b) in the course of any trade or business prepare, mix, compound or dispense any medicinal product or poison except under the supervision of a registered pharmacist; and
- (c) assume, take, exhibit or, in any way make use of, any title, emblem, description or addition reasonably calculated to suggest that he is registered as a pharmacist.

(2) For the purpose of paragraph (c) of subsection (1), the use of the word “pharmacist” or “chemist” or “druggist” or any similar word or combination of words shall be deemed to suggest that the owner of the business or the person having control of the business on those premises is, or purports to be, a registered pharmacist.

[Ch3501s18]18. Persons registered under the repealed Act

(1) Every person who, immediately before the commencement of this Act, was registered in the register of pharmacists under the Act repealed by this Act and is resident in Malawi, shall be deemed to have been registered under this Act in that register.

(2) Every person deemed by subsection (1) to be registered under this Act shall submit to the Registrar particulars of his registration in such form as may be prescribed and, subject to payment of the prescribed fee, shall be entitled to be issued with a certificate of registration under this Act.

[Ch3501s19]19. Residence of registered persons

(1) Subject to subsection (2), an applicant for registration as a pharmacist, pharmacy technologist or pharmacy assistant shall not be registered unless at the time of his application—

- (a) he resides in Malawi; or

(b) he intends, if he is registered, to take up residence in Malawi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Board may from time to time specify for the purposes of this subsection by notice in the Gazette, may be registered if, but for residing outside Malawi, he is otherwise qualified for registration.

[Ch3501s20]20. Persons eligible to be registered as pharmacists, pharmacy technologists or pharmacy assistants

(1) Subject to this section, a person shall be eligible for registration under this Act as a pharmacist or pharmacy technologist or pharmacy assistant if he is a holder of a degree, diploma, certificate or other qualification which is recognized by the Board as making him eligible for registration and he satisfies the Board that he—

- (a) has acquired sufficient knowledge of science and pharmacy;
- (b) has an adequate knowledge of the English language; and
- (c) is, in all respects as to character and otherwise, a fit and proper person to be registered.

(2) No qualification from an examination authority outside Malawi shall be recognized or accepted under subsection (1) as a qualification for registration of the holder, unless the qualification entitles the holder to registration in the country, state or territory in which the examination authority has jurisdiction.

(3) In any case where the Board does not recognize a degree, diploma, certificate or other qualification, relating to the profession of pharmacy held by any person, as making him eligible for registration, the Board may take steps to assess his suitability for registration and for the purpose of so doing may require him to attend an interview or to undergo any oral or written examination.

(4) The Board may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (3) to a committee of the Board which shall, after making such assessment, make such recommendations to the Board as it considers appropriate.

[Ch3501s21]21. Procedure for registration

(1) A person desiring to be registered under this Act may make his application, in the prescribed form, to the Board and shall submit with his application—

- (a) the prescribed fee; and
- (b) a certificate of any qualification on which he relies for registration or a certified photocopy thereof: Provided that a certificate showing his registration in the country, state or territory in which he qualified is submitted and that such a certificate contains details of the qualifications on which registration was based; and

(c) if other practical experience or training is required in the country, state or territory in which he qualified before registration in that country, state or territory—

(i) evidence that such experience has been acquired or that such training has been obtained; and

(ii) the certificate of registration in that country, state or territory or a certified copy thereof;

(d) save in case of a person referred to in section 19 (2), evidence that he resides or intends, if he is registered, to reside in Malawi.

(2) The Board may require any statement in connexion with an application under subsection (1) to be supported by a solemn or statutory declaration.

(3) If the Board is satisfied that the qualification and the particulars or documents submitted under subsection (1) are in accordance with the requirements of this Act, the Board shall, upon payment by the applicant of the prescribed fee, register the applicant in the appropriate register.

[Ch3501s22]22. Certificate of registration

30 of 1991 Upon registration by the Board of the applicant in—

- (a) the register of pharmacists;
- (b) the register of pharmacy technologists;
- (c) the register of pharmacy assistants.

the Board shall issue an appropriate certificate of registration in the prescribed form.

[Ch3501s23]23. Application for retention of name on register

30 of 1991(1) Every registered pharmacist, registered pharmacy technologist and registered pharmacy assistant shall, before the 31st January in each year, make application to the Board for the retention of his name on the appropriate register.

(2) An application made under subsection (1) shall be accompanied with the prescribed fee.

(3) The Board may, by its resolution, strike off from the appropriate register the name and other particulars of any registered pharmacist, registered pharmacy technologist or registered pharmacy assistant who does not make application to the Board for the retention of his name on the appropriate register as required by subsection (1).

[Ch3501s24]24. Removal of name of registered pharmacist, etc., from the register

30 of 1991(1) Subject to paragraph (3), the Board may remove from the appropriate register the name of a pharmacist or a pharmacy technologist or a pharmacy assistant who—

(a) is convicted of an offence against this Act or any other written law which in the opinion of the Board renders him unfit to be on the appropriate register; or

(b) is judged by the Board after due inquiry, at which such person shall have an opportunity of being heard—

(i) to have been guilty of improper or disgraceful conduct or conduct which, when due regard is had to his profession or calling, is improper or disgraceful; or

(ii) to be grossly incompetent or to have performed any act pertaining to his profession or calling in a grossly incompetent manner; or

(c) is dead.

(2) Every pharmacist, pharmacy technologist or pharmacy assistant whose name is removed from the register under this section shall surrender the certificate of registration to the Registrar for cancellation.

(3) The Board may, instead of removing the name of a person registered under this Act from an appropriate register, reprimand such person or suspend his registration subject to such conditions as the Board may consider necessary to impose.

[Ch3501s25]25. Notification of registration and of removal from register

The Board shall, from time to time and not less frequently than once every year, cause to be published in the Gazette a notification of all registrations effected under this Act and of all removals from any register.

[Ch3501s26]26. Appeals against refusal to register or against removal from register

(1) A person aggrieved by—

(a) the refusal of the Board to enter his name in an appropriate register; or

(b) the removal by the Board of his name from an appropriate register,

may after giving written notice to the Board and within three months after the date on which notice is given to him by the Board of the fact of refusal or removal, as the case may be, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court.

(2) On an appeal under subsection (1) the High Court may—

(a) dismiss the appeal; or

(b) if it is of the opinion that the Board has not acted in accordance with the Act, make an order that the name of the appellant be entered or retained in the appropriate register; or

(c) refer the matter back to the Board for further consideration, and may make such other order as to costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty imposed by the Board by reason only of an informality or irregularity in the proceedings of the Board, or where the matter

was referred to the Pharmacy Committee, the proceedings of that committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

[Ch3501s27]27. Display of certificate of registration on premises where pharmacy business is carried on

No person shall carry on a retail pharmacy business unless the name and certificate of registration of the person having control of the premises in which such business is carried on are conspicuously exhibited therein.

[Ch3501s28]28. Registration of premises where pharmacy business is to be carried on

30 of 1991(1) A person carrying on manufacturing pharmacy business, a wholesale pharmacy business or a retail pharmacy business in accordance with this Act shall cause each set of premises where such business is being carried on to be registered.

(2) An application for registration of premises under this section shall be made to the Board in the prescribed form and such application shall be accompanied with the prescribed fee.

(3) The registration of any premises under this section shall become void upon the expiry of thirty days from the date of any change in the ownership of the business carried on therein.

(4) The Board may, for good cause to be stated in writing, refuse to register or in like manner remove from the register any premises which in its opinion are or have become unsuitable for the purpose of carrying on manufacturing pharmacy business, a wholesale pharmacy business or a retail pharmacy business.

[Ch3501s29]29. Company may carry on a retail pharmacy business upon certain conditions

(1) Notwithstanding anything contained in the foregoing provisions of this Act, a company may carry on a retail pharmacy business if—

- (a) it is registered by the Board under this Act;
 - (b) it is shown to the satisfaction of the Board that the business is under the personal management and control of a registered pharmacist;
 - (c) a copy of the certificate of incorporation of the company is lodged with the Board;
- and
- (d) the other provisions of this Act are complied with.

(2) A company carrying on a retail pharmacy business in accordance with this section shall be an authorized seller of poisons within the meaning of this Act and may use the description of chemist and druggist, or of dispensing chemists or dispensing druggist and may use the description “pharmacy” in connexion with the registered premises.

(3) Any act which if done by an individual would be an offence against this Act shall, if done by a company, be an offence committed by every director, secretary and manager thereof unless he

proves that the act or omission constituting the offence took place without his knowledge or consent.

[Ch3501s30]30. Representatives of deceased or insolvent pharmacists

Notwithstanding anything contained in the foregoing provisions of this Part—

(a) if a pharmacist dies, or becomes of unsound mind or is adjudged bankrupt or enters into an arrangement with his creditors, his representative may, with the permission of the Board and subject to such directions and conditions as the Board may in its discretion deem fit to impose, carry on the business, and it shall be necessary for such representative to be registered in relation to the premises where such business is carried on, and such business shall be continued only under the personal management and control of a pharmacist and for such period not exceeding five years as the Board may decide;

(b) the representative of a pharmacist carrying on a business in accordance with paragraph (a) shall be the authorized seller of poisons within the meaning of this Act and it shall be lawful for him to use any title, emblem or description which might have been lawfully used by the pharmacist whose representative he is.

[Ch3501s31]31. Exemptions from this Part

(1) This Part shall not apply to medicinal products supplied by—

- (a) a medical practitioner or dentist in the ordinary course of his practice;
- (b) a veterinary surgeon in the ordinary course of his practice;
- (c) any hospital which the Minister may, by order published in the Gazette, exempt;
- (d) any sale of poisons in Part II of the Poisons List by an authorized seller of poisons pursuant to section 55 (2) (b); and
- (e) any transaction mentioned in section 35 (2) and (3).

[Ch3501s32]32. Pharmacy Committee

19 of 1995(1) There shall be a Pharmacy Committee (in this section referred to as the "Committee") of the Board which shall consist of a chairman and not less than two and not more than four other persons, at least two of whom shall be pharmacists, specially appointed by the Chairman of the Board for any particular business or function of the Committee.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

21 of 1996(3) Without prejudice to the generality of subsection (2) the Committee shall, where it is assigned by the Board so to do, deal with all matters relating to—

- (a) the registration and discipline of pharmacists, pharmacy technologists or pharmacy assistants;

(b) regulate the training of pharmacists, pharmacy technologists and pharmacy assistants; and

(c) the control and regulation of any pharmacy business.

(4) In any disciplinary inquiry before the Committee, the Board may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Committee in the proceedings of the inquiry.

(5) At any meeting of the Committee the Chairman and two other members shall form a quorum.

(6) For the purposes of any disciplinary inquiry before the Committee, the Chairman of the Board may appoint to the Committee, in addition to the members by virtue of subsection (1), any other person he considers reasonably qualified to assist the Committee in the conduct of the inquiry.

(7) All facts, matters or things authorized or required to be done by the Committee shall be decided by a majority vote at a meeting of the Committee at which a quorum is present.

(8) At all meetings of the Committee each member present being a member by virtue of subsection (1), shall have one vote on a question before the Committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(9) The Committee shall have power to regulate its own procedure.

[Ch3501s33]33. Pharmacy Committee to be the disciplinary committee of the Board

30 of 1991, 21 of 1996(1) Subject to subsection (2), the Pharmacy Committee shall perform the functions of a disciplinary committee of the Board and for that purpose it shall have power to inquire into any matter or question referred to it by the Board pursuant to sections 24 (1) and 32 (3) (a) alleging that a pharmacist, pharmacy technologist or pharmacy assistant—

(a) has been guilty of an offence which in the view of the Board renders him unfit to be on the appropriate register; or

(b) has been guilty of improper or disgraceful conduct or conduct which, when due regard is had to his profession or calling, is improper or disgraceful; or

(c) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function under subsection (1), the Pharmacy Committee shall—

(a) cause to be served upon a registered pharmacist or registered pharmacy technologist or registered pharmacy assistant a notice setting out the allegations against him; and

(b) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

(3) For purposes of any inquiry, the Pharmacy Committee may take evidence and may—

(a) under the hand of the chairman or the Registrar summon witnesses and require the production of any book, record, document or thing;

(b) administer oath or affirmation to any person; and

(c) examine any book, record, document or thing which a witness has been required to produce.

(4) A summons for attendance before the Pharmacy Committee or for the production to it of any book, record, document or thing shall be—

(a) in the form prescribed; and

(b) signed by the Chairman of the Board or Registrar.

21 of 1996(5) Any person who has been summoned under subsection (4) and who—

(a) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(b) refuses to be sworn or to affirm; or

(c) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(d) attends as a witness before the Pharmacy Committee and refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him; or

(e) gives false evidence on oath at an inquiry before the Pharmacy Committee knowing such evidence to be false or not believing it to be true,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for six months.

(6) The Pharmacy Committee shall, as soon as practicable after the close of the inquiry, consider the evidence adduced and the representations made thereat, and shall, without undue delay complete and deliver to the Board its report thereon together with such documents as were produced and are relevant to the matters inquired into, and shall make its recommendations as to whether the allegation should be dismissed, or the pharmacist, or pharmacy technologist, or pharmacy assistant, as the case may be, should be reprimanded, or his registration should be suspended or cancelled.

PART IV

MEDICINAL PRODUCTS

[Ch3501s34]34. Licensing authority

19 of 1995The Board shall be the licensing authority responsible for the granting, renewal, variation, suspension and revocation of licences and certificates under this Part.

[Ch3501s35]35. Classes of licences

21 of 1996(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 a business carried on by him—

- (a) sell, supply, export or import any medicinal product;
- (b) procure for sale, supply or exportation of any medicinal product; and
- (c) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale, supply or export.

(2) No person shall, in the course of any business carried on by him, manufacture or assemble any medicinal product 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, supply any medicinal product 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 any medicinal product by way of dispensing except in accordance with a licence granted for that purpose (hereinafter referred to as a "dispensing licence").

21 of 1996(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than ten thousand Kwacha and not exceeding one hundred thousand Kwacha.

21 of 1996(6) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine of not less than twenty thousand Kwacha and not exceeding two hundred thousand Kwacha, and to imprisonment for five years.

21 of 1996(7) Any person who contravenes subsection (3) shall be guilty of an offence and shall be liable to a fine of not less than fifty thousand Kwacha and not exceeding five hundred thousand Kwacha, and to imprisonment for ten years.

21 of 1996(8) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable to a fine of not less than ten thousand Kwacha and not exceeding one hundred thousand Kwacha.

[Ch3501s36]36. Exemptions

The provisions of section 35 shall not apply to—

- (a) anything done by a medical practitioner or dentist which—
 - (i) relates to a medicinal product specially prepared, or specially imported by him or to his order, for administration, sale or supply to his particular patient; or

(ii) relates to a medicinal product specially prepared by a medical practitioner or dentist at the request of another medical practitioner or dentist for administration, sale, or supply to a particular patient of that other medical practitioner or dentist; or

(b) anything done by a veterinary surgeon which—

(i) relates to a medicinal product specially prepared for administration, sale, or supply for a particular animal or herd which is under his care; or

(ii) relates to a medicinal product specially prepared by a veterinary surgeon at the request of another veterinary surgeon for administration, sale or supply to a particular animal or herd which is under the care of that other veterinary surgeon;

(c) anything which is done in a registered pharmacy or a hospital and is there done by or under the supervision of a pharmacist and consists of preparing, dispensing, assembling or procuring a medicinal product in accordance with a prescription given by a medical practitioner or dentist;

(d) anything which is done in a registered pharmacy by or under the supervision of a pharmacist and consists of—

(i) preparing or dispensing a medicinal product for administration to a person where the pharmacist is requested by or on behalf of that person to do so in accordance with the pharmacist's own judgment as to the treatment required, and that person is present in the pharmacy at the time of the request in pursuance of which that product is prepared or dispensed; or

(ii) preparing a stock of medicinal products with a view to dispensing them as mentioned in paragraph (c) or in paragraph (d) (i); or

(e) anything which is done in a hospital by or under the supervision of a pharmacist and consists of preparing a stock of medicinal products with a view to dispensing them as mentioned in paragraph (c); or

(f) the assembly of any medicinal products by a person in the course of that person's profession as a nurse or midwife; or

(g) the importation of a medicinal product by any person for administration to himself or to any persons who are members of his household, or the importation of a medicinal product where it is specially imported by or to the order of a medical practitioner or dentist for administration to his patient provided that in either case the quantity so imported shall be no greater than is reasonably necessary for that purpose and is not of commercial value; or

(h) the importation of a medicinal product in such circumstances as may be specified by the Minister in the notice published in the Gazette.

[Ch3501s37]37. Application for licences

(1) Any application for a licence under this Part shall be made to the licensing authority in the prescribed form.

(2) Any application referred to in subsection (1) shall contain a description of medicinal products to which the licence will relate.

[Ch3501s38]38. Matters to be considered before issuing a licence

Where an application is made for a licence under this Part, the licensing authority shall, before issuing the licence to which the application relates, consider the following—

- (a) in the case of an application for a product licence—
 - (i) the safety of medicinal products of each description to which the application relates;
 - (ii) the efficacy of medicinal products of each such description for the purposes for which the medicinal products are proposed to be administered; and
 - (iii) the quality of medicinal products of each such description, according to the specification and the method or proposed method of manufacture of the medicinal products, and the provisions proposed for securing that the medicinal products when sold or supplied will be of that quality;
- (b) in the case of an application for a manufacturer's licence—
 - (i) the operations proposed to be carried out pursuant to the licence;
 - (ii) the premises in which those operations are to be carried out;
 - (iii) the equipment which is or will be available on those premises for carrying out those operations;
 - (iv) the qualifications of the person under whose supervision those operations will be carried out; and
 - (v) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, medicinal products manufactured or assembled in pursuance of the licence;
- (c) in the case of an application for a wholesale dealer's licence—
 - (i) the premises on which medicinal products of the description to which the application relates will be stored;
 - (ii) the equipment which is or will be available for storing medicinal products on those premises;
 - (iii) the equipment and facilities which are or will be available for distributing medicinal products from those premises;
 - (iv) the qualifications of the persons under whose supervision those operations will be carried out; and

(v) the arrangements made or to be made for securing the safekeeping of, and the maintenance of adequate records in respect of, medicinal products stored on or distributed from those premises.

[Ch3501s39]39. Issue of licences

(1) If the licensing authority is satisfied that the applicant is a fit and proper person to carry on any business set out in section 35, he may issue to the applicant the licence appropriate to such business subject to such general or special conditions as the licensing authority may consider appropriate to impose.

(2) A licence issued under subsection (1) shall be in the form, and shall be for such duration, as may be prescribed.

(3) Where the licensing authority, after consultation with the Board, considers that the applicant is not a fit and proper person to whom a licence should be issued for the carrying on of any business specified in section 35, he shall refuse to issue a licence and such refusal shall not be subject to appeal to, or question in or by, any court, and the licensing authority shall not be required to assign any reasons therefor.

[Ch3501s40]40. Suspension and revocation of a licence

(1) Subject to this Part, the licensing authority may suspend a licence for such period as he may determine, or may revoke, or vary the provisions of such licence.

(2) The suspension or revocation of a licence under this section may be limited to medicinal products of one or more descriptions, or to any particular premises or to a particular part of any premises.

[Ch3501s41]41. Variation of a licence

Subject to section 37, the licensing authority may, on the application of the holder of a licence under this Part, vary the provisions of the licence in accordance with any proposals contained in the application, if the licensing authority is satisfied that the variation will not adversely affect the safety, quality or efficacy of medicinal products.

[Ch3501s42]42. Clinical trial

(1) In this Part “clinical trial” means an investigation or series of investigations consisting of the administration of one or more medicinal products of a particular description by, or under the direction of, a medical practitioner or dentist to his patient where there is evidence that medicinal products of that description have effects which may be beneficial to the patient in question and the administration of the medicinal product is for the purpose of ascertaining to what extent the product has any other effects whether beneficial or harmful.

(2) Subject to the provisions of this Part, no person shall, in the course of a business carried on by him—

(a) sell or supply any medicinal product for the purpose of a clinical trial; and

(b) procure the sale or supply of any medicinal product for the purpose of a clinical trial;
or

(c) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale or supply for the purpose of a clinical trial,

unless the following conditions are fulfilled by that person—

(aa) that he is the holder of a product licence which authorizes the clinical trial in question, or he does it to the order of the holder of such a licence, and, in either case, he does it in accordance with that licence; and

(bb) that a certificate for the purpose of this section (in this Act referred to as a “clinical trial certificate”) has been issued to him certifying that, subject to the provisions of the certificate, the licensing authority has authorized the clinical trial in question and that a certificate is for the time being in force and the trial is to be carried out in accordance with that certificate.

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

(a) anything which is done in a registered pharmacy or a hospital by or under the supervision of a pharmacist in accordance with a prescription given by a medical practitioner or dentist; or

(b) anything done by or under the supervision of a pharmacist which consists of procuring the preparation or dispensing of a medicinal product in accordance with a prescription given by a medical practitioner or dentist.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

[Ch3501s43]43. Animal test

(1) Subject to this Part, no person shall, in the course of a business carried on by him—

(a) sell or supply any medicinal product for the purposes of a medicinal test on animals;
or

(b) procure the sale or supply of any medicinal product for the purposes of medicinal test on animals; or

(c) procure the manufacture or assembly or for the manufacture or assembly of any medicinal product for sale or supply for the purposes of medicinal test on animals,

unless the following conditions are fulfilled by that person—

(i) that he is the holder of a product licence which authorizes the test in question, or he does it to the order of the holder of such a licence, and, in either case, he does it in accordance with that licence;

(ii) that a certificate for the purpose of this section (in this Act referred to as an “animal test certificate”) has been issued to him certifying that, subject to the provisions of the

certificate, the licensing authority has authorized the test in question and that a certificate is for the time being in force and the test is to be carried out in accordance with that certificate.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence.

[Ch3501s44]44. Clinical trial and animal test certificates

(1) Subject to the provisions of this section, every clinical trial certificate or animal test certificate, unless previously renewed or revoked, shall expire at the end of the period of one year from the date on which it was issued or from the date specified in the certificate as issued or renewed.

(2) Any certificate, if it has not been revoked, may, on the application of the holder of the certificate be renewed by the licensing authority for a further period of one year from the date on which it would otherwise expire.

(3) The licensing authority may suspend, for such period as he may determine, a clinical trial certificate or animal test certificate, or he may revoke or vary the provisions of, any such certificate.

PART V

PROVISIONS RELATING TO DEALINGS IN MEDICINAL PRODUCTS

[Ch3501s45]45. Restrictions on sale of medicinal products

(1) Subject to any exemption conferred by or under this Part, no person shall sell by retail, offer or expose for sale by retail or supply any medicinal product on a pharmacy list unless—

- (a) the person is lawfully conducting a retail pharmacy business; or
- (b) the product is sold or supplied on premises which are a registered pharmacy; or
- (c) the person is a pharmacist, or, if the transaction is carried out on his behalf by another person, then that other person is, or acts under the supervision of a pharmacist; or
- (d) the product has been made up for sale in a container or package elsewhere than at the place at which it is sold or supplied and the container has not been opened since the product was made up for sale in it.

(2) No person shall sell or supply any medicinal product unless such sale or supply is made from premises capable of being closed so as to exclude the public.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence.

[Ch3501s46]46. Circumstances in which restrictions on sale of medicinal product may not apply

(1) The restrictions imposed by section 45 shall not apply to—

- (a) the sale or supply of a medicinal product—
 - (i) by a medical practitioner or dentist who holds a dispensing licence; or

(ii) in the course of the business of a hospital where the product is sold or offered for sale or supplied for the purpose of being administered, whether in the hospital or elsewhere, in accordance with the directions of a medical practitioner or dentist;

(b) the sale or supply of a medicinal product of a description or class specified by Order made by the Minister and published in the Gazette where such medicinal product is sold or supplied—

(i) by a nurse in the course of her professional practice; or

(ii) by a midwife in the course of her professional practice; or

(iii) by a clinical officer in the course of his professional practice and where he holds a dispensing licence; or

(iv) by a medical assistant or dental assistant in the course of his professional practice and where he holds a dispensing licence; or

(v) a veterinary surgeon who holds a dispensing licence.

[Ch3501s47]47. Sale and administration of medicinal product to be subject to prescription by appropriate practitioner

(1) Subject to the provisions of this section, no person shall sell by retail, or supply in circumstances corresponding to retail sale or administer, other than to himself, a medicinal product of a description or a class specified by Order made by the Minister and published in the Gazette except in accordance with a prescription given by an appropriate practitioner.

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

(a) the sale or supply or administration of a medicinal product to a patient is by a medical practitioner or dentist who holds a dispensing licence; or

(b) the sale or supply of a medicinal product is for administration to an animal or herd by a veterinary surgeon who holds a dispensing licence.

(3) In this Part “appropriate practitioner” means a medical practitioner, dentist, veterinary surgeon and any person as the Minister may specify in the Order made under subsection (1).

(4) Any person who contravenes the provisions of this section shall be guilty of an offence.

[Ch3501s48]48. Restrictions on wholesale dealings

The Minister may by Order published in the Gazette provide for restrictions on the sale or supply of medicinal products by way of wholesale dealing.

[Ch3501s49]49. Prohibition of adding to or abstraction of any substance from medicinal products

30 of 1991(1) No person shall—

(a) add any substance to, or abstract any substance from, a medicinal product so as to affect adversely the composition of the product with intention of selling the product in that changed state; or

(b) sell or supply, or offer or expose for sale or supply, or have in his possession for the purpose of sale or supply, any medicinal product whose composition has been adversely affected by the addition thereto or abstraction therefrom of any substance; or

(c) sell or supply any medicinal product which is not of the nature or quality demanded by the purchaser.

(2) Subsection 1 (c) shall not be taken to have been contravened by reason only that a medicinal product contains some extraneous matter if it is proved that the presence of that matter was an inevitable consequence of the process of manufacture of the product.

(3) Where a medicinal product is sold or supplied pursuant to a prescription given by an appropriate practitioner, subsections (1) and (2) shall have effect as if—

(a) any reference to the “purchaser” included a reference to the person for whom the medicinal product was prescribed by an appropriate practitioner; and

(b) for the words “demanded by the purchaser” there were substituted the words “specified in the prescription”.

(4) Any person who contravenes the provision of this section and regulations made under section 66 shall be guilty of an offence.

PART VI

CONTAINERS, PACKAGE, AND IDENTIFICATION OF MEDICINAL PRODUCTS

[Ch3501s50]50. Medicinal product to be in labelled containers or packages

(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 any medicinal product in a container or package which is not labelled in accordance with regulations made under section 66.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, sell or supply, a medicinal product 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 product; or

(b) is likely to be misleading as to the nature, efficacy or quality of the product or as to the uses or effects of medicinal products of that description.

(3) Any person who contravenes this section shall be guilty of an offence.

[Ch3501s51]51. 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 medicinal products, a leaflet relating to such medicinal products which does not comply with regulations made under section 66.

(2) Without prejudice to subsection (1), no person shall, in the course of a business carried on by him, supply together with a medicinal product or have in his possession for the purpose of so supplying a leaflet which—

- (a) falsely describes a medicinal product to which it relates; or
- (b) is likely to be misleading as to the nature, efficacy or quality of such medicinal product.

(3) Any person who contravenes this section shall be guilty of an offence.

PART VII

PROMOTION OF SALES OF MEDICINAL PRODUCTS

[Ch3501s52]52. Regulations for advertising of medicinal products

The Minister may make regulations which may prohibit any issue of advertisements—

- (a) relating to medicinal products of a description or a class specified in the regulations;
- (b) likely to lead to the use of any medicinal product, 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 medicinal products 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 medicinal products 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 products or as to any condition of body or mind in connexion with which the medicinal product might be used.

[Ch3501s53]53. 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 the 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 52 may otherwise provide, for the purposes of this Part, the following shall not constitute an advertisement—

(a) the sale or supply, or offer or exposure for sale or supply, of a medicinal product in a labelled container or package; and

(b) the supply, together with a medicinal product, of a leaflet relating solely to the use of the medicinal products supplied.

[Ch3501s54]54. Medicines Committee

19 of 1995(1) There shall be a Medicines Committee of the Board (in this section referred to as the "Committee") which shall consist of a chairman and not less than two and not more than four other persons appointed by the Board.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

(3) Without prejudice to the generality of subsection (2), the Committee shall—

(a) advise the Board on all matters covered in Parts IV to VII; and

(b) advise the Board on the safety, quality or efficacy of medicinal products.

(4) Section 12 shall apply to the Committee to the extent possible.

PART VIII

POISONS

[Ch3501s55]55. Preparation of poisons list

(1) The Minister shall, after consultation with the Board, prescribe a list of non-medicinal poisons (hereinafter referred to as the "Poisons List").

(2) The Poisons List shall be divided into two parts, as follows—

(a) Part I shall consist of those substances which, subject to the provisions of this Act, are prohibited from being sold except by a person who is lawfully conducting a retail pharmacy business; and

(b) Part II shall consist of those substances which, subject to the provisions of this Act, are prohibited from being sold except by a person who is an authorized seller of Part II poisons.

[Ch3501s56]56. Prohibition of, and conditions with respect to, sale of poisons

(1) Subject to the provisions of this Act, no person shall—

(a) sell or supply any poison which is a substance included in Part I of the Poisons List, unless—

(i) he is a person lawfully conducting a retail pharmacy business;

(ii) the sale or supply is effected on premises which are a registered pharmacy;

and

(iii) the sale or supply is effected by, or under the supervision of, a pharmacist;

(b) sell or supply any poison which is a substance included in Part II of the Poisons List, unless—

(i) he is a person lawfully conducting a retail pharmacy business and the sale or supply is effected on premises which are a registered pharmacy; or

(ii) he is a person who is an authorized seller of Part II poisons;

(c) sell or supply any poison, whether it is a substance included in Part I or in Part II of the Poisons List, unless the container of the poison is labelled in the prescribed manner—

(i) with the name of the poisons;

(ii) in the case of a preparation which contains a poison as one of its ingredients, with the prescribed particulars as to the proportion which the poison contained in the preparation bears to the total ingredients;

(iii) with the word “poison” or other prescribed indication of the character of the article; and

(iv) with the name of the seller of the poison and the address of the premises on which it is sold.

(2) Subject to the provisions of this Act—

(a) no person shall sell or supply any poison which is a substance included in Part I of the Poisons List to any person unless that person is either—

(i) certified in writing in the prescribed manner by a person authorized in that behalf by the Minister; or

(ii) known by the seller or by a pharmacist in the employment of the seller at the premises where the sale is effected to be a person to whom the poison may properly be sold;

(b) the seller of any poison shall not deliver it until—

(i) he has made or caused to be made an entry in a book to be kept for that purpose stating the date of the sale, the name and address of the purchaser and of the person by

whom the certificate required under paragraph (a) was given, the name and quantity of the article sold, and the purposes for which it is stated by the purchaser to be required; and

(ii) the purchaser has signed for the entry.

(3) Subject to the provisions of this Act, a poison shall not be exposed for sale in, or be offered for sale by means of, an automatic machine.

(4) Any person who contravenes this section shall be guilty of an offence.

[Ch3501s57]57. Poisons Committee

(1) There shall be a Poisons Committee of the Board (in this section referred to as the "Committee") which shall consist of a chairman and not less than two and not more than four other persons appointed by the Board.

(2) The Committee shall perform such functions and exercise such powers as the Board may from time to time assign to the Committee.

(3) Without prejudice to the generality of subsection (2), the Committee shall, where it is assigned by the Board so to do—

(a) advise the Board on all matters covered under this Part; and

(b) assist the Board in the preparation of the Poisons List.

(4) Section 12 shall apply to the Committee to the extent possible.

PART IX

PROVISIONS FOR NON-MEDICINAL PRODUCTS

[Ch3501s58]58. Provisions relating to substances which are not medicinal products

(1) The Minister may by regulations specify any descriptions or classes of articles or substances which—

(a) are manufactured, sold, supplied, imported or exported in a manner similar to medicinal products; or

(b) are used as ingredients in the manufacture of a medicinal product; or

(c) if used without proper safeguards, are likely to be a risk to public health or to be dangerous or injurious to animals, and he may provide that, subject to such exceptions and modifications as may be specified, the provisions of this Act including those relating to offences and penalties shall have effect to such descriptions or classes of articles or substances as those provisions apply to medicinal products.

PART X

INSPECTION

[Ch3501s59]59. Inspectors

21 of 1996(1) The Board shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as it considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

21 of 1996(2) A person shall not be qualified for appointment as an inspector unless he is a pharmacist or pharmacy technologist.

21 of 1996(3) A person appointed by the Board as an inspector under this section shall hold office subject to such conditions as the Board may determine, and the Board shall, in the case of an inspector who is a pharmacy technologist, determine the premises which may be inspected by such inspector.

[Ch3501s60]60. Entry into premises

21 of 1996(1) Subject to the provisions of this section and section 59 (3), 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).

[Ch3501s61]61. 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 medicinal product or a poison;

(b) any article appearing to him to be a container or package used or intended to be used to contain any medicinal product or poison or to be a label or leaflet used or intended to be used in connexion with a medicinal product or poison; or

(c) any plant or equipment appearing to him to be used or intended to be used in connexion with the manufacture or assembly of medicinal products or poisons and the means employed, at any stage of the processes of manufacture or assembly, 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 medicinal product or poison 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 of a medicinal product or poison,

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 medicinal product or poison is sold and supplied or intended to be sold, supplied or manufactured.

(3) For the purposes of this section, an inspector may—

(a) require any person carrying on a business which consists of, or includes, the manufacture, assembly, sale or supply of medicinal products or poisons, and any person employed in connexion with such a business, 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 proceeding under this Act.

(5) In exercising the powers under this section, an inspector may, in order to secure 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 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 60 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) wilfully obstructs an inspector in the discharge of his duties; or

(b) wilfully 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.

[Ch3501s61A]61A. Closure of premises and seizure of equipment, etc.

21 of 1996(1) Where the Board believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Board may, subject to subsection (2), order—

- (a) the closure of any premises; and
- (b) the seizure of any equipment, instrument or any other thing,

by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any equipment or any other thing seized shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Board, been complied with, unless before that time disciplinary or court proceedings, as the case may be, have been instituted in respect of the contravention, in which event the premises shall remain closed and the equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence or disciplinary misconduct under this Act or any regulations made thereunder, any equipment, instrument or other thing by means of or in relation to which the offence or misconduct was committed may, in addition to any other penalty imposed by the court or the Board, be forfeited to such person, and may be disposed of in such manner and at such time and place, as the court or the Board, as the case may be, may direct; but no equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or the Board or before the time within which the appeal may be taken has expired.

[Ch3501s62]62. 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;

(b) any information obtained by 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 therefor, be guilty of an offence and shall be liable to a fine not exceeding K200 and to imprisonment for a term not exceeding three months.

[Ch3501s63]63. Inspectors not to be personally liable for acts done by them under the Act

An inspector shall not be personally liable in respect of any act done by him in the course of his employment and in the execution or purported execution of any duty under this Act.

[Ch3501s64]64. Offences by a corporate body

Where under this Act, an offence committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was supposed to act in any capacity, such officer and the body corporate shall severally and jointly be guilty of an offence.

[Ch3501s65]65. Penalty

(1) Any person who is guilty of an offence under this Act for which a specific penalty has not been provided shall be liable to a fine not exceeding K50,000 and to imprisonment for a term not exceeding five years.

21 of 1996(2) Upon conviction of any person for an offence under this Act, the court may, in addition to any other penalty imposed, declare any 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.

PART XI

REGULATIONS AND SAVINGS

[Ch3501s66]66. Regulations

The Minister may, with the advice of the Board, make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may—

(a) specify descriptions or classes of medicinal products or poisons or of any articles or substances required to be specified under this Act;

(b) control, regulate or prohibit the sale or supply, export or the importation, of medicinal products or poisons or any articles or substances of any specified description or class;

- (c) provide for the manner in which containers and packages or medicinal products or poisons may be labelled;
- (d) provide for the manner in which leaflets relating to the advertisement of medicinal products or poisons may be made;
- (e) prescribe such requirements as may be necessary with respect to—
 - (i) the manner in which, or persons under whose supervision, medicinal products or poisons may be prepared or may be dispensed;
 - (ii) the amount of space to be provided in any premises for persons preparing or dispensing medicinal products, 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 medicinal products or poisons;
 - (iv) the accommodation to be provided in any premises for members of the public to whom medicinal products or poisons are sold or supplied or for whom medicinal products or poisons are being prepared or assembled;
 - (v) the amount of space to be provided in any premises for members of the public and storage of medicinal products or poisons;
 - (vi) the safekeeping of medicinal products or poisons;
 - (vii) the disposal of medicinal products or poisons which have become unusable or otherwise unwanted;
 - (viii) precautions to be observed before medicinal products or poisons are sold or supplied;
 - (ix) the keeping of records relating to the sale or supply of medicinal products or poisons;
 - (x) the supply of medicinal products or poisons 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 medicinal products;
- (f) prescribe forms of any register required to be kept by the Board under this Act;
- (g) prescribe forms of any applications, notices, licences, certificates and any other documents required to be prescribed under this Act;
- (h) prescribe forms of any book or record to be kept for the purposes of this Act;
- (i) prescribe the fees payable upon registration or renewal of registration and upon application for a licence or certificate or renewal of licence or certificate; and

- (j) prescribe anything to be prescribed under this Act.

[Ch3501s67]67. Repeal and savings

(1) The Pharmacy and Poisons Act is hereby repealed. Cap. 35:01

(2) Any subsidiary legislation made under the Pharmacy and Poisons Act in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and be deemed to be a subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

under s. 66

G.N. 65/1991

14/1995

82/1995

7/1997

87/1998

49/2000

1. Citation

These Regulations may be cited as the Pharmacy, Medicines and Poisons (Fees and Forms) Regulations.

2. Fees

The Fees specified in the First Schedule shall be payable in respect of the matters correspondingly specified herein.

3. Forms

The forms set out in the Second Schedule shall be used for the purposes of the Act, and such particulars as are contained in these forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act.

FIRST SCHEDULE reg. 2

G.N. 14/1995

G.N. 82/1995

G.N. 87/1998

G.N. 49/2000

FEES

Item Matter K t

1. On application for—

(a) registration as a pharmacist—

(i) for a Malawian 500 00

(ii) for a newly qualified Malawian 250 00

(iii) for a Non-Malawian US\$ 100 00

(b) registration as a pharmacy technologist—

(i) for a Malawian 200 00

(ii) for a newly qualified Malawian 100 00

(iii) for a non-Malawian US\$ 50 00

(c) registration as—

(i) a pharmacy assistant 100 00

(ii) a newly qualified pharmacy assistant 50 00

(d) registration of premises where a retail pharmacy business is to be carried on—

(i) by a company 5,000 00

(ii) by an individual 5,000 00

(e) registration of premises where—

(i) a prescription wholesale pharmacy business is to be carried on 12,000 00

(ii) a non-prescription wholesale pharmacy business is to be carried on 10,000 00

(f) registration of premises where a manufacturing pharmacy business is to be carried on 10,000 00

(g) registration of premises where a medicine store business is to be carried on 3,000 00

2. (a) Upon issue of a certificate of registration as a pharmacist—

(i) for a Malawian 500 00

(ii) for a newly qualified Malawian 100 00

(iii) for a non-Malawian US\$ 100 00

(b) Upon issue of a certificate of registration as a pharmacy technologist—

(i) for a Malawian 200 00

(ii) for a newly qualified Malawian 100 00

(iii) for a non-Malawian US\$ 50 00

(c) Upon issue of a certificate of registration as—

(i) a pharmacy assistant 100 00

(ii) a newly qualified pharmacy assistant 50 00

(d) Upon registration of premises where a retail pharmacy business is to be carried on 7,000 00

(e) Upon registration of premises where—

(i) a wholesale pharmacy business is to be carried on 15,000 00

(ii) a non-prescription wholesale business is to be carried on 7,000 00

(f) Upon registration of premises where a manufacturing pharmacy business is to be carried on 12,000 00

(g) Upon registration of premises where a medicine store business is to be carried on 4,000 00

3. (a) On application for—

(i) product licence for products manufactured within Malawi 1,000 00

(ii) product licence for products manufactured outside Malawi US\$ 50 00

(iii) manufacturer's licence 1,000 00

(iv) wholesale dealer's licence 2,000 00

(v) non-prescription wholesale dealer's licence 1,000 00

(vi) dispensing licence 500 00

(vii) medicine stores licence 2,000 00

(b) Upon issue of—

(i) a product licence for products manufactured within Malawi 1,500 00

(ii) a product licence for products manufactured outside Malawi US\$ 150 00

(iii) a manufacturer's licence 5,000 00

(iv) a wholesale dealer's licence 15,000 00

(v) a non-prescription wholesale dealer's licence 10,000 00

(vi) a dispensing licence to— 00

(A) a medical practitioner, dentist or veterinary surgeon practising within the Cities of Blantyre, Lilongwe, Mzuzu and the Municipality of Zomba 2,000 00

(B) a medical practitioner, dentist or veterinary surgeon practising at a place other than any of the places referred to in subparagraph (A) 500 00

(C) any appropriate practitioner other than those referred to under subparagraphs (A) and (B) practising at any place in Malawi 300 00

(vii) a medicine store licence 4,000 00

4. Retention fees—

(a) On application for retention of name on the register of—

(i) (A) a Malawian pharmacist 500 00

(B) a non-Malawian pharmacist US\$ 100 00

(ii) (A) a Malawian pharmacy technologist 200

(B) a non-Malawian pharmacy technologist US\$ 50 00

(iii) a pharmacy assistant 100 00

(b) Upon approval for retention of names of register of—

(i) (A) a Malawian pharmacist 400 00

(B) a non-Malawian pharmacist US\$ 80 00

(ii) (A) a Malawian pharmacy technologist 200 00

(B) a non-Malawian pharmacy technologist US\$ 50 00

(iii) a pharmacy assistant 75 00

- (c) a retail pharmacy business 7,000 00
- (d) a wholesale dealer's licence 15,000 00
- (e) a non-prescription wholesale dealer's licence 10,000 00
- (f) a medicine store business 3,500 00
- (g) a manufacturer's licence 5,000 00
- (h) a dispensing licence—

(i) to a medical practitioner, dentist or veterinary surgeon practising within the cities of Blantyre, Lilongwe and Mzuzu and the Municipality of Zomba 2,000 00

(ii) to a medical practitioner, dentist or veterinary surgeon practising in any other district 500 00

(iii) to any appropriate practitioner other than those referred to under subparagraphs (i) and (ii) practising at any place in Malawi 300 00

(i) a product licence—

(i) where the product is manufactured in Malawi 1,000 00

(ii) where the product is manufactured outside Malawi US\$ 150 00

SECOND SCHEDULE

FORM No. 1

FORMS

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR REGISTRATION AS A PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(section 21 (1))

To: The Registrar

Pharmacy, Medicines and Poisons Board

P.O. Box 30377

Lilongwe 3

1. Name and address of applicant (in block letters)

Surname

First Names

Address.....

Telephone Number

2. Date of birth

3. Sex (male/female)

4. Nationality

5. Application for registration in the register of

6. Academic qualifications (certificates, diplomas, degrees) and institutions attended (school, university, college)—

Qualification	Year	Institution and Country
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.....
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.....
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.....
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.....
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.....
-------	-------	-------

7. Professional qualifications (with dates and institutions attended)—

Qualifications	Year	Institution/Body
----------------	------	------------------

.....
-------	-------	-------

.....
-------	-------	-------

.....
-------	-------	-------

.....
.....

8. Present employer and address:

.....
.....

9. I, the above-mentioned applicant, hereby apply for registration on the aforementioned register and submit herewith—

- * (a) the prescribed application fee of K
- * (b) the prescribed registration fee of K, and
- * (c) the following documents in support of my application:

.....

10. Declaration—

I, the above-mentioned applicant, hereby solemnly and sincerely declare that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and the Regulations made under the Act and understand that, if registered, I shall be bound thereby and by any amendments thereto, for as long as my name shall remain on the aforementioned register.

Declared at by

.....

Signature of Applicant

before me at on this day of
....., 19

.....

Commissioner of Oaths

11. FOR OFFICE USE ONLY—

- (a) Date of approval of application
- (b) Registration No.

Certificate No.

(c) Receipt Nos. of application and registration fees

(d) Remarks

.....

Date

Signature

Registrar

Pharmacy, Medicines and Poisons Board

FORM No. 2

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(Sections 21 (3) and 66 (f))

Qualifications

Name of Registered person	Date of Registration	Registration Number	Expiry Date
Address	Nationality	Date of Birth	Upon registration
University, College, School or other institution	Date of cancellation of registration, if any		
Remarks, if any			

FORM No. 3

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION OF A PHARMACIST, PHARMACY TECHNOLOGIST OR PHARMACY ASSISTANT*

(Section 22)

Registration No Certificate No

This is to certify that is this day of
....., 19 registered on the register of kept and
maintained by the Pharmacy, Medicines and Poisons Board in accordance with the provisions of the
Pharmacy, Medicines and Poisons Act, 1988, and the Regulations made thereunder.

Valid until, 19

Dated

.....

Registrar

Chairman

Common Seal of the Board

FORM No. 4

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR RETENTION OF NAME OF REGISTERED PHARMACIST, REGISTERED PHARMACY
TECHNOLOGIST, OR REGISTERED PHARMACY ASSISTANT* ON APPROPRIATE REGISTER

(Sections 23 (1) and 66 (g))

To: The Registrar

Pharmacy, Medicines and Poisons Board

P.O. Box 30377

Lilongwe 3

1. Surname

2. First names

3. Address

4. Date of Birth

5. Sex (male/female)

6. Nationality

7. Registration No. dated, 19

8. Certificate No. dated, 19

9. Application for retention of name on the in respect of

.....

(name of registered Pharmacist, registered Pharmacy Technologist or registered Pharmacy Assistant)

10. I, the above-mentioned applicant, hereby apply for retention of my name on the
aforementioned register and submit therefor—

(a) *application fee of K and

(b) *retention fee of K.....

Dated this day of, 19

.....

Signature of Applicant

11. FOR OFFICE USE ONLY—

(a) Date of approval of application

(b) Registration No. Certificate No.

(c) Receipt Numbers of application and retention fees

(d) Remarks

.....
Date

.....
Registrar Pharmacy, Medicines and Poisons Board

FORM No. 5

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35.01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR REGISTRATION OF PREMISES WHERE A RETAIL PHARMACY BUSINESS IS TO BE
CARRIED ON

(Section 28)

To: The Registrar
Pharmacy, Medicines and Poisons Board
P.O. Box 30377
Lilongwe 3

1. Name of applicant

2. Address

3. Location of premises on which a retail pharmacy business it to be carried (Town, Street,
Plot No.)

.....

.....

.....

4. Where the applicant is a company—

(a) state registration number of company under the Act

(b) state name and Certificate No. of registered pharmacist under whose personal management and control the affairs of the company would be subject to
.....

(c) attach a copy of the certificate of incorporation of the company
.....

5. Name and number of certificate of registration of a registered pharmacist having control of the premises referred to in paragraph 3

.....

.....

6. I, the above-mentioned applicant, submit herewith application fee of K
and registration fee of K

Date

Signature of Applicant

[*NOTE 1. Fees must be payable only by cheque or postal order made in favour of the Pharmacy, Medicines and Poisons Board.

2. Application fee is not refundable whereas registration fee is refundable where the application is not accepted]

7. FOR OFFICE USE ONLY—

(a) Date of inspection of premises

(b) Remarks

(c) Date of approval of application

(d) Registration No.

(e) Receipt Nos. of application and registration fees \

Date

Signature

Registrar Pharmacy, Medicines and Poisons Board

FORM No. 6

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION OF PREMISES WHERE A RETAIL PHARMACY BUSINESS IS TO BE CARRIED ON

(Sections 28 and 66)

REGISTRATION No.

..... CERTIFICATE No.

.....

THIS IS TO CERTIFY that the Premises situated at

.....

.....

(state location of premises, namely town, street and plot No.)

where is authorized to carry out a

(Name of business owner)

retail pharmacy business are this day of, 19 registered on the register of premises where retail pharmacy business is to be carried on, kept and maintained by the Pharmacy, Medicines and Poisons Board in accordance with the provisions of the Pharmacy, Medicines and Poisons Act and the Regulations made thereunder.

Date

.....

Registrar

Chairman

Common Seal of the Board

FORM No. 7

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PREMISES WHERE A RETAIL PHARMACY BUSINESS IS TO BE CARRIED ON

(Sections 28 and 66 (f))

Location of Registered Premises	Date of Registration	Registration Certificate No.	Name, Registration and of Registered Pharmacist in Control of Business	Remarks, if any
---------------------------------	----------------------	------------------------------	--	-----------------

Town	Street	Plot No.
------	--------	----------

FORM No. 8

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A PRODUCT LICENCE

(Sections 35 (1) and 37 (1))

To: The Secretary for Health

Ministry of Health

P.O. Box 30377

Lilongwe 3 Malawi

NOTES—1. Application for a product licence in respect of established medicinal products may be exempted from submission of information normally required for certain parts of the application at the discretion of the licensing authority. Exemption claims may be submitted along with the application with reasons for the request. Application for a product licence in respect of new medicinal products, however, will normally have to comply in full with the requirements of all relevant parts of the application form.

2. Before completing each part of the form, please read any notes on the application form.

3. Samples and printed matter should be sent by post or other means, postage prepaid by the applicant.

4.—(a) Written evidence of application fee of K and product licence fee of K as having been paid to the Board should be submitted together with this application, to the Secretary for Health. The application fee and product licence fee shall be paid to the Board in the form of postal order or cheque.

(b) The application fee shall not be refundable whereas the product licence fee shall be refundable where the applicant is not accepted.

SUMMARY OF APPLICATION FORM FOR PRODUCT LICENCE

PART 1: General Information

1.1 Particulars of Applicant

1.2 Particulars of Medicinal Product

PART 2: Pharmaceutical Data (Formulation)

PART 3: Chemical Data (Active and Inactive Ingredients)

3.1 Chemical Detail

3.2 Outline Synthesis

PART 4: Manufacturing Data

4.1 Summary of Procedures

4.2 In-process Controls

PART 5: Raw Materials Data

5.1 Specifications

5.2 Control Procedures

PART 6: Final Product Data

6.1 Specifications

6.2 Control Procedures

6.3 Product Information

PART 7: Container and Packaging Data

7.1 Primary Container

7.1.1 Specifications

7.1.2 Control Procedures

7.2 External Packaging

PART 8: Stability Data

8.1 Active Ingredient(s)

8.2 Analytical Procedures

8.3 Experimental Results

8.4 Shelf Life

8.5 Degradation Products

8.6 Deterioration Evidence

8.7 Stability Testing

PART 9: Package Insert and Labelling Data

9.1 Package Insert

9.2 Product Label

9.3 Outer Package Label

PART 10: Foreign Registration Data

10.1 Country of Origin

10.2 Other Countries

10.3 Non-acceptance Details

PART 11: Distribution and Promotion Data

11.1 Distribution

11.2 Promotion/Advertising

PART 12: Pharmaceutical and Biological Availability Data

12.1 Pharmaceutical Data

12.2 Biological Data

PART 13: Toxicological Data

13.1 Preclinical

13.2 Clinical

PART 14: Efficacy Data

14.1 Preclinical

14.2 Clinical

PART 15: Pharmacological Data

15.1 Pharmacodynamic Data

15.2 Pharmacokinetic Data

15.3 Adverse Reaction Data

15.4 Overdosage Data

15.5 Interaction Data

15.6 Biological Assay Data

PART 16: Veterinary Medicine Clinical Studies Data

16.1 Toxicological Data

16.2 Efficacy Data

16.3 Pharmacological Data

16.4 Data on Residues

PART 17: Additional Document Requirements

PART 1

1.1 Particulars of Applicant (2)

Name

Business address

.....

Postal address

.....

Telephone number

Telex number

Telefax number

1.2 Description of medicinal product to which the product licence relates

.....

Approved name (3)

Proprietary name (4)

Dosage form and presentation (5)

Pharmacological classification (6)

Country of origin (7)

Principal's name and address

.....

.....

.....

Manufacturer's name and address

.....

.....

.....

The medicinal product *has/has not been available in Malawi/ before

....., 19

I, the undersigned, hereby solemnly and sincerely declare that the information I have given above is true in every respect to the best of my knowledge and belief and that I have read the Act and any Regulations or Rules made under the Act and understand that, if issued with the product licence, I shall be bound thereby for so long the product licence is valid.

.....

Signature of Applicant

Declared at by

.....

(State name of applicant)

before me this

day of, 19

Signature

(Commissioner of Oaths)

PART 1—NOTES

(1) For office use only.

(2) Application for product licence shall be made—

(a) in case of an individual, by a registered pharmacist who is himself the applicant;

(b) in case of a company, by a registered pharmacist under whose _ personal management and control the business of the company is carried on.

(3)(a) This shall be the international non-proprietary name or approved generic name in the country of origin.

(b) If an approved name has not yet been allocated to the medicinal product by an appropriate international or national body, the name which has been or will be submitted for approval shall be stated here.

(4) This is the trade name which is unique to the particular medicinal product and by which it is generally identified for commercial purposes.(5)

(a) The dosage form namely, capsule, eye-drops, injection vial, ointment, solution, suppository, tablet and the presentation, including a brief description of the physical characteristics of the medicinal product and the strength of its active ingredient(s) shall be stated here. Examples:

- (i) dispersible greenish-yellow round scored tablets containing
.....
- (ii) injection, powder for reconstitution as a solution/suspension, 2 g vial
- (iii) suspension (=mixture), granules for reconstitution with water for preparations, 100 ml bottle. When reconstituted contains
...../5m

(b) Each different dosage form or presentation of a medicinal product will be construed as requiring a separate product licence.

However applications for product licence in respect of medicinal products which vary only in strength may be made on the same form.

(6) The pharmacological classification or therapeutic group into which the medicinal product falls should be stated.

Examples— stimulant laxative

non-steroidal anti-inflammatory

anti-epileptic

topical antifungal

anti-tuberculosis drug, etc.

(7) This is the country of original development of the medicinal product.

PART 2: PHARMACEUTICAL DATA (FORMULATION)

Name of applicant:

Name of medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

Listed below are details of the active and inactive ingredients contained in the medicinal product.

Approved name (1) inclusion if inactive	Chemical name (2)	Quantity (3)	Active or inactive (4)	Reasons for
--	-------------------	--------------	------------------------	-------------

PART 2—NOTES

(1) This will be the international non-proprietary name or a national generic name. If no such approved name exists, the name which has been submitted for approval should be stated.

(2) This shall, wherever possible, be given in terms of the published list of an appropriate international body. If none exists, the chemical nature of the ingredient should be described.

(3) This should be stated in terms of a dosage unit or, where none exists, in terms of a suitable unit of mass or volume of the medicinal product.

(4) Inactive ingredients include all ingredients other than the active ingredient(s), including pharmaceutical additives, necessary for formulation purposes.

PART 3: CHEMICAL DATA (ACTIVE AND INACTIVE INGREDIENTS)

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

3.1 Chemical details of the active and inactive ingredients are as follows:

Approved name
Chemical name and structural formula
Specifications (1)
Physical Characteristics (2)

3.2 Outline synthesis procedures for each active ingredient with side-product limits is as follows:

Active ingredient	Outline synthesis	Side-product limits
-------------------	-------------------	---------------------

PART 3—NOTES

(1) Where applicable, reference to internationally recognized publications e.g. BP, BPC, Eur.P, IP, USP, etc., will be acceptable.

(2) These should include where relevant—

- (a) Melting point
- (b) Boiling point
- (c) Optical rotation
- (d) Water solubility (according to BP terminology)

(e) Crystal form

(f) Particle size

together with any other physical properties which characterize the ingredient.

PART 4: MANUFACTURING DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

4.1 Summary of Manufacturing Procedure (1)–(3).

4.2 Analytical, microbiological or other in-process control procedures (2).

PART 4—NOTES

(1) This should cover the various stages of manufacturing and packaging and should include types of equipment and process durations.

(2) The frequency with which and sequence in which in-process controls are carried out should also be indicated here.

(3) The name and address of each pharmaceutical manufacturing facility which carries out any of the above procedures should be indicated, together with particulars of the procedures.

PART 5: RAW MATERIALS DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

5.1—Specifications Summarized below are the specifications of all active and inactive raw materials used in the manufacturing process of the medicinal product. The names of the tests, limits and criteria of acceptance of each parameter in the specifications are given (1)–(4).

PART 5.1—NOTES

(1) Where the stated specification tests correspond to a recognized pharmacopoeia, this should be stated.

(2) Specifications should be as in the latest editions of such pharmacopoeia and any departure from these should be fully substantiated.

(3) Approved or chemical names only should be used.

(4) Those raw materials not present in the final product should be indicated.

5.2—Control Procedures

Following is a description of the analytical and other control procedures performed on each of the raw materials, in order to confirm the specifications stated in Part 5.1 (1)–(3). This should include microbiological procedures where applicable.

PART 5.2—NOTES

(1) Reference only to standard texts will not be sufficient and full details should therefore be given.

(2) Release criteria should be stated for each raw material.

(3) The name of the laboratory carrying out each control procedure should be given.

PART 6: FINAL PRODUCT DATA

Name of Applicant:

Name of Medicinal Product— (a) Approved:

(b) Proprietary:

Dosage Form:

6.1 Specifications Summarized below are the specifications of the final product in terms of the name of the specification and the limits and criteria of acceptance of the physical, chemical and microbiological parameters where applicable.

PART 6.1—NOTES

(1) Analytical procedures should not be given here but in the next section, part 6.2.

(2) Control Procedures

Following is a description of analytical and other control procedures performed on the final product in order to confirm the specifications stated in Part 6.1. This should include microbiological procedures where relevant (1)–(4).

PART 6.2—NOTES

(1) Reference only to standard texts will not be sufficient and full details should therefore be given.

(2) Where an analytical procedure has been fully described in another part of the application reference to the relevant page may be made.

(3) Lot release requirements for the final product should be stated.

(4) The name of the laboratory carrying out each control procedure should be given.

6.3 Product Information (1)

- (a) Name of medicinal product (2) and dosage form
- (b) Content of active ingredient(s) (3)
- (c) Summary of pharmacological effects
- (d) Indications (4)
- (e) Contra-indications
- (f) Dose information (5)
- (g) Cautions (6)
- (h) Side-effects (7)

- (i) Interactions and incompatibilities with other medicinal products and other substances (8)
- (j) Treatment of overdosage (9)
- (k) Presentation and pack size(s) of the medicinal product (10)
- (l) Other dosage forms of the same medicinal product available (11)
- (m) Storage requirements of the medicinal product (11)
- (n) Scheduling status (12)
- (o) Proposed retail price per unit pack.

PART 6.3—NOTES

(1) All the information given here (with the exception of (1)), should appear on the data sheet package insert together with other details as specified in Part 9.

(2) The international non-proprietary name or nationality approved generic name should be given together with the proprietary name, where this exists.

(3) This should be expressed as the amount per unit dose or per suitable unit mass or volume. The name and quantity of any added preservative should be given. Inactive ingredients may be specified as “excipients” except where they have special significance, e.g. sugar in preparations likely to be used by diabetics.

(4) These will be the indications for which a product licence is being sought.

(5)(a) Dose information should be given in the form of average doses or dose ranges and normal, maximum single and total daily doses for adults, children and infants.

(b) This should be accompanied by information on routes of administration, dose frequencies and normal duration of treatment with the medicinal product. Where relevant, the above information should be given for each therapeutic indication of the medicinal product.

(c) Doses for children and infants should be expressed as mg/kg, mg/m² or for specified age ranges.

(6) Cautions should include—

(a) Specific information on conditions or patients where the medicinal product should be used with particular care, e.g. in pregnancy, in renal or hepatic impairment, in elderly or young patients, during lactation, etc.

(b) Other specific warnings on use of the medicine, i.e. if liable to cause drug dependence, the statement “may be habit forming”; if a prescription only medicinal product, the statement “consult your physician before use of this medicine” or similar warnings.

(c) Warnings of potential drug interactions and incompatibilities (to be detailed in section (i)).

(7) (a) Details of all major and minor side-effects should be given together with an indication of the likely frequency of occurrence, e.g. common, occasional, rarely with all patients, etc.

(b) Also whether such side-effects are related to high or low doses and short or prolonged courses of treatment with the medicine should be stated, together with information on the reversibility or otherwise of the side-effect(s).

(8) All potential interactions and incompatibilities with other medicinal products should be given together with any involving alcohol, tobacco, foodstuffs, etc., where relevant.

(9) Information on both general measures for treatment of overdose and use of specific antidotes should be given where available.

(10) Presentation should be described in terms of the macroscopic characteristics of the product together with details of any distinguishing features, e.g. colour, flavour, scoring, distinguishing marks, etc.

(11) Refers to other products made by the company manufacturing the medicinal products for which application for registration is being submitted.

(12) i.e. CD =controlled drug

POM=prescription medicinal product

OMP=other medicinal product

GSL =general sales list medicinal product, etc.

PART 7: CONTAINER AND PACKAGING DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

7.1 Primary Container

7.1.1 Specifications The following are the detailed specifications of the type, nature, size and grade of the primary container, i.e. that which is in direct contact with the medicinal product. Details of the type and method of closure together with those of any internal wadding or packing materials should also be stated. (1)

PART 7.1.1—NOTES

- (a) The physical characteristics of the material(s) of construction of the container and closure should be given.
- (b) In the case of plastics, names and percentages of any supplementary substances should be indicated.
- (c) With metals, information on any interior lacquer coating substance should be given.
- (d) For all materials, possible interactions with the medicinal product should be described.
- (e) Where specifications for a container material do not exist, this should be stated.

7.1.2 Control Procedures Following are the analytical and any other control procedures carried out on the primary container by or on behalf of the applicant, in order to confirm the requirements of the specification detailed in Part 7.1.1.

PART 7.1.2—NOTES

- (1) Reference only to standard reference texts will not be sufficient and full details should therefore be provided.
- (2) The laboratories in which the control procedures are carried out should be stated, and where a laboratory other than that of the applicant or manufacturer is used, the applicant should confirm that the relevant tests are being carried out.
- (3) Release criteria for the primary container and the closure should be stated.

7.2 External Packaging(s)

A brief description of any outer packaging(s) together with specifications, where relevant, is given below.

PART 8: STABILITY DATA (1) (6)

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

8.1 Following is a description of active ingredient(s) characteristics regarding—

(a) normal degradation patterns (where known) resulting from hydrolysis, photolysis, oxidation and other processes:

(b) identity of known degradation products:

.....; and

(c) storage conditions currently used to maintain the quality of each

.....
.....
.....

8.2 Following is a description of analytical procedures used to determine the stability of the medicinal product as packaged with the reasons for assuming that these methods can indicate stability. (2) (3).....

.....

8.3 Following are tabulated experimental results of the above stability tests carried out on the final product, together with the interpretation of the results and an explanation of the basis on which the shelf-life is deduced. (4)

.....

8.4 The shelf-life claimed for the final packaged product under specified storage conditions is as follows

.....
.....

8.5 The methods employed and results obtained for determination of the presence of degradation products after a period of storage under specified conditions are as follows

.....

.....

8.6 Physical characteristics of the final product during storage under specified normal conditions and evidence indicating deterioration are as follows

.....

.....

8.7 Following is a programme of stability testing which is used to monitor and confirm the deduced shelf-life. (5)

.....

.....

PART 8—NOTES

(1)(a) No application for a product licence in respect of any medicinal product shall be submitted without inclusion of stability data indicating a shelf-life of twenty-four months for the final packaged medicinal product.

(b) This requirement will not apply to medicinal products with inherently unstable ingredients.

(2) As temperatures up to 40 degrees centigrade may be reached during storage in Malawi, testing should simulate these condition.

(3) Stability tests should include monitoring of the continued preserving ability of any antimicrobial preservative in the product.

(4) Tabulated results of stability tests should include—

(a) stability results obtained in respect of all specification tests listed in Part 6.2.;

(b) full details of environmental conditions e.g. temperature, humidity, light, duration of storage, used in shelf-life studies.

(c) batch numbers and dates of manufacture of the samples' examined; and

(d) confirmation that the packaging used is the same as described in Part 7.1.

(5) The programme shall include details of frequency of testing, proposed environmental conditions, acceptance criteria and parameters to be tested.

(6)(a) Informing on the batch number code must be given to the licensing authority so that it will be possible to judge the age of the product.

(b) Alternatively the date of manufacture should be declared on the label of the primary container and on any other packaging.

PART 9: LABELLING AND PACKAGE INSERT DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

9.1 Package Insert

The following information shall appear on the package insert/data sheet of the product, six specimens of which should be submitted—

- (a) scheduling status;
- (b) generic name;
- (c) proprietary name;
- (d) dosage form;
- (e) composition;
- (f) pharmacological/therapeutic classification;
- (g) summary of pharmacological action;
- (h) indications;
- (i) contra-indications;
- (j) dosages and directions for use;
- (k) side-effects;
- (l) interactions and incompatibilities;
- (m) symptoms and treatment of overdose;
- (n) cautions/warnings;
- (o) storage instructions;
- (p) presentation/identification;

- (q) name and address of manufacturer;
- (r) product licence number and date of issue; and
- (s) date of publication.

PART 9.1—NOTES

As for Part 6.1 where applicable

9.2 Product label.

The following information should be included on the label of the primary container which is in direct contact with the medicine, six specimens of which should be submitted—

- (a) scheduling status;
- (b) generic and proprietary names;
- (c) dosage form;
- (d) composition;
- (e) doses and routes of administration/directions for use;
- (f) any necessary warnings e.g. “keep away from children” “read package insert carefully before use”;
- (g) date of manufacture;
- (h) batch number;
- (i) date of expiry; and
- (j) name and address of manufacturer.

PART 9.2—NOTES

As for Part 6.3 where applicable

9.3 Outer Package Label The following information should be included on the label of any outer package of the product, six specimens of which should be submitted—

- (a) scheduling status;
- (b) generic and proprietary names;
- (c) dosage form;
- (d) composition;
- (e) doses and routes of administration/directions for use;

- (f) any necessary warnings;
- (g) manufacturing date;
- (h) batch number;
- (i) expiry date;
- (j) date and number of product licence;
- (k) for introductory samples, the statement "SAMPLE";
- (l) name and address of manufacturer; and
- (m) indications (in the case of over-the-counter products).

PART 9.3—NOTES

As for Part 6.3 where applicable

PART 10: FOREIGN REGISTRATION DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

10.1 Product licence/registration number in country of origin (1).

10.2 Summary of other countries of registration with product licence/registration numbers, name and presentation of the medicinal product and prescription status (2) in these countries. (Copies of the registration certificates and product licences should be submitted.)

Country	Licence/ Registration	Name of Medicinal Product	Presentation	Prescription
---------	-----------------------	---------------------------	--------------	--------------

10.3—Countries in which registration of the medicinal product has not been accepted with reasons for non-acceptance are as follows—

PART 10—NOTES

(1) If registration has not been authorized details as to progress made with the registration application should be given.

(2) i.e. PO (prescription only), P (pharmacy only), GSL (general sales list), CD (controlled drug) or other as specified.

PART 11: DISTRIBUTION AND PROMOTION DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

11.1 How it is proposed to distribute the medicinal product (1)

- (a) under controlled drug (narcotics) regulations
- (b) on prescription only
- (c) recorded purchase through pharmacies only
- (d) on sale through pharmacies only
- (e) for general sale
- (f) for veterinary use only

11.2 How will the medicinal product be advertised/ promoted ? (1)

- (a) to the medical/pharmacy professions only
- (b) to the general public by point-of-sale displays in pharmacies
- (c) to the general public

PART 11—NOTES

(1) Please tick the appropriate boxes

PART 12: PHARMACEUTICAL AND BIOLOGICAL AVAILABILITY DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

Following are experimental details and results of tests performed on the medicinal product to confirm its pharmaceutical and biological availability (bioavailability).

12.1 Pharmaceutical Availability (1)

12.2 Biological Availability (2)

PART 12—NOTES

(1) These are IN VITRO tests (commonly dissolution rate studies) designed to illustrate the rate of release of active ingredient(s) from the dosage form.

(2) These are IN VIVO tests designed to show the characteristics of release of the active ingredient(s) from the dosage form into body fluid (usually blood plasma).

(3) Confirmation must be given that such tests were carried out on the medicine formulation for which registration is being sought. If the product formulation with which clinical trials were conducted is not identical to that of this application, any differences must be clearly indicated.

(4) The applicant should state whether any correlation exists between the in vitro and in vivo data obtained using the methods described above.

(5) Full details of any standard reference substances used in the tests should be given, e.g. supplier, composition, batch number.

PART 13: TOXICOLOGICAL DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

Following are details of methods used in, results obtained and conclusion drawn from tests performed on the medicinal product to demonstrate all aspects of its toxicity and to prove the safety of its use. These should include (1–6) (11)—

13.1 Pre-clinical studies with special reference to—

(a) single dose studies to investigate acute toxicity and determine the average lethal dose (7).

(b) multiple dose studies to investigate sub-acute and chronic toxicity (8);

(c) teratogenicity studies and other reproduction studies (9);

(d) mutagenicity studies (10);

(e) carcinogenicity studies (10); and

(f) other studies to substantiate the safety of the medicinal product, including studies investigating drug-dependence potential and histo-pathological investigations.

PART 13.1—NOTES

(1) Where well known active ingredients are concerned, the licensing authority may grant exemption from the submission of some of the above information.

(2) The route of administration used in the tests should generally be the same as that intended for clinical use.

(3) Control groups should always be included in the tests. These controls would usually be given a place but otherwise treated and observed like the test groups.

(4) Data provided should be concise, relevant and provide adequate proof that the requirements of this part have been met.

(5) The following information must be supplied—

- (a) animal strain;
- (b) method of administration and dosage;
- (c) solvents or suspending agents used;
- (d) numbers, sexes, ages and weights of animals used; and
- (e) numbers and composition of control groups.

(6) Results of investigations and observations carried out should be reported both individually for each animal and collectively for each group. The arithmetic means for each test and control group should be specified.

(7)(a) Data on acute toxicity, stated as LD50 with confidence limits and preferably LD95 also, should be expressed as units of weight or volume per kg of body weight.

(b) This data should generally be available for at least two animal species and in respect of different administration methods.

(c) Observation periods and survival times of the animals tested should be stated.

(d) Data on acute toxicity in newborn animals should be provided for medicines to be used in the prenatal period.

(8) Reference here is to toxicity following different forms of repeated administration of the medicine. Such tests should be conducted with at least two animal species, one of which should normally be a non-rodent.

(9) These should include—

- (a) embryotoxicity (death of foetus or reduced foetal weight);
- (b) peri- and post-natal actions (effects arising just prior to, during and after parturition);
and
- (c) fertility studies.

(10) These tests are generally required if any ingredient of the medicine or metabolite are allied to known carcinogenic and/or mutagenic substances, and also in general if the medicine is intended to be used over prolonged periods.

(11) Where certain tests have not been performed, the reasons for this should be stated which the medicinal product is intended to be used and with regard to the dosage and method of administration of the medicinal product—

.....
.....
.....

14.2 Clinical studies, with special reference to comparative or controlled clinical tests, double blind tests, etc.—

.....
.....
.....

PART 14.2—NOTES

(1) Proof of all information relating to efficacy as contained in the package insert should be substantiated here.

(2) By whom, when and where the studies were carried out should be stated.

PART 15: PHARMACOLOGICAL DATA

Name of Applicant:

Name of Medicinal product— (a) Approved:

(b) Proprietary:

Dosage Form:

The pharmacological properties of the medicinal product are summarized below in terms of its pharmacodynamic and pharmacokinetic characteristics.

15.1 Pharmacodynamic data (1).

15.1.1 Pre-clinical data on primary pharmacodynamic effects:

A summary of studies in animals of the pharmacological effects forming the basis for therapeutic use of the medicinal product, with particular reference to quantitative aspects is given below—

.....
.....

15.1.2 Pre-clinical data on other pharmacodynamic effects:

(a) Studies of other pharmacological effects of the medicinal product in animals, which though not relevant to its therapeutic use are relevant to assessment of its clinical use and risks, are summarized below—

.....

(b) Interactions of the medicinal product with other compounds where relevant to the proposed therapeutic use should be indicated.

15.1.3 Clinical data on primary pharmacological effects (2):

A summary of studies in humans of the pharmacological effects forming the basis for the therapeutic use of the medicinal product, with particular reference to quantitative aspects is given below—

.....
.....

15.1.4 Clinical data on other pharmacodynamic effects (3):

(a) Studies of such effects in humans, which though not relevant to the therapeutic use of the medicine are relevant to assessment of its clinical use and risks, are summarized below—

.....

.....

(b) Any interactions of the medicinal product with other compounds where relevant to its proposed therapeutic use should also be stated.

PART 15.1—NOTES

(1) In the case of new drugs which are similar to others in the same pharmacological category, clinical trials should if possible be planned so that comparison with an established drug in the category can be made.

(2) Dose-response curves and dose duration should be given.

(3) Any effect of the medicinal products on the CNS, including respiratory system, cardiovascular system, blood, hepatic and renal function, details of development of tolerance to the medicinal products should be described, in relation to doses intended for clinical use.

15.2 Pre-clinical Pharmacokinetic Data (1).

The pattern and time course of absorption (2), distribution (3), biotransformation (4) and elimination (5) of active constituents of the medicinal product and important metabolites, in at least one animal species are described below:

.....
.....
.....

15.2.1 Clinical Pharmacokinetic Data.

As in 15.2 above but in human volunteers

PART 15.2—NOTES

(1) To facilitate assessment of information obtained in these investigations, certain relevant chemical and physical chars of the active ingredients should be stated in this part including pka values, partition coefficients at various pHs.

(2)(a) Absorption should be documented preferably on a quantitative basis and with the intended route of administration, Particulars should be given for those concentrations in the blood, plasma or serum at which pharmacological and toxicological effects are obtained.

(b) Any physico-chemical properties influencing absorption should be stated.

(3)(a) Primary distribution should be outlined by specifying concentrations in the various tissues. It is important to indicate individual organs having particularly high concentrations of the drug(s) or metabolites or risks of retention of these. Protein binding characteristics should be detailed.

(b) Penetration characteristics of the drug across the blood-brain and placental barriers should be described, preferably quantitatively.

(c) It should also be established whether the drug(s) is secreted in breast milk and what concentrations may be reached.

(d) Any physico-chemical properties affecting distribution should be stated.

(4) Studies of metabolism of the drug(s) in several species of animal and in humans should be described together with investigation into biologically active metabolites and including at test for chemical toxicity.(5) The main routes of excretion of the drug(s) and its main metabolites should be stated. Data on the rate of elimination (half-life) from the blood, plasma or serum, should be stated including if possible the most important factors affecting elimination rate, including biotransformation, renal excretion and urinary pH.

15.3 Adverse Reaction Data (1).

Incidence and nature of adverse reactions to the medicine in therapeutic doses, together with descriptions of individual cases with particularly toxic or hypersensitivity reactions are stated below—

15.4 Overdosage

Toxic effects of overdosage with recommended treatment of such intoxication are detailed below—

.....
.....
.....
.....

PART 15.3—NOTES

(1) If available, information regarding the origin and biochemical mechanisms of adverse effects should be given, together with advice on how the effects may be minimized.

(2) All indications of development of tolerance, dependence or habitation to the medicinal product should be stated, including the appearance of withdrawal symptoms.

15.5 Interaction Data

All interactions with other drugs and in particular those likely to be used concurrently should be stated together with the likely effects of such an interaction.

15.5.1 Animal Studies

Interaction data observed in animal studies is summarized below (with references). Mechanisms of interaction aetiology should be explained.

15.5.2 Clinical Investigations

Interactions of the medicinal product observed in humans with other drugs, foods or other agents including alcohol, tobacco, together with a description of the effects of such interactions, are as follows (with references):

.....
.....
.....

15.6 Biological Assay Data

Details of assay methods for the drug within body fluids including blood, urine, saliva are as indicated below. Experimental details of tests performed and results obtained to establish correlation between physiological levels of the drug and pharmacological action are as indicated.

PART 16: VETERINARY MEDICINE CLINICAL STUDIES DATA

Name of Applicant:

Name of Medicinal product—

(a) Approved:

(b) Proprietary:

Dosage Form:

16.1 Toxicological Data

Tests performed on different animal species regarding safety of the medicinal product are as follows—

16.1.1 Acute Toxicity

Studies are described below and the maximum tolerated doses and minimum lethal doses indicated:

Clinical tests performed regarding the efficacy of the

.....
.....
.....

16.1.2 Chronic Toxicity

Field use studies involving sufficiently large groups of animals of both sexes and different ages are described below and results and conclusions are summarized:

.....
.....
.....

PART 16.1—NOTES

(1) All supporting data should be concise, relevant and sufficient to provide proof that the requirements of this part have been fulfilled.

(2) Proof of all information relating to toxicity and efficacy as contained in the package insert should be provided.

(3) For each species, the doses administered, route of administration used and side-effects observed, clinical tests performed regarding the efficacy of the medicinal products are described below and the results and conclusions of these are summarized:

.....
.....
.....
.....

PART 16.2—NOTES

(1) By whom, when and where the tests were conducted should be stated.

(2) Special reference should be made to comparative and controlled clinical trials.

16.3 Pharmacological Data

(a) Tests performed to establish correlation between physiological levels of the medicinal products and claimed pharmacological action are as described below:

.....
.....
.....

(b) Experimental details and results are specified and conclusions summarized:

.....
.....
.....

16.4 Data on Residues

(a) Tests conducted to determine the presence of residues of active ingredients of the medicinal product or their metabolites in the eggs, milk and tissues of food animals are described below:

.....
.....
.....

(b) Experimental details and results are specified and conclusions summarized (1)

.....
.....

.....
.....
PART 16.4—NOTES

(1) The recommended withdrawal period for the medicinal product should be stated.

PART 17: ADDITIONAL DOCUMENT REQUIREMENTS

Name of applicant:

Name of Medicinal product—

(a) Approved:

(b) Proprietary:

Dosage Form:

Listed below are the additional documents required to be submitted along with the application for product licence. Numbers of copies are indicated and reference is made to the relevant part of the application form where applicable—

(1) medical literature references regarding therapeutic use of the medicinal product, published within the last 10 years—one copy of each;

(2) package insert (Part 9.1)—6 copies;

(3) product label (Part 2)—6 copies;

(4) outer package label (Part 9.3)—6 copies;

(5) all proposed advertising and promotional materials (Part 11)—6 copies of each;

(6) product information summary (Part 6.3)—6 copies;

(7) product formula (Part 2)—6 copies;

(8) all manufacturing records and batch data relating to a particular batch, preferably that of the sample submitted, including—

(a) raw material analytical reports;

(b) manufacturing and packaging master sheets;

(c) in process control records;

(d) final product analytical reports;

(e) authorization for release;

(f) any other appropriate records, one copy of each;

(9) five sealed samples of the smallest commercial pack, to enable analytical tests to be performed.

FORM No. 8A

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A PRODUCT LICENCE (SUMMARY SHEET)

(sections 35 (1) and 37 (1))

A. Product Identification

1. PMPB Ref. No.(for office use only)
2. Proprietary name
3. Non-proprietary name (INN)
4. Dosage form
5. Strength
6. Route of administration

7. Suggested Price US

B. Applicant details

1. Name of Applicant
2. Address of Applicant
3. City/town
4. Country
5. Tel. No.
6. Fax. No.
7. Telex
8. E-mail address

C. Manufacturer details

1. Name of manufacturer
2. Address
3. City/town
4. Country
9. Manufacturing licence No.
10. Licence date
5. Tel. No.
6. Fax No.
11. Name and address of licensing authority
7. Telex
8. E-mail address
12. Date of last GMP inspection

D. Product details

1. Therapeutic category
2. Main indication(s)
3. Dosage details and method of use
4. Stability data (on first 3 batches)
5. Shelf-life
6. Storage conditions

7. Complete quantitative formula (per dose form)

(a) Substance (b) Function (c) Amount (d) QC specifications

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

8. Total weight or volume of dose form

E. Active ingredient details

9. Active ingredients

(a) Active ingredient (Optional) (b) Source (c) Standard e.g. USP, BP (d) In-process controls

(i)

(ii)

(iii)

(iv)

F. Manufacturing and Quality Control Information

10. (a) Method of manufacture of dosage form

10 (b) In process control measures

11. QC specifications of the final product

12. Validated analytical method for final product

13. Batch No. 14. Date of manufacture 15. Expiry date 16. Results of batch testing

(attach additional information if necessary)

G. Equivalence data (Optional)

Comparative bioavailability, pharmacodynamic or clinical studies and comparative in vitro dissolution tests

H. Container information

(a) Size (number of dose units) (b) Description of container and closure

(i)

(ii)

(iii)

I. Distribution and Promotion Information

1. What is the intended scheduling status of the product? (tick appropriate box)

(a) CD Controlled medicine (b) POM Prescription only medicine (c) PIM Pharmacist initiated medicine (d) V Pharmacy only medicine (e) GSL General sales list medicine (f) Veterinary use only

2. How is it proposed to promote the medicinal product? (tick appropriate box)

(a) to the medical and pharmacy professions only

(b) to the general public b point-of-sale displays in pharmacies

(c) to the general public

(d) other (please specify)

J. Current Regulatory Status of Product (Please attach relevant documents)

(a) Country (b) Product Licence No. (c) Date of First Registration

(i) Country of manufacture

(ii)

(iii)

(iv)

(v)

K. Date and Signature

(a) Date of application (b) Signature of registered pharmacist

(c) Applicant official seal

L. Registration Information (for office use only)

(a) Application Fee (b) App. Fee No. (c) Registration Fee (d) Reg. Fee Receipt No.

(e) Reg. Date (f) Reg. expiry date (g) Registration No.

(h) Full name and signature

Registrar

Pharmacy, Medicines and

Poisons Board

FORM No. 9

PHARMACY, MEDICINES AND POISONS ACT

(Cap. 35:01)

G.N. 7/1997

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

PRODUCT LICENCE

(section 39)

Product Licence No. issued at under section 39 of the
Pharmacy, Medicines and Poisons Act

to

(name of person or firm to whom licence is issued)

of

(state city, street, plot number and postal address)

who is hereby licensed to engage in any or all of the business activities outlined under
section 35 (1) of, and subject to, the Act in regard to the following medicinal product(s) in
accordance with the special conditions specified hereunder—

- (a) Medicinal product identity—
 - (i) name.....
 - (ii) generic form
 - (iii) dosage form
 - (iv) strength.....
 - (v) manufacturing
 - (vi) manufacturing country.....
- (b) Year and therapeutic category of the medicinal product
- (c) Scheduling status
- (d) Declaration of content—
 - (i) active ingredient
 - (ii) content per unit dose
- (e) Package—
 - (i) type of package

(ii) size of package

(iii) initial retail price per package

Further conditions of this Product Licence are—

Valid until 20

Date

(Official Stamp)

.....

Registrar

Chairman

FORM No. 10

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

REGISTER OF PRODUCT LICENCES

(section 66)

Product licence Description of Medical Products to which licence relates Name and address of licence holder

No. Date issued

FORM No. 11

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A MANUFACTURER'S LICENCE

(sections 35 (2) and 37 (1))

To: The Secretary for Health

P.O. Box 30377

Lilongwe 3

Malawi

1. Name of applicant

2. Address

.....

.....

3. List of products to be manufactured (name, form, dosage and strength) (submit formula for each product):

.....

.....

.....

4. Location of business premises:

.....

(state city, street and plot number)

5. Manufacturing equipment to be used—

Name /type	Capacity
------------	----------

.....
-------	-------

.....
-------	-------

.....
-------	-------

6. Name and registration number of supervising pharmacist:

.....

.....

.....

7. Qualifications and experience of supervising pharmacist:

.....

.....

8. Other key officers:

Name	Qualification	Experience
Production Officer(s)
Quality Control Officer(s)
Maintenance Officer(s)

9. Arrangements made or to be made for securing safekeeping of, and the maintenance of adequate records in respect of medicinal products stored on or distributed from premises specified under paragraph 4

.....

.....

10. Brief description of manufacturing process (may be attached separately)

.....

.....

.....

.....

11. Proposed source(s) of raw materials.

12. I submit herewith written evidence that application fee of K and manufacturer's fee of K have been paid to the Board.

Date

.....

Signature of Applicant

13. FOR OFFICE USE ONLY

- (a) Date of inspection
 - (b) Date of approval
 - (c) Licence No.
 - (d) Receipt No. of application fees
 - (e) Remarks
- Date

.....

Registrar Pharmacy, Medicines and Poisons Board

[NOTE: 1. Fees shall be payable to the Board in the form of postal order or cheque.
2. Application fee shall not be refundable whereas manufacturer's licence fee shall be refundable where the application is not accepted.]

FORM No. 12

PHARMACY, MEDICINES AND POISONS ACT G.N. 7/1997

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MANUFACTURER'S LICENCE

(section 39)

Manufacturer's Licence No. issued at under section 39 of Pharmacy, Medicines and Poisons Act to

.....

(name of person or firm to whom licence is issued)

of

(state city, street, plot number and postal address)

who is hereby licensed to manufacture, subject to the Pharmacy, Medicines and Poisons Act and to the special conditions set out hereunder, the following medicinal products—

Special conditions of this Licence are—

.....
.....

Valid until 20

Date

(Official Stamp)

.....

Registrar

Chairman

FORM No. 13

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A WHOLESALE DEALER'S LICENCE

(sections 35 (3) and 37 (1))

To: The Secretary for Health

P.O. Box 30377

Lilongwe 3

Malawi

1. Name of applicant:

2. Postal address:

3. Residential address:

(state city, street, plot number)

4. Medicinal products to which this application relates:

.....

.....

5. Location of premises on which medicinal products specified under paragraph 4 will be stored:

.....

.....
(state city, street, plot number)

6. Specify equipment which is or will be available for storing the medicinal products at the premises referred to under paragraph 5:

.....
.....

7. Specify equipment and facilities which are or will be available for distributing the medicinal products from the premises referred to under paragraph 5:

.....
.....
.....

8. Specify qualifications including the registration number of the pharmacist under whose supervision the wholesale dealer's business will be carried out:

.....
.....
.....

9. Specify the arrangements made or to be made for securing the safekeeping of and the maintenance of adequate records of the medicinal products stored on or distributed from the premises referred to under paragraph 5:

.....
.....

10. I submit herewith written evidence that application fee of K and wholesale dealer's licence fee of K have been paid to the Board.

Date

.....

Signature of Applicant

FOR OFFICE USE ONLY

(a) Date of inspection

(b) Remarks

(c) (i) Application fees K Receipt No. (ii) Licence fees K
..... Receipt No.

(d) Date of approval Licence No.

Date

.....

Secretary for Health

[NOTE:1. Fees shall be payable to the Board in the form of postal order or cheque.

2. Application fee shall not be refundable, whereas registration fee shall be refundable where application for licence has not been accepted.]

FORM No. 14

PHARMACY, MEDICINES AND POISONS ACT G.N. 7/1997

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

WHOLESALE DEALER'S LICENCE

(section 39)

Wholesale Dealer's Licence No. issued at under section 39 of the Pharmacy, Medicines and Poisons Act to

(name of person or firm to whom the licence is issued)

of

(state city, street, plot number and postal address)

who is hereby licensed to carry on business as a wholesaler of medicinal products, subject to the Pharmacy, Medicines and Poisons Act and to the special conditions set out hereunder.

Special Conditions of this Licence are—

.....

.....

Valid until, 20

Date

(Official Stamp)

.....

Registrar

Chairman

FORM No. 15

PHARMACY, MEDICINES AND POISONS ACT G.N. 7/1997

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

DISPENSING LICENCE

(section 39)

Dispensing Licence No issued at under section 39 of the
Pharmacy, Medicines and Poisons Act to

(name of person or firm to whom licence is issued)

of

(state city, street, plot number and postal address)

who is hereby licensed to dispense medicinal products, subject to the Pharmacy, Medicines
and Poisons Act, and to the special conditions set out hereunder.

Special conditions of this licence are—

.....
.....

Valid until, 20....

Date

(Official Stamp)

.....

Registrar

Chairman

FORM No. 16

PHARMACY, MEDICINES AND POISONS ACT

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

APPLICATION FOR A DISPENSING LICENCE

(sections 35 (4) and 37 (1))

To: The Secretary for Health

P.O. Box 30377

Lilongwe 3

Malawi

1. Name of Applicant:

2. Address:

3. Location of business premises:

.....

(state city, street, and plot number)

4. Name and registration number of supervising Pharmacist

.....

.....

5. Qualifications and experience of supervising pharmacist

.....

.....

.....

6. Medicinal products to which this application relates

.....

.....

7. I submit herewith written evidence that application fee of K and dispensing licence fee of K have been paid to the Board.

Date

.....

Signature of applicant

8. FOR OFFICE USE ONLY—

- (a) Date of inspection
 - (b) Remarks
 - (c) Receipt of application fees
 - (d) Date of approval
 - (e) Licence No.
- Date

.....

Secretary for Health

[Note: 1. Fees shall be payable to the Board in the form of postal order or cheque.

2. Application fee shall not be refundable whereas dispensing licence fees shall be refundable where the application is not accepted.]

FORM NO. 17

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

C.G.M.P. Inspection Report

(section 60)

MANUFACTURING

1. Name of Manufacturer: Date:

Owner: Individual/Partnership/Company

Address:

Tel. No. Fax No.

Name of Production Pharmacist/Manager.....

Registration Number.....

Complies Default Not Applicable

2. PREMISES:

2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.

2.2 Sited to avoid external contamination

2.3 Surrounding environment pleasant

2.4 Good state of repair of walls, floors and ceiling (no cracks, etc.)

2.5 Premises clean and tidy

2.6 Walls and floor cleanable

3. SERVICES PROVIDED:

3.1 Adequate lighting

3.2 Temperature controller/Air conditioner

3.3 Acceptable ventilation and humidity

3.4 Filtered air in sterile suites

3.5 Water supply (hot and cold)

3.6 Distilled water supply

3.7 Disposal of waste, receptacles provided

4. SECURITY:

4.1 Restricted entry into drug production and storage areas to authorized personnel only

4.2 Burglar bars provided

4.3 Adequate locking system

4.4 Security watchmen deployed

4.5 Burglar alarm installed

5. SAFETY:

5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers

5.2 Fire exits clearly marked

5.3 Fire alarm/smoke detectors

6. LAYOUT OF WAREHOUSE:

Adequate space to allow logical flow of materials and activities and to allow easy communication and supervision of operations in each of the following sections—

6.1 Receipts and quarantine section (raw materials store)

6.2 Weighing section (raw materials)

6.3 Production suites

6.4 In houses QC laboratory

6.5 Packing and labelling sections

6.6 Quarantine areas (finished products)

6.7 Rejected products area

6.8 Warehouse for finished products

6.9 Dispatch section (finished products)

6.10 Recalled products area

6.11 Retained samples area

6.12 Materials and finished products stored to minimize mix-up errors or cross contamination

6.13 All storage areas clearly labelled

6.14 Animal houses completely separated from production areas

6.15 Changing or cloakrooms suitably located and separated from production areas

6.16 Toilet facilities adequate and provided with running water, hand wash basin and other facilities

6.17 Toilets not opening directly to manufacturing areas

6.18 Air lock system on entering into the main production areas

6.19 Microbiological contamination monitoring and validation

7. EQUIPMENT:

- 7.1 General layout of equipment including segregation and spacing
- 7.2 State of repair and functioning of each equipment
- 7.3 Maintenance schedule and/ or service contracts
- 7.4 Written SOPs and other operating instructions available
- 7.5 Calibration methods and validation SOPs available
- 7.6 Cleaning SOPs to avoid cross contamination and their validation
- 7.7 Suitability of equipment in relation to the production activities

8. HUMAN RESOURCES:

- 8.1 Production Manager: a fulltime supervisor of production activities who is a registered pharmacist
 - 8.2 Name and registration number given
 - 8.3 Relevant experience related to manufacturing noted and satisfactory
 - 8.4 Other supporting staff in production suitably qualified
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)
 - 8.5 Written job descriptions and areas of responsibilities for all support staff available and well defined
 - 8.6 Formal preliminary and continuous educational program given to staff
 - 8.7 Quality assurance manager available
 - 8.8 QA manager separate from production manager
 - 8.9 Relevant qualifications and experience noted and satisfactory
 - 8.10 Other supporting staff in QC suitably trained

(1)

(2)

(3)

(4)

8.11 Written job descriptions and areas of responsibility available and well defined for all QC support staff

8.12 Personal Hygiene:

8.12.1 Instructions to personnel on hygiene

8.12.2 Adequate facilities for washing

8.12.3 Adequate toilet facilities

8.12.4 Adequate changing room

8.13 Health:

8.13.1 Pre-employment medical check-up policy in place

8.13.2 Periodic medical check-up during employment and records kept

8.13.3 Provision of protective clothing, headgear, marks boots, gloves, ear plugs, etc.

9. DOCUMENTATION:

Are documents available in the following areas and are they adequate?

9.1 Starting materials testing and specifications

9.2 Packaging materials testing and specifications

9.3 Intermediate and bulk material specifications

9.4 Finished products specifications

9.5 Sampling and approved documentation

9.6 Master formula and production methods

9.7 Inventory records for starting materials

9.8 Inventory records for packing materials including printed labels

9.9 Production: Yield reconciliation

- 9.10 Batch manufacturing records
- 9.11 Intermediate and bulk release records
- 9.12 Complaints, recalls and returned goods records and SOPs

- 9.13 Documented analytical methods for raw materials
- 9.14 Documented analytical methods for finished products
- 9.15 Product stability data and its conformity to labelling and packing instructions of final product

10. MANUFACTURING PROCESS

10.1 Compliance with written specifications for raw materials including the following main areas—

- 10.1.1 Physical description of material
- 10.1.2 Safety precautions on handling
- 10.1.3 Approved supplier(s) of material
- 10.1.4 Storage conditions of material
- 10.1.5 Details of tests for identity, limits of purity, physical and chemical properties and microbiological standards (where applicable)
- 10.1.6 Method of assay of material
- 10.1.7 Re-examination and retesting program
- 10.2 Weighing and measuring records for all raw materials for the production process

- 10.3 Labelling and batch numbering
- 10.4 Batch manufacturing methods specify the following—
 - 10.4.1 Specific equipment used and the cleaning, assembly, calibration, sterilization, etc.

 - 10.4.2 Detailed stepwise processing instructions including the following—
 - 10.4.2.1 Sequence of adding materials
 - 10.4.2.2 Mixing and other processing times
 - 10.4.2.3 Working temperature

10.4.2.4 Authorization and checking on each process

10.4.2.5 Format for presentation of data acceptable

11. IN-PROCESS ACTIVITY AND PACKING

11.1 Facilities and personnel for in-process activities adequate

11.2 Sampling testing, recording and checking processes adequate

11.3 Contamination and product mix-up minimized

11.4 Storage and security of labels and their release procedure adequate

11.5 Reconciliation of yields done

11.6 Quarantine and release procedures for finished products in place

11.7 Storage facility and conditions of storage for finished products acceptable

11.8 Tests for quality of finished product including assay methods

11.9 Stability evaluation (records for accelerated stability tests and tests on samples at room temp).

12. QUALITY CONTROL

12.1 Laboratory premises: cleanliness and layout acceptable

12.2 Ventilation adequate

12.3 Temperature and humidity controlled

12.4 Equipment adequate for the product list

12.5 Equipment in good working order

12.6 Maintenance, calibration and standardization program for equipment available

12.7 Sampling and handling of samples acceptable

12.8 Written specifications and methods of analysis available

12.9 Validation of methods of analysis done

12.10 Retention and storage of test samples adequate

.....

Inspector's Name Number Signature Date

FORM No. 18

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Wholesale inspection Report

(section 60)

WHOLESALE

1. Name of Wholesale:..... Date:

Owner: Individual/Partnership/Company

Address:

Tel. No Fax No

Name of Pharmacist/Manager:

Registration Number:

Complies Default Not Applicable

2. PREMISES:

2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.

2.2 Sited to avoid external contamination

2.3 Surrounding environment pleasant

2.4 Good state of repair of walls, floors and ceiling

2.5 Premises clean and tidy, walls and floor cleanable

3. SERVICE PROVIDED:

3.1 Adequate lighting

3.2 Temperature controlled

3.3 Acceptable ventilation and humidity

3.4 Water supply (hot and cold)

3.5 Disposal of waste; receptacles provided

4. SECURITY:

4.1 Restricted entry into drug storage areas to authorized personnel only

4.2 Burglar bars provided

4.3 Adequate locking systems

4.4 Security watchmen deployed

4.5 Burglar alarm installed

5. SAFETY:

5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers

5.2 Fire alarm/smoke detector

6. LAYOUT OF WAREHOUSE:

6.1 Adequate space to allow logical flow of goods in receipt, dispatch and storage sections

6.2 Space adequate enough to allow easy communication and supervision of various operations

6.3 Warehouse layout and shelving orderly to eliminate mix-up errors or cross contamination during handling

6.4 Quarantine area for inspection of incoming goods provided

6.5 Segregated storage for rejected goods

6.6 Segregated areas for product recalls

6.7 Segregated area for expired medicines

6.8 Pharmacist's office, tea/rest room for other staff available

6.9 Properly located toilet facilities with running water, hand wash basin and other facilities available

7. FACILITIES/EQUIPMENT:

7.1 Adequate shelving, racks and pallets

7.2 Refrigerator with freezer in good working order with temperature monitoring device

7.3 Goods assembly benches and trolleys

7.4 Cartons, seal tapes, etc.

8. HUMAN RESOURCES:

8.1 Full-time supervision by a registered pharmacist

8.2 Name and registration number given

8.3 Relevant experience noted and satisfactory

8.4 Other adequately trained support staff

(1)

(2)

(30

(4)

9. RECORDS:

9.1 Records for receipt of goods, delivery notes and invoices available on file

9.2 Purchase orders (for stock) and other supplies logistics activities authorized signed/countersigned by pharmacist

9.3 Expiry dates indicated on inventory records

9.4 Batch numbers recorded on inventory records

9.5 All sources of received goods identified and indicated on inventory records

9.6 Sales records: Details of clinics, hospitals and individuals supplied indicated on inventory records

9.7 Are the clients supplied bona fide registered persons? And is this requirement adequately verifiable?

9.8 Quantities sold tally with requisitions and sales invoices.

10. OTHER REQUIREMENTS:

10.1 No unregistered medicines sold in the premises (contrary to PMPB Act)

10.2 All medicines comply with labelling and other presentation requirements

10.3 No secondary production activities such as repacking and re-labelling take place

10.4 Dispatch records and delivery notes (to be) countersigned by pharmacist

10.5 Records for stock balances available for each item

10.6 Stock verification done on regular basis and shown on records

10.7 Records able to trace specific batches delivered for product recall purposes

10.8 Orders (requisitions) for supply from wholesale verified and countersigned by known (authorized) persons

.....
.....
.....

Inspector's Name Number Signature Date

FORM No. 19

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Dispensing Practitioner Inspection Report (Clinic, Surgery or Private Hospital)(section 60)

1. PREMISES OWNED BY:

Individual/Partnership/Company

Address:

Tel. No

Available practitioner in-charge:

.....
.....

Other dispensing staff members (nurses, pharmacy assistants, etc.)

Practitioner's registration certificate displayed YES/No.

Dispensing licence displayed YES/No.

Distance from nearest Pharmacy Km

Complies Default Not Applicable

2. DISPENSARY LAYOUT

2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.

2.2 Sited to avoid contamination

2.3 Separate from Clinical Area (room)

2.4 Good state of repair of walls, floors and ceiling

2.5 Adequate ventilation

2.6 Lighting satisfactory

2.7 Security satisfactory

2.8 Wash-hand basin with cold and hot water

2.9 Toilet facilities satisfactory

2.10 Adequate seat for waiting area for patients

3. STOREROOM:

3.1 Adequate lighting

3.2 Temperature controlled

3.3 Acceptable ventilation and humidity

3.4 Disposal of waste; receptacles provided

3.5 Orderly arrangement of medicines; external and internal medicines separated

3.6 Medicines protected from direct sunlight

3.7 Medicines protected from heat

- 3.8 Medicines protected from moisture
- 3.9 Medicines out of reach of patients
- 4. SECURITY AND SAFETY:
 - 4.1 Restricted entry into storeroom to authorized staff only
 - 4.2 Adequate locking systems
 - 4.3 Security watchmen deployed
 - 4.4 Burglar alarm installed
 - 4.5 Fire fighting equipment, e.g. hose pipes, fire extinguishers
- 5. DISPENSING PROCEDURES:
 - 5.1 Dispensed product label to comply with the following:
 - 5.1.1 Name and strength of the medicine
 - 5.1.2 Directions for use of medicine
 - 5.1.3 Name of patient on label
 - 5.1.4 Quantity dispensed indicated
 - 5.1.5 Label legible
 - 5.1.6 Name and address of surgery
 - 5.1.7 Date of dispensing
- 6. EQUIPMENT:
 - 6.1 Measuring cylinders for dispensing reconstituted powders
 - 6.2 Refrigerator in good working condition
 - 6.3 Medicines counting tray
 - 6.4 Washable formica dispensing bench
 - 6.5 Dispensing packs/containers/ glass bottles/vials, etc.
 - 6.6 Adequate shelves, fans, air conditioner
- 7. HUMAN RESOURCES.
 - 7.1 Full-time supervisor who is a registered health professional in the medical, nursing or pharmacy field

- 7.2 Name and registration number given
- 7.3 Relevant experience noted and satisfactory
- 8. RECORDS:
 - 8.1 Receipt of goods delivery notes and invoices available
 - 8.2 All sources of received goods indicated on inventory records
 - 8.3 All documents, e.g. invoices, delivery notes for all receipts carefully filed
 - 8.4 No unregistered medicines sold in the premises contrary to PMPB Act unless exempted
 - 8.5 Records for stock movement and balances available for each item
 - 8.6 Stock verification done on regular basis and shown on records
 - 8.7 Expired medicines not on shelf and disposed off according to procedure
 - 8.8 Transaction records for narcotics maintained satisfactorily and according to the provisions of the Controlled Substances Act (DDA)
 - 8.9 Storage of narcotics in accordance with the Controlled Substances Act (DDA)
 - 8.10 Other controlled medicines stored securely under lock and key
 - 8.11 Records for ALL dispensed medicines available; computer, patient cards, etc.
- 9. REFERENCE BOOKS:
 - 9.1 Current Edition Martindale
 - 9.2 Pharmacy, Medicines and Poisons Board Act and Regulations
 - 9.3 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)
 - 9.4 Malawi National Formulary
 - 9.5 Malawi Standard Treatment Guidelines

COMMENTS AND RECOMMENDATIONS

(attach additional sheet if necessary)

.....
.....
.....

Inspector's Name Number Signature Date

FORM No. 20

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Medicine Store Inspection Report

(section 60)

1. MEDICINE STORE

Name of Medicine Store: Date:

Owner: Individual/Partnership/Company

Address:

Tel. No Fax No

Complies Default Not Applicable

2. PREMISES:

2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins, etc.

2.2 Sited to avoid external contamination

2.3 Surrounding environment pleasant

2.4 Good state of repair of walls, floors and ceiling

2.5 Premises clean and tidy, walls and floor cleanable

3. SERVICES PROVIDED:

3.1 Adequate lighting

3.2 Temperature controlled

3.3 Acceptable ventilation and humidity

3.4 Water supply

3.5 Disposal of waste; receptacles provided

4. SECURITY AND SAFETY:

4.1 Adequate locking systems

4.2 Security watchmen deployed

4.3 Burglar bars/alarm installed

4.4 Fire fighting equipment available

5. LAYOUT OF DRUG STORE:

5.1 Space adequate to allow easy communication and supervision of operations

5.2 Medicines stored to minimize errors or contamination during sale

5.3 Quarantine area for inspection of incoming goods available

5.4 Properly located toilet facilities with water, hand wash basin and other facilities available

6. EQUIPMENT:

6.1 Adequate shelving, racks and pallets

6.2 Refrigerator, if needed, in good working order

7. HUMAN RESOURCES:

7.1 Full-time supervision by a registered health professional approved by the Pharmacy Board

7.2 Name and registration number of supervisor given

7.3 Relevant experience noted and satisfactory

7.4 Other support staff

(1)

(2)

(3)

8. RECORDS:

8.1 Receipt of documentation such as goods delivery notes and invoices available

8.2 All sources of received goods identified and indicated on inventory records

8.3 All documents, e.g. invoices, delivery notes for all receipts carefully filed

8.4 No unregistered medicines sold in the premises contrary to PMPB Act

8.5 Only P and GSL medicines found on premises

8.6 No secondary production activities such as re-packing and re-labelling or dispensing taking place

8.7 Expired medicines not on shelves and disposed off according to procedure

9. REFERENCE BOOKS:

9.1 Pharmacy, Medicines and Poisons Board Act and Regulations

9.2 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)

9.3 Malawi National Formulary

9.4 Guidelines Malawi Standard Treatment

COMMENTS AND RECOMMENDATIONS

(attach additional sheet if necessary)

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Inspector's Name Number Signature Date

FORM No. 21

PHARMACY, MEDICINES AND POISONS ACT G.N. 87/1998

(CAP. 35:01)

PHARMACY, MEDICINES AND POISONS (FEES AND FORMS) REGULATIONS

MEDICINES INSPECTORATE

Retail Pharmacy Inspection Report

(section 60)

RETAIL PHARMACY

1. Name of Owner: Date:

Owner: Individual/Partnership/Company

Address:

Tel. No. Fax No. Name of
Pharmacist/Manager Registration Number:

Complies Default Not applicable

2. PREMISES:

2.1 Constructed and maintained to protect against weather, ground seepage, pests, vermins,
etc.

2.2 Sited to avoid external contamination

2.3 Surrounding environment pleasant

2.4 Good state of repair of walls, floors and ceiling

2.5 Premises clean and tidy, walls, floors and shelves cleanable

3. SERVICES PROVIDED:

3.1 Adequate lighting

3.2 Temperature controlled

3.3 Acceptable ventilation and humidity

3.4 Water supply (hot and cold)

3.5 Disposal of waste, receptacles provided

4. SECURITY:

4.1 Restricted entry into drug storage areas to authorized personnel only

4.2 Burglar bars provided

4.3 Adequate locking systems

4.4 Security watchmen deployed

4.5 Burglar alarm installed

5. SAFETY:

5.1 Fire fighting equipment, e.g. hose pipes, fire extinguishers

5.2 Fire alarm/smoke detector

6. LAYOUT OF WAREHOUSE:

6.1 Suitable lockable room allocated for dispensing POM preparations out of reach of clients. Dispensing counter provided marked "Prescriptions" for serving clients, elevated in relation to the rest of the pharmacy front shop

6.2 Dispensing counter clean and tidy with white smooth finish preferably formica

6.3 Space (shelving) allocated for PIM preparations behind the dispensing counter with no public access

6.4 Small room allocated for private consultations with patients next to the dispensary

6.5 Space for the front shop for P and GSL medicines and other merchandise

6.6 Medicines stored in all sections in an orderly manner to minimize mix-up errors or contamination during handling

6.7 Quarantine area for inspection of incoming goods provided

6.8 Segregated storage for rejected goods

6.9 Segregated areas for product recalls

6.10 Segregated area for expired medicines

6.11 Pharmacist's office, tea/rest room for other staff available

6.12 Properly located toilet facilities with running water, hand wash basin and other facilities available

7. FACILITIES/EQUIPMENT:

7.1 Adequate shelving, racks white smooth finish or formica in all sections

7.2 Refrigerator with freezer in good working order with temperature monitoring device

7.3 Dispensing counter (see 5.2)

7.4 Measuring cylinders for up to 200 ml volume

7.5 Balance in metric system

7.6 Dispensing counting trays

7.7 Fixed double lockable cupboard for Narcotics

7.8 Other controlled substances such as psychotropics under lock and key

8. HUMAN RESOURCES:

8.1 Full-time supervision by a registered pharmacist

8.2 Name and registration number given

8.3 Relevant experience noted and satisfactory

8.4 Other adequately trained support staff

(1)

(2)

(3)

(4)

9. RECORDS:

9.1 Records for receipt of goods such as delivery notes and invoices available on file

9.2 Purchase orders (for stock) and other supplies logistics activities authorized, signed/ countersigned by pharmacist

9.3 All sources of received medicines identified and recorded on inventory records

9.4 Dispensing records:

9.4.1 Patient profile cards

9.4.2 Dispensed prescriptions filing system in place

9.4.3 Labelling of dispensed prescriptions according to guidelines

9.4.4 Patient counselling according to guidelines

10. OTHER REQUIREMENTS:

10.1 No unregistered medicines handled in the premises

10.2 No expired medicines in the premises. Expired medicines disposed off according to procedure

10.3 Stock verification done on regular basis and shown on records

11. CONTROLLED DRUGS: (CD Schedule)

11.1 Transaction records kept in accordance with the provision of Dangerous Drugs Act

11.2 Storage in accordance with the Dangerous Drugs Act (see 6.7)

11.3 Supplies sold to authorized clinics or individuals (verifiable)

11.4 Other controlled medicines such as psychotropics stored securely under lock and key and sold to bona fide individuals

12. REFERENCE BOOKS:

12.1 Current Edition Martindale

12.2 United States Pharmacopoeia

12.3 British Pharmacopoeia

12.4 Pharmacy, Medicines and Poisons Regulations

12.5 PMPB Schedules of Registered Medicines (POM, PIM, P, GSL)

COMMENTS AND RECOMMENDATIONS

(attach additional sheet if necessary)

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Inspector's Name Number Signature Date

PHARMACY, MEDICINES AND POISONS REGULATIONS

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G.N. 88/1998

PHARMACY, MEDICINES AND POISONS REGULATIONS

under s. 66

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Pharmacy, Medicines and Poisons Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“batch number” means the number or other cipher allocated to medicinal product by a manufacturer, by which the origin of raw materials and the complete process of manufacture of the medicinal product can be determined;

“business address” in relation to a business, means the full address of the premises where that business is carried on or any abbreviated address approved by the Board;

“country of origin” in relation to a medicinal product, means the country where the manufacture of that medicinal product was undertaken;

“dangerous drug” or “Controlled Drugs” or “(CD)” means a drug—

- (a) controlled in terms of the Dangerous Drugs Act;
- (b) listed in the Tenth Schedule; or
- (c) registered as such by the Board;

“expiry date”, in relation to any batch of a medicinal product, means the date on which the shelf-life of such medicinal product will expire;

“general sales list medicine” or “GSL” means a medicinal product to which Division 3 of Part VI applies or a medicinal product registered as such by the Board;

“logo” means the mark, device, design, letter, word, name or numeral or any combination thereof which is used in, or proposed to be used, in relation to, any medicinal product for the purpose of indicating a connexion with the principal manufacturer of the medicinal product and the medicinal product itself;

“institution” means a hospital, dispensary, clinic, nursing home or other institution at which human ailments are treated;

“label”, in relation to a package of a medicinal product, means any written, pictorial or other matter marked on or affixed to the package;

“package insert” means a pamphlet on which is printed the particulars prescribed in regulation 15;

“patent” means a patent registered in terms of the Patents Act and which is of full force and effect;

“pharmacist initiated medicine” or “PIM” means a medicinal product listed in the Sixth Schedule or registered as such by the Board;

“pharmacy medicine” or “(P)” means a medicinal product listed in the Seventh Schedule or registered as such by the Board;

“prescriber” means a medical practitioner, a dentist, or a veterinary surgeon or any other person who is lawfully authorized to prescribe any medicinal product;

“prescription” means an order, in writing or orally by a prescriber for the supply of a medicinal product or combination of medicinal products, for the treatment of a person or animal specified therein;

“prescription only medicines” or “POM” means a medicinal product listed in the Fifth Schedule, or registered as such by the Board;

“shelf-life”, in relation to any batch or a medicinal product, means the period up to which a medicinal product in that batch will retain the potency and properties stated on the label as fixed by the manufacturer.

PART II

FORMS

3. Particulars, etc., on forms

(1) Every person who is required to make an application under the Act shall complete the prescribed form and pay the prescribed fees, and shall furnish to the Registrar with such further information or particulars as may be prescribed.

(2) All forms shall be completed in English.

4. Illegible or incomplete forms

The Registrar may reject any form if any part of the form is illegible or not properly completed.

PART III

LICENSING OF PREMISES AND PERSONS

5. Minimum requirements for premises, etc.

Any person who applies for registration under the Act shall ensure that the premises comply with—

(a) in the case of manufacturing pharmacy business, the minimum requirements set out in Part I of the First Schedule;

(b) in the case of wholesale pharmacy business, the minimum requirements set out in Part II of the First Schedule;

(c) in the case of retail pharmacy business, the minimum requirements set out in Part III of the First Schedule;

(d) in the case of an institution, the minimum requirements set out in Part III of the First Schedule;

(e) in the case of a registered dispensing practitioner, the minimum requirements set out in Part IV of the First Schedule; and

(f) in the case of a medicine store, the minimum requirements set out in Part V of the First Schedule.

6. Dispensing licences

An application for a dispensing licence to dispense medicinal products from any premises in accordance with section 35 (4) of the Act shall not be granted where such premises are situated within five kilometres of a pharmacy:

Provided that the Board may waive this requirement where the Board considers it in the public interest so to do.

7. Duration of licences

Every licence which is issued in respect of premises or to any person pursuant to the Act shall be valid for a period of one year from the date of issue, and may be renewed annually thereafter.

8. Display of licences

(1) Subject to subregulation (2), every licensee shall ensure that his licence is prominently displayed at all times upon the licensed premises to which it relates.

(2) Subregulation (1) shall not apply in respect of any period during which the licence is necessarily removed from the licensed premises for the purposes of doing anything in terms of the Act or for any other lawful purpose the proof thereof, in any proceedings against any person for contravention of subsection (1), shall lie upon that person.

9. Production and return of licences

(1) Whenever the Board—

- (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 Registrar shall request the holder of the licence to produce such licence within such period as the Registrar may specify, 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) shall be guilty of an offence.

(3) Whenever the Board varies, amends or imposes any new condition in respect of a licence, the Board shall return such licence duly endorsed to the holder thereof within a reasonable time.

10. Application for renewal of licences

(1) Every application for the renewal of a licence shall be—

- (a) in the prescribed form;
- (b) lodged with the Registrar at least two months before the expiry of the licence; 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 Registrar after the time limit as specified in subregulation (1) there shall be paid in addition to the renewal fee an appropriate penalty fee in respect of the licence as determined by the Board.

PART IV

CLASSIFICATION, REGISTRATION AND RETENTION OF REGISTRATION OF MEDICINAL PRODUCTS

11. Categories for registration

For the purpose of registration, the Board shall divide medicinal products into the categories specified in the Second Schedule.

12. Application for registration and retention of registration of medicinal products

(1) An application for the registration of a medicinal product may be made by—

- (a) the person who owns the medicinal product; or
- (b) any other person registered by the Board.

(2) Every application for the registration of a medicinal product shall be submitted to the Registrar in the prescribed form and shall be accompanied by—

(a) a sample of the medicinal product in the smallest of each of the package forms available for distribution to the public, including the identification marks on such product where appropriate, or if the package forms are not yet available, a sample in a package in which the applicant intends to make the medicinal product available for distribution to the public;

(b) detailed information of all advertising material and package inserts which the applicant intends to use;

(c) such samples of the medicinal product or the raw materials thereof as the Board may request for analysis;

(d) a copy of any literature in support of the application:

Provided that the Board may require additional copies of such literature;

(e) twenty additional package inserts and twenty labels or copies of the package;

(f) at least three copies of all records and batch data relating to a particular batch, which shall include raw material analytical reports, master sheets relating to manufacture and

packaging in process control records, final product analytical records and authorized for release, and any other relevant records; and

(g) the prescribed fee, together with such additional fees as the Board may require for the purpose of analysing the medicinal product.

(3) Every applicant shall, without delay, inform the Board either before or after the registration of a medicinal product—

(a) of any alteration of the information or particulars furnished by him in applying for registration in terms of subsection (2); and

(b) whether the medicinal product is to be imported as a finished product into, or relabelled or repackaged or dealt with in any other manner, in Malawi.

(4) For the purposes of paragraph (b) of subsection (3), "finished product", in relation to a medicinal product, means a medicinal product which is wholly manufactured outside Malawi and is imported into Malawi ready for sale without having to be relabelled or repackaged.

(5) An application for the retention of the registration of a registered medicinal product shall be submitted to the Registrar, in prescribed form at least two months before the expiry of the licence and shall be accompanied by the prescribed fee.

13. Labelling and marking of medicinal products

(1) Subject to regulation 29, every medicinal product shall, unless otherwise directed by the Board, bear or incorporate a label on the package in which the medicinal product is sold, on which is printed in clear and indelible letters in the English language and any other language as may be directed or approved by the Board the following particulars which relate to that medicinal product—

(a) the name and address of the person who owns the medicinal product;

(b) the name and address of the manufacturer;

(c) the approved name of the medicinal product and the proprietary name or trade mark, if any, of the medicinal product;

(d) the logo, if any, of the person who owns the medicinal product or manufacturer of the medicinal product;

(e) the name and percentage of any bacteriostatic or bactericidal agent which is added to the medicinal product as a preservative;

(f) the date of manufacture and the expiry date of the medicinal product;

(g) the batch number of the medicinal product;

(h) the quantity of the medicinal product, in the package;

(i) the strength of the medicinal product;

(j) the required storage conditions or other necessary precautions for the preservation of the medicinal product;

(k) the category of distribution of the medicinal product which may be represented by words or symbols as set out in the Third Schedule;

(l) the dosage of the medicinal product and the directions for use;

(m) any warning notices which shall be in a colour or print other than the colour or print of the particulars referred to in subparagraphs (a) to (l); and

(n) any other particulars as may be directed by the Board:

Provided that in the case of a small package containing a medicinal product, it shall be adequate to record the information required by paragraphs (c), (f), (g), (h), and on the outer label.

(2) Every medicinal product shall where possible be marked with the logo of the owner of the medicinal product or manufacturer of the medicinal product, as the case may be, and such other distinguishing mark for the purpose of identifying such medicinal product.

14. Package inserts

Every package of a medicinal product shall, unless otherwise directed by the Board, contain a package insert on which is printed in clear and indelible letters in the English language and any other language as may be directed or approved by the Board the following particulars which relate to medicinal product—

(a) the name and address of the owner of the medicinal product;

(b) the name and address of the manufacturer of the medicinal product;

(c) the approved name of the active ingredient of the medicinal product and the proprietary name or trade mark, if any, of the medicinal product;

(d) the logo, if any, of the owner of the medicinal product or manufacturer of the medicinal product;

(e) the name and percentage of any bacteriostatic or bactericidal agent which is added to the medicinal product as a preservative;

(f) the strength of the medicinal product, where applicable;

(g) the required storage conditions or other necessary precautions for the preservation of the medicinal product;

(h) the category of distribution of the medicinal product which may be represented by words or symbols as set out in the Third Schedule;

(i) the pharmacological classification of the medicinal product determined in accordance with regulation 11;

- (j) the dosage of the medicinal product and the directions for use;
- (k) the description of the pharmacological action of the medicinal product;
- (l) indications of the medicinal product;
- (m) contra-indications of the medicinal product;
- (n) warnings relating to the use of the medicinal product;
- (o) the side-effects and special precautions of the medicinal product;
- (p) known symptoms of over-dosage and particulars of its treatment;
- (q) the identification of the medicinal product;
- (r) the form in which the medicinal product is presented, whether tablet, capsule or liquid and the colour thereof;
- (s) the date of publication of the package insert;
- (t) any necessary warning concerning the administration or use of the medicinal product by children, old people, pregnant women or patients suffering from certain diseases, or the use of the medicinal product in conjunction with the consumption of alcohol or any particular food or any other medicinal product;
- (u) a summary of relevant information concerning the purpose and the beneficial, detrimental, injurious or other effects of the medicinal product, and the possible dangers that may arise from the prolonged use of the medicinal product;
- (v) relevant information, including particulars in regard to a specific medicinal product as an antidote (if known), concerning the treatment of a patient in cases where an overdose of the medicinal product has been administered or where a patient reacts adversely to the medicinal product; and
- (w) any other particulars or warning notices as may be directed by the Board.

15. Categories for distribution

(1) Where the Board approves the registration of a medicinal product it shall fix, as a condition of registration, the appropriate category for distribution of that medicinal product, prescribed in the Third Schedule.

(2) The same categories for distribution of a medicinal product shall apply to veterinary medicines and shall be identified by the suffix "(VET)".

16. Medicinal products register

The Registrar shall enter in the register in respect of each medicinal product registered by the board—

- (a) the date of the application for registration of the medicinal product;

- (b) the number allocated to the application for registration;
 - (c) the proprietary name or trade mark of the medicinal product, if any;
 - (d) the logo of the owner of the medicinal product or manufacturer of the medicinal product, if any;
 - (e) the particulars of the patent of the medicinal product, if any;
 - (f) the approved name of the medicinal product;
 - (g) the form in which the medicinal product is presented, whether tablet, capsule or liquid and the colour thereof;
 - (h) the strength of the medicinal product;
 - (i) the qualitative and quantitative details of every ingredient in each dosage unit of the medicinal product;
 - (j) the name and business address of the owner of the medicinal product;
 - (k) the name and business address of the manufacturer of the medicinal product;
 - (l) the country of origin of the medicinal product;
 - (m) the name and address of the applicant;
 - (n) the number allocated to the inspection report of the place of manufacture, if applicable;
 - (o) the date of registration of the medicinal product;
 - (p) the registration number of the medicinal product;
 - (q) the shelf-life of the medicinal product;
 - (r) the category for distribution of the medicinal product fixed in accordance with regulation 15 and any other conditions of registration;
 - (s) the pharmacological classification of the medicinal product determined in accordance with regulation 11;
 - (t) the date and particulars of any variation in the conditions of registration of the medicinal product;
 - (u) the payment of any fee for the retention or registration of the medicinal product;
- and
- (v) where applicable, the date of the cancellation of the registration of the medicinal product.

17. Certificate of registration for medicinal products

After registering a medicinal product, the Registrar shall issue a certificate of registration in the prescribed form.

18. Production and return of registration certificate for medicinal products

(1) Whenever the Board—

- (a) cancels the registration of any medicinal product;
- (b) varies or amends the conditions of registration of any medicinal products; or
- (c) imposes any new conditions on the registration of any medicinal product,

the Registrar shall request the holder of the registration certificate concerned to produce such certificate within a reasonable period as the Registrar may specify 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 subsection (1) shall be guilty of an offence.

(3) Whenever the Board varies, amends or imposes any new condition on any registration certificate, the Board shall return such certificate, duly endorsed, to the holder thereof within a reasonable period.

PART V

GENERAL, CONDITIONS FOR SALE OF MEDICINAL PRODUCTS

19. Importation of medicinal products with less than one-half of shelf-life

No person shall, without the prior written approval of the Board, import into Malawi any medicinal product which has less than one-half of its shelf-life remaining upon arrival in Malawi.

20. Delivery and sale of medicinal products with less than one-half of shelf-life

No person shall, without the prior written approval of the Board, deliver, receive, accept or sell any medicinal product whose shelf-life is less than one-half.

21. Sale of expired medicinal products

No person shall sell any medicinal product on a date later than the expiry date which appears on the package of such medicinal product.

22. Medicinal products to be sold from licensed premises

No person shall sell any medicinal product unless the sale is effected on premises—

- (a) licensed under the Act; or
- (b) authorized in terms of these Regulations:

Provided that this regulation shall not apply to the sale of general sales list medicines.

23. Conditions of sale of medicinal products

No person shall sell any medicinal product unless—

- (a) he is authorized to do so; or
- (b) the sale is effected by or under the continuous personal supervision of an authorized person.

24. Disclosure of composition of medicinal product

No person shall sell any of the medicinal product which is not labelled in accordance with the requirements of regulation 13.

25. Safe-keeping of certain medicinal products

(1) No person who sells any medicinal products listed in the Fifth, Sixth or Seventh Schedule shall keep such medicinal products on an open shelf in a part of his premises to which members of the public have access.

(2) Any person who has in his possession or under his control or uses any medicinal product shall exercise all reasonable care in the custody, safe-keeping and use thereof.

26. Return of medicinal products three months before expiry

(1) Any person who practices or carries on the business of a pharmacy or dispenses any medicinal product may, where a medicinal product is due to expire, return such medicinal product, not less than three months before the expiry date of such medicinal product, to the manufacturer, agent or distributor, as the case may be:

Provided that the medicinal product shall be returned in its original unbroken package, as sealed by the manufacturer.

(2) On receipt of medicinal products returned pursuant to subparagraph (1), the manufacturer, agent or distributor, as the case may be—

- (a) shall store such medicinal product in a quarantine area of his premises; and
- (b) may reimburse the person who returned the medicinal products by—
 - (i) awarding a credit, or
 - (ii) replacing such surrendered or returned medicinal products,

to the person concerned.

27. Return of expired medicinal products

(1) Any person who practises or carries on the business of a pharmacist or dispenses any medicinal product shall, where a medicinal product has expired—

(a) return such expired medicinal product to the manufacturer, agent or distributor, as the case may be; or

(b) destroy such expired medicinal product on site in accordance with standard operating procedures.

(2) On receipt of an expired medicinal product the manufacturer, agent or distributor, as the case may be, shall destroy the medicinal product in accordance with standard operating procedures.

28. Dispensing of medicinal products

(1) No person shall dispense any medicinal product in or from an area to which members of the public have access.

(2) No person shall own, install or use or cause or permit the installation of, any machine designed or intended to be used to supply any medicinal product.

29. Labels for dispensed prescription only medicinal products

Every person who dispenses a prescription only medicine shall label such medicinal product with—

(a) the registered name, strength and form of the medicinal product;

(b) the total quantity of the medicinal product;

(c) the directions for use;

(d) any warnings;

(e) the name of the patient;

(f) the name of the prescriber;

(g) the prescription reference number allocated to the prescription by the person dispensing the medicinal product;

(h) the date on which the prescription only medicine is supplied; and

(i) the name and address of the supplier.

30. Limit of validity of prescription

No person shall dispense any prescription for the first time later than one month after the date of issue of the prescription.

31. Copy of prescription

A copy of a prescription marked “copy—for information—not to be dispensed” may be given to the patient by the person who dispenses the prescription.

32. Records of Prescription

The supplier of a prescription shall, on the day of which a prescription is dispensed or, if that is not reasonably practicable, on the business day next following that day, record in a manner acceptable to the Board, a complete copy of the prescription.

33. Preservation of records of prescription

Every person who dispenses any medicinal product shall keep or cause to be kept a record of such dispensing for a period of two years and shall preserve such record on the premises in which the dispensing takes place:

Provided that where the premises cease to be used or licensed such person shall make arrangements, acceptable to the Board, for the preservation or destruction of such records.

34. Restriction on advertising medicinal products

(1) No person shall advertise any medicinal product without the prior written approval of the Board.

(2) No person shall advertise or sell any medicinal product to the public in connexion with any bonus offer or discount.

(3) No person shall advertise any medicinal products to members of the public in terms calculated to lead to its use for the treatment of human beings for any of the conditions set out in the Fourth Schedule.

PART VI

SPECIAL CONDITIONS OF SALE FOR PRESCRIPTION ONLY MEDICINES, PHARMACIST INITIATED MEDICINES AND PHARMACY MEDICINES, GENERAL SALES LIST MEDICINES AND VETERINARY MEDICINES

Division 1—Prescription only Medicines (POM)

35. Possession of prescription only medicine

(1) No person shall possess a prescription only medicine unless, in accordance with subregulation (2), he is a member of a class of persons authorized to be in possession thereof.

(2) The classes of persons who are authorized to be in possession of a prescription only medicine shall be—

(a) in the case of a dangerous drug, any person who is authorized or licensed in terms of the Dangerous Drugs Act; Cap. 35:02

(b) in the case of a prescription only medicine other than a dangerous drug—

(i) prescriber;

(ii) any person in the employ and acting under the personal supervision of a prescriber in so far as is necessary in the execution of his duties; and

(iii) any person to whom the prescription only medicine has been supplied in accordance with a prescription by a prescriber.

36. Supply of prescription only medicine

(1) Subject to this regulation and regulation 37, no person shall supply any prescription only medicine listed in the Fifth Schedule otherwise than in accordance with the written prescription of a prescriber:

Provided that where it is not reasonably practicable for a prescriber to furnish to the supplier such written prescription immediately, the prescription only medicine may be supplied on the oral direction of the prescriber on one occasion only, and the prescriber shall furnish to the supplier a written prescription within three days.

(2) For the purpose of this regulation, a prescription shall—

- (a) bear the name, address and qualifications of the prescriber;
- (b) specify the name and address of the person for whom it is given or, if the prescription is issued by a veterinary surgeon, of the person for whose animal the prescription is issued; and
- (c) have written thereon—
 - (i) if issued by a dentist, the words “for dental treatment only”; or
 - (ii) if issued by a veterinary surgeon, the words “for animal treatment only”; or
 - (iii) if issued for topical application, the words “for external use only”;
- (d) if the person for whom the prescription is being issued is under the age of twelve years, state the person’s age;
- (e) be legibly written, in the handwriting of the prescriber, and contain the following particulars—
 - (i) the date on which the prescription is issued; (ii) the registered name, strength and form of the medicinal product;
 - (iii) the total daily dose of the medicinal product; (iv) the total quantity of the medicinal product; and (v) the directions for use;
- (f) where the medicinal product is packed otherwise than in ampoules, indicate the total amount to be supplied and, except in the case of a medicinal product which is to be used for external treatment only the dose to be taken;
- (g) where the medicinal product is packed in ampoules, indicate either the total amount to be supplied or the total amount it is intended should be administered or injected and, in either case, the amount it is intended should be administered or injected in each dose;

(h) not be for more than thirty days' supply at the dosage indicated, and not authorize more than five further supplies of thirty days each: Provided that nothing in this paragraph shall apply to the supply of reasonable quantities of medicinal product to persons who intend to depart temporarily from Malawi; and

(i) be signed in full by the prescriber issuing it.

(3) In an emergency any pharmacist may sell any medicinal product listed in the Fifth Schedule at the request of any person, subject to the following conditions—

(a) that the pharmacist by, or under whose supervision the medicinal product is to be sold, has satisfied himself—

(i) that there is an immediate need for the medicinal product requested and that it is impracticable in the circumstances to obtain a prescription without undue delay; and

(ii) that the medicinal product requested has on a previous occasion been prescribed by a medicinal practitioner, dentist or veterinary surgeon, as the case may be, for the person requesting it;

(b) that not more than three days quantity of the medicinal product is sold: Provided that—

(i) where a public holiday falls within the three-day period, a sufficient quantity of such medicinal product may be sold; and

(ii) where the medicinal product is in a composite pack which exceeds three days supply a single pack may be sold;

(c) that the pharmacist by or under whose supervision the medicinal product is sold, before he delivers such medicinal product makes an entry in his records stating—

(i) the date on which the medicinal product is sold;

(ii) the registered name, quantity, form and strength of the medicinal product;

(iii) the name and address of the person requesting the medicinal product;

(iv) the nature of the emergency; and

(v) the name of the medicinal practitioner, dentist or veterinary surgeon, as the case may be, if ascertainable; and

(d) that the medicinal product is labelled—

(i) in accordance with regulation 29; and

(ii) with the words "Emergency Supply".

37. Dispensing of prescription only medicines

Every person who dispenses a prescription only medicine shall ensure that—

(a) the prescription is not dispensed more than once, unless the prescriber has directed otherwise and in such event the lawful instructions of the prescriber shall be complied with; and

(b) at the time of dispensing, or where a prescription preparation has been supplied in accordance with the proviso to regulation 36 (1), on the subsequent receipt of the prescription, there is noted on the prescription the name and address of the supplier and the date on which the prescription is dispensed.

38. Storage and safe custody of prescription only medicine

(1) Every person who is authorized under regulation 35 (2) (b) to be in possession of a prescription only medicine keep such medicinal product in a place to which members of the public do not have access, and in a cupboard or drawer, or on a shelf reserved solely for the storage of such medicinal products.

(2) Any person who is in possession of a prescription only medicine shall keep such medicinal product in a place to which children do not normally have access.

Division 2—Pharmacist Initiated Medicines (PIM) and Pharmacy Medicines (PM)

39. Sale of pharmacist initiated and pharmacy medicines

(1) No person other than a pharmacist shall sell a pharmacist initiated medicine listed in the Sixth Schedule at the request of any person, and every such sale shall be subject to the following conditions—

(a) that the pharmacist by or under whose supervision the medicinal product is sold, before he delivers such medicinal product, makes an entry in his records stating—

(i) the name and address of the person requesting the medicinal product and the person for whom it is intended;

(ii) if the person is under the age of twelve years, the age of the person;

(iii) the date on which the medicinal product is sold;

(iv) the registered name, quantity, form and strength of the medicinal product;

(v) the total daily dose of the medicinal product; and

(vi) the directions for use; and

(b) that the medicinal product is labelled in accordance with regulation 13 as may be appropriate.

(2) No person other than a pharmacist, or a person acting under the continuous personal supervision of a pharmacist medicines in a medicine store, shall sell a pharmacy medicine listed in the Seventh Schedule.

Division 3—General Sales List Medicines (GSL)

40. Sale of general sales list medicines

Any person may, subject to any other written law relating to the sale of goods, sell any general sales list medicine:

Provided that such medicinal product is labelled in accordance with regulation 13 and is sold in original unbroken packs.

Division 4—Veterinary Medicines

41. Sale of veterinary medicines

The provisions of Division 1, 2 and 3 shall apply, mutatis mutandis, to the sale of veterinary medicines.

42. Conditions of sale of veterinary medicines

The sale of veterinary medicines by an authorized dealer shall be in original unbroken packs, sealed by the manufacturer.

43. Use of veterinary medicines

No person shall use any veterinary medicine for the treatment of human beings.

PART VII

SPECIAL PROVISIONS FOR INSTITUTIONS

44. Supply of medicinal products from institutions to out-patients

The provisions of Division 1 of Part VI shall apply to any medicinal product dispensed from an institution to an outpatient.

45. Supply of medicinal products for use within institutions

(1) In any institution in which medicinal products are dispensed in a dispensary or pharmaceutical department, no medicinal products shall be supplied from that dispensary or pharmaceutical department, except in cases of emergency, for use in wards, operating theatres or other sections of the institution, unless such medicinal product is supplied on the directions of a prescriber.

(2) Every package of a medicinal product supplied under subsection (1) shall be labelled with—

- (a) the registered name, form, strength and quantity of the medicinal product;
- (b) the directions for use;
- (c) the name of the patient;
- (d) the date on which such medicinal product is supplied; and

(e) the name of the prescriber.

46. Storage and handling of medicinal products in institutions

(1) Every medicinal product in an institution shall be stored in place to which no unauthorized person has access.

(2) Every person who handles or distributes medicinal products in an institution shall ensure that no unauthorized persons have access to such medicinal products during the handling or distribution of such medicinal products.

PART VIII

MISCELLANEOUS PROVISIONS

47. Withdrawal of medicinal products

(1) Where the Board is of the opinion that the withdrawal of any medicinal product is necessary for the protection of the public, the Board may require any person to withdraw such medicinal product in accordance with such procedures as the Board may determine.

(2) Every person who is in possession of a medicinal product required to be withdrawn under subregulation (1) shall comply with the procedure for the withdrawal of such medicinal product as determined by the Board.

48. Report of loss or theft of medicinal products

Any person, other than a person to whom a prescription preparation is lawfully dispensed, who is in possession of any medicinal product and who misplaces or loses such medicinal product or from whom such medicinal product is stolen, shall report such loss or theft, as the case may be, to a police officer and to the Registrar as soon as is reasonably practicable, and in any case within twenty-four hours of the occurrence of the loss or theft.

49. Disposal of existing stocks of prohibited medicinal products

If at any time any medicinal product becomes prohibited any person other than a person to whom a medicinal product is lawfully dispensed who is in possession of such medicinal product at the time shall inform the Board of his possession, and shall dispose of such medicinal product in such manner as the Board may direct.

50. Availability of Act and regulations

A copy of the Act and these Regulations shall be available at all premises licensed under the Act.

FIRST SCHEDULE

PART I

MINIMUM REQUIREMENTS FOR PREMISES USED FOR MANUFACTURING PHARMACY BUSINESS

1. Premises

1.1 Premises should be sited to avoid contamination from the external environment or from other nearby activities and in existing premises, effective measures should be taken to avoid such contamination.

1.2 Animal houses should be well isolated from manufacturing areas.

1.3 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, birds and pests.

1.4 Premises should be designed and laid-out in such a way that the risk of mix-up or contamination of one product or material by another is minimized. This especially applies to premises for the handling of highly toxic or sensitizing materials such as hormones, cytotoxic agents and antibiotics.

1.5 Protection from the weather should be provided for receiving and despatch areas and for materials and products in transit.

1.6 Premises should be maintained in a good state of repair. The condition of buildings should be reviewed regularly and repairs effected where necessary. Special care should be exercised to ensure that buildings and repair or maintenance operations do not hazard products.

1.7 Premises should have sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.8 The processing of materials for non-medicinal use should be separated from the processing of medicinal products.

1.9 Cloakrooms should be separate from, or partitioned from processing areas. Toilets should be well ventilated and should not open directly to manufacturing areas.

1.10 Premises in which medicinal products are manufactured or stored should be made secure, with access restricted to authorized personnel.

1.11 Floors in processing areas should be made of impervious materials, laid on an even surface, free from cracks and open joints, and should allow prompt and efficient removal of any spillages. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.12 Pipework, light fittings, ventilation points and other services in manufacturing areas should be sited to avoid the creation of uncleanable recesses; and should be sealed into any walls and partitions through which they pass service should preferably be run outside the processing areas.

1.13 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 and disinfection.

1.14 Buildings should be effectively lit and properly ventilated, with air control facilities including temperature, humidity and filtration facilities appropriate both to the operations undertaken within them and to the external environment.

1.15 Air intakes and exhausts, and associated pipework and trucking should be sited to avoid product contamination hazards.

1.16 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.

1.17 All premises, including processing areas, laboratories, stores, passage ways, external surroundings should be maintained in a clean and tidy condition.

1.18 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 at regular and frequent intervals. Special care is necessary over the disposal of waste containing dangerous, highly toxic or sensitizing materials such as hormones, cytotoxic agents, sensitizing antibiotics. Disposal of raw materials, printed packing materials and rejected products should be carefully controlled and documented.

1.19 There should be made available written cleaning procedures and schedules for manufacturing and storage areas.

1.20 Adequate space, preferably separated from processing areas, should be provided for cleaning and storing equipment, and the storage of cleaning materials.

2. Storage areas

2.1 Storage areas should be designed, laid-out and be of sufficient capacity to permit effective and orderly segregation of the various categories of material stored and allow rotation of stock.

2.2 Segregated storage should be provided for rejected, recalled, expired or returned goods. Where the maintenance quarantine status depends upon storage in separate areas, such areas should be provided with restricted access.

2.3 Labels and other printed packaging materials, including labels for starting materials and for bulk and intermediate products, should be stored in a secure manner that will permit issue only to authorized person in accordance with formal documented procedures. Storage arrangements should permit separation of different labels and other printed materials and avoidance of mix-up.

2.4 Goods should be stored off the floor. Provision should be made for shelving, racking and pelleting and in a manner that will permit easy cleaning and the use of pest control agents by trained personnel without risk of contamination.

2.5 All goods should be stored under cover.

2.6 All materials containers should be clean before they are admitted to stores and checked again for cleanliness before issued to manufacturing areas.

2.7 Where special storage conditions such as temperature, humidity and security are required, these should be provided, checked and monitored.

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 contemplated functions and present no hazard to the product and personnel.

3.2 Manufacturing equipment should be easily and conveniently cleanable, both inside and outside. There should be available written instructions for cleaning of equipment and suitable cleaning facilities should be provided.

3.3 Equipment should not be a hazard to products through leaking joints, lubricant drips, or through inappropriate modifications or adaptations.

3.4 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.

4. Qualifications of personnel

4.1 The key personnel are the person responsible for production 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 operations shall be carried out under the supervision of a registered pharmacist with adequate relevant postgraduate training with the support of suitably qualified personnel such as a pharmacy technologist or pharmacy assistant.

4.3 All quality control operations shall be carried out under the supervision of an appropriately trained pharmacist or chemist with relevant postgraduate training with the support of suitably qualified personnel such as pharmacy technologist, laboratory technologist or chemist.

4.4 All manufacturing and quality control processes should be done in accordance with Good Manufacturing Practices (GMP) as approved by Board.

PART II

MINIMUM REQUIREMENTS FOR PREMISES FOR WHOLESALE PHARMACY BUSINESS (reg. 5)

1. Premises and equipment

1.1 Premises should be sited to avoid contamination from the external environment or from the nearby activities and in existing premises, effective measures should be taken to avoid such contamination.

1.2 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, birds, pests and pets.

1.3 Protection from the weather should be provided for receiving and dispatching areas and for materials and products in transit.

1.4 Premises should be maintained in good state of repair. The condition of buildings should be reviewed regularly, and repairs effected where necessary. Special care should be exercised to ensure that buildings, repair and maintenance operations do not hazard products.

1.5 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.6 Cloakrooms should be separate from or partitioned from processing areas. Toilets should be well ventilated and should not open directly to storage areas.

1.7 Premises in which medicinal products are stored should be secure, with access restricted to authorized personnel.

1.8 Floors in processing areas should be made of impervious materials, laid on an even surface, free from cracks and open joints and should allow prompt and efficient removal of any spillages. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.9 Buildings should be effectively lit and properly ventilated, with air control facilities including temperature and humidity appropriate both to operations undertaken within them and to the external environment.

1.10 All premises, including processing areas, stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.11 Waste material should not be allowed to accumulate, but it should be collected in suitable receptacles for removal to collection points outside the building and disposed of at regular and frequent intervals. Special care is necessary over the disposal of waste containing dangerous, highly toxic or sensitizing materials such as hormones, cytotoxic agents, sensitizing antibiotics.

1.12 Segregated storage should be provided for rejected, expired or returned goods.

1.13 Goods should be stored off the floor. Provision should be made for shelving, racking and pelleting, and in a manner that will permit easy cleaning and the use of pest control agents by trained personnel without risk of contamination.

1.14 Where special storage conditions such as temperature, humidity and security are required; these should be provided, and checked and monitored regularly. In particular, controlled temperature environments should be equipped with temperature recorders.

1.15 Van selling should be restricted to items on the general sales list.

2. Qualifications of personnel

2.1 Wholesale operations shall be carried out under the direct full-time supervision of a registered pharmacist, with the support of a suitably qualified personnel such as a pharmacy assistant or pharmacy technologist, who shall be responsible for the funding, procurement, clearing, receipting, storage, distribution and documentation relating to medicinal products.

2.2 The services of alocum may be used.

3. Records

3.1 Adequate records shall be maintained for—

(a) receipts source, quantity, expiry dates and batch number of medicinal products;

(b) sales (source, quantity, expiry dates and batch number of medicinal products) despatches shall be countersigned by a pharmacist. Orders shall be signed by authorized persons known to the wholesaling unit;

(c) stock (balances) of each batch and consignment;

(d) disposal of rejected or/expired products and records shall be kept for a minimum period of 2 years. All expired products must be notified to the Board when destroyed plus method of destruction used.

PART III

MINIMUM REQUIRMENTS FOR PREMISES USED FOR RETAIL PHARMACY BUSINESS (reg. 5)

1. Premises

1.1 Premises shall be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin, pest and pets.

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. Special care should be exercised to ensure that buildings, and repair or maintenance operations do not hazard products.

1.3 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work, and permit effective communication and supervision.

1.4 Toilets should be well ventilated and should not open directly to storage areas.

1.5 Floors should be made of impervious materials, laid to an even surface, and should be free from cracks and open joints. If not carpeted floors should have tiles to facilitate easy cleaning. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.6 Buildings should be effectively lit and properly ventilated with air control facilities.

1.7 All premises, including stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.8 Premises in which medicinal products are stored should be made secure, with access restricted to authorized personnel.

1.9 Waste material should not be allowed to accumulate, but it should be collected in suitable receptacles for removal to collection points outside the building and disposed of at regular and frequent intervals.

1.10 The dispensary should be separate and independent from other operations, and should be locked when the pharmacist is not present. The dispensary should have running water (cold and warm) and adequate working and cleaning benches with formica tops and adequate shelving.

1.11 The dispensary and consulting room should be elevated overlooking pharmacy and medicine counter.

2. Equipment and reference books

2.1 A Pharmacy shall, where relevant, have measuring cylinders, a stirring rod, counting trays, balance, fridge, a fixed lockable DDA cupboard, current edition of Martindale and other books such as British National Formulary (BNF). United States Pharmacopoeia (USP) and Malawi National Formulary (MNF).

3. Records

3.1 Patient profile cards should be kept where possible.

3.2 Prescriptions should be kept for a minimum period of two years and should be numbered and filed chronologically.

3.3 Record of receipts with expiry dates and Lot. No. should be kept for a minimum of two years.

4. Labelling

4.1 Labelling of dispensed medicine products should include—

- (a) name of patient; its strength and quantity dispensed;
- (b) name of medicine,

- (c) directions for use;
- (d) date of dispensing; and
- (e) name of pharmacy or dispensing unit. The Pharmacist shall communicate to the patient any other pertinent information.

5. Prescription

5.1 A prescription should have—

- (a) name of patient;
- (b) name of medicine, its strength and quantity dispensed;
- (c) directions for use; and
- (d) signature, date and address of the prescriber.

5.2 A prescription should be checked and endorsed after dispensing.

6. Personnel

6.1 A retail pharmacy should be under the direct supervision of a full-time registered pharmacist assisted by appropriately trained personnel approved by the Board.

PART IV

MINIMUM REQUIREMENTS FOR REGISTERED DISPENSING PRACTITIONER (reg. 5)

1. Dispensary layout

1.1 Dispensary shall be separated from the clinical areas.

1.2 Dispensary should be maintained in good state of repair. The general condition of the building should be reviewed regularly and repairs effected where necessary.

1.3 Dispensary should be clean and tidy at all times.

1.4 Floors and walls should be free from cracks and made of impervious material for easy cleaning.

1.5 Dispensary should be effectively lit and properly ventilated.

1.6 Dispensary should be made adequately secure with no access to unauthorized persons.

1.7 Dispensary should have running water (cold and warm), adequate shelving for medicines and other supplies, adequate patient waiting area with seats.

1.8 A toilet for staff with running water, must be provided but should not open directly to the dispensing area.

2. Storage room (if separated from dispensary)

2.1 The main storeroom for medicines should have adequate lighting and ventilation.

2.2 Medicines and other supplies should be arranged on shelves in an orderly manner.

2.3 Medicines should be protected from direct sunlight and excess heat and kept well out of reach of patients.

2.4 Storeroom should be provided with adequate security measures including adequate locking system, burglar bars and there shall be restricted entry into storeroom.

3. Dispensing requirements

3.1 Labelling of dispensed medicinal products must be legible and should include— Name of patient; Name of medicine, its strength and quantity dispensed; Directions for use of medicine; Date of dispensing; Name of surgery or clinic or dispensing unit.

4. Equipment and reference books

4.1. Measuring cylinders for dispensing reconstituted powders must be made available.

4.2 Refrigerator in good working condition must be provided.

4.3 Medicine counting trays for tablets and capsules must be provided.

4.4 Dispensing packs or containers must be available.

4.5 A fixed lockable cupboard for controlled medicines, including narcotics must be provided.

4.6 Current editions of the following publications must be made available— Current edition Martindale; Pharmacy, Medicines and Poisons Board Act and Regulations; Pharmacy, Medicines and Poisons Board schedules of registered medicines; Mala???i National Formulary; Mala???i Standard Treatment Guidelines.

5. Records

5.1 Patient profile cards should be maintained.

5.2 Dispensed prescriptions should be kept for a minimum of 2 years and should be filed orderly.

5.3 Records of sources of medicinal products, receipt of goods, stock movement, should be available and kept for a minimum of 2 years.

6. Human Resources

6.1 A dispensary should be managed and supervised by a fulltime registered health professional in the medical, nursing or pharmacy field.

6.2 Other suitably qualified staff may also be employed to assist the supervisor.

PART V

MINIMUM REQUIREMENT FOR OPERATION OF A MEDICINE STORE

1. Premises

1.1 Premises should be constructed and maintained so as to be protected against weather, ground seepage and the entrance and harbouring of vermin and pests.

1.2 Premises should be maintained in a good state of repair. The condition of the buildings should be reviewed regularly, and repairs effected where necessary. Special care should be exercised to ensure that building, repair or maintenance operations do not hazard the products.

1.3 Premises should provide sufficient space to suit the operations to be carried out, allow an efficient flow of work and permit effective communication and supervision.

1.4 Toilets should be well ventilated and should not open directly to the medicine store.

1.5 Floors should be made of impervious material and should be free from cracks and open joints. Walls should be sound and finished with a smooth, impervious and washable surface. Ceilings should be so constructed and finished that they can be maintained in a clean condition.

1.6 The building should be effectively lit and properly ventilated.

1.7 All premises, including stores, passage ways and external surroundings, should be maintained in a clean and tidy condition.

1.8 Premises in which medicinal products are stored should be made secure, with access restricted to authorized personnel.

1.9 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 at regular and frequent intervals.

1.10 Adequate shelving should be provided.

SECOND SCHEDULE (reg. 11)

PHARMACOLOGICAL CLASSIFICATION CATEGORIES OF MEDICINAL PRODUCTS

PART I

HUMAN CLASSIFICATION

1. Anaesthetics
 - 1.1 General anaesthetics and medical gases
 - 1.2 Local anaesthetics
 - 1.2.1 Injectable
 - 1.2.2 Topical
 - 1.3 Cholinesterase inhibitors and muscle relaxants used in anaesthesia
2. Analgesics and antipyretics
 - 2.1 Single ingredient products
 - 2.2 Compound products
3. Drugs used in rheumatism and gout
 - 3.1 Nonsteroidal anti-inflammatory drugs
 - 3.2 Drugs for gout
 - 3.3 Special antirheumatic drugs
4. Narcotic analgesics/Narcotic Antagonists
 - 4.1 Narcotic analgesics
 - 4.2 Narcotics antagonists
5. Antihistamines
6. Antidotes
 - 6.1 General
 - 6.2 Specific
 - 6.3 Drugs used in the treatment of addictions-
 - 6.3.1 Alcohol
 - 6.3.2 Nicotine

6.3.3 Narcotics

6.3.4 Psychotropics

6.3.5 Others

7. Anti-infective drugs

7.1 Penicillins

7.1.1 Non beta-lactamase resistant

7.1.2 Beta-lactamase resistant

7.2 Other antibacterials

7.2.1 Aminoglycosides

7.2.2 Cephalosporins

7.2.3 Sulphonamides (including combinations with trimethoprim)

7.2.4 Tetracyclines

7.2.5 Others

7.3 Antituberculars

7.4 Antileprotics

7.5 Antimalarials

7.6 Antiprotozoals (other than antimalarials)

7.7 Anthelmintics

7.8 Antischistosomes

7.9 Antitrypanosomals

7.10 Leishmanicides

7.11 Antiflarials

7.12 Antifungals (systemic)

7.13 Antivirals

7.14 Urinary antiseptics

8. Antimigraine drugs

9. Antineoplastic and immunosuppressive drugs

- 9.1 Alkylating agents—
 - 9.1.1 Nitrogen mustard
 - 9.1.2 Alkyl sulphonates
 - 9.1.3 Nitrosureas
 - 9.1.4 Triazines
- 9.2 Antimetabolites—
 - 9.2.1 Folic acid analogues
 - 9.2.2 Pyrimidine analogues
 - 9.2.3 Purine analogues
- 9.3 Natural products and their derivatives—
 - 9.3.1 Vinca alkaloids
 - 9.3.2 Antibiotics
 - 9.3.3 Enzymes
- 9.4 Miscellaneous cytotoxic agents
- 9.5 Hormones and hormone inhibitors—
 - 9.5.1 Hormones
 - 9.5.2 Hormones inhibitors
- 9.6 Immunosuppressive agents
- 10. Drugs affecting the blood
 - 10.1 Anti-anaemia preparations—
 - 10.1.1 Iron
 - 10.1.2 Folates
 - 10.1.3 Vitamin B12
 - 10.1.4 Combinations
 - 10.2 Anticoagulants
 - 10.3 Anticoagulant antagonists
 - 10.4 Haemostatics

- 10.5 Drugs modifying platelet function
- 10.6 Drugs altering blood viscosity
- 11. Blood production/blood substitutes
 - 11.1 Plasma substitutes and expanders
 - 11.2 Plasma fractions for specific uses
- 12. Cardiovascular drugs
 - 12.1 Antianginal drugs
 - 12.2 Antiarrhythmic drugs
 - 12.3 Antihypertensive drugs—
 - 12.3.1 Vasodilators
 - 12.3.2 Beta blockers
 - 12.3.3 Centrally acting antihypertensives
 - 12.3.4 Ganglion blockers
 - 12.3.5 Others
 - 12.4 Cardiac glycosides
 - 12.5 Diuretics and antidiuretics
 - 12.6 Calcium antagonists
 - 12.7 Sympathomimetic cardiac stimulants
 - 12.8 Drugs modifying serum lipids
 - 12.9 Other cardiovascular drugs
- 13. Central nervous system drugs
 - 13.1 Anticonvulsants
 - 13.2 Psychotherapeutic drugs—
 - 13.2.1 Antidepressants
 - 13.2.2 Anxiolytics
 - 13.2.3 Antipsychotics
 - 13.3 Hypnotics

- 13.4 Antiparkinsonian drugs
- 13.5 Drugs for myaesthesia gravis
- 13.6 Muscle relaxants, centrally acting
- 13.7 CNS stimulants
- 13.8 Drugs improving cerebral blood flow or metabolism
- 13.9 Respiratory stimulants, centrally acting
- 14. Dermatological and topical preparations
 - 14.1 Topical anti-infectives
 - 14.1.1 Antibiotics
 - 14.1.2 Sulphonamides
 - 14.1.3 Antifungals
 - 14.1.4 Antiseptics and disinfectants
 - 14.1.5 Scabicides and pediculocides
 - 14.2 Topical corticosteroids—
 - 14.2.1 Plain
 - 14.2.2 Combinations
 - 14.3 Topical antihistamines
 - 14.4 Topical local anaesthetics
 - 14.5 Acne preparations—
 - 14.5.1 Topical
 - 14.5.2 Systemic
 - 14.6 Preparations for psoriasis—
 - 14.6.1 Topical
 - 14.6.2 Systemic
 - 14.7 Anti-dandruff preparations
 - 14.8 Keratolytic
 - 14.9 Topical cytotoxic

- 14.10 Sunscreen agents
- 14.11 Melanin stimulants
- 14.12 Melanin inhibitors
- 14.13 Astringents
- 14.14 Emollients
- 14.15 Rubefacients
- 14.16 Medicated dressings
- 14.17 Vaginal preparations
- 14.18 Heavy metal preparations
- 14.19 Others
- 15. Diagnostic agents
 - 15.1 Miscellaneous—
 - 15.1.1 Serological
 - 15.1.2 Skin tests
 - 15.1.3 Blood grouping
 - 15.1.4 Others
 - 15.2 Radiocontrast media
 - 15.3 Reagent strips and tablets
- 16. Gastrointestinal drugs
 - 16.1 Antacids
 - 16.2 Antiemetics
 - 16.3 Antihaemorrhoidals
 - 16.4 Antispasmodics
 - 16.5 Laxatives—
 - 16.5.1 Lubricants and softeners
 - 16.5.2 Stimulants
 - 16.5.3 Bulking agents

- 16.5.4 Osmotic agents
 - 16.5.5 Combinations
 - 16.5.6 Others
- 16.6 Antidiarrhoeals
- 16.7 Gastric/peptic ulcer drugs
- 16.8 Gastrointestinal enzymes
 - 16.8.1 Pancreatic enzymes
 - 16.8.2 Other Glenzymes
- 16.9 Appetite depressants—
 - 16.9.1 Centrally acting
 - 16.9.2 Locally acting
- 17. Endocrine system drugs
 - 17.1 Corticosteroids
 - 17.2 Androgens
 - 17.3 Oestrogens
 - 17.4 Progestogens
 - 17.5 Sex hormones combinations (excluding contraceptive preparations)
 - 17.6 Insulins
 - 17.7 Oral antidiabetic drugs
 - 17.8 Thyroid hormones/inhibitors—
 - 17.8.1 Thyroid hormones
 - 17.8.2 Thyroid inhibitors
 - 17.9 Parathyroid hormones/inhibitors—
 - 17.9.1 Parathyroid hormones
 - 17.9.2 Parathyroid inhibitors
 - 17.10 Pituitary hormones/inhibitors—
 - 17.10.1 Pituitary hormones

- 17.10.2 Pituitary inhibitors
- 17.11 Tropic hormones
- 17.12 Hormone inhibitors (other than the above)
- 17.13 Fertility stimulants
- 17.14 Others
- 18. Immunologicals
 - 18.1 Sera/immunoglobulins—
 - 18.1.1 Antitoxins
 - 18.1.2 Antivenons
 - 18.1.3 Immune globulins
 - 18.1.4 Others
 - 18.2 Vaccines
- 19. Ophthalmic drugs
 - 19.1 Anti-infective
 - 19.1.1 Antibiotics
 - 19.1.2 Suphonamides
 - 19.1.3 Antivirals
 - 19.1.4 Antiseptic
 - 19.1.5 Others
 - 19.2 Corticosteroids—
 - 19.2.1 Without antibiotics
 - 19.2.2 With antibiotics
 - 19.3 Local anaesthetics
 - 19.4 Miotics
 - 19.5 Mydriatics
 - 19.6 Diagnostics
 - 19.7 Systemic

- 19.8 Contact lens preparations
- 19.9 Topical decongestants and anti-allergies
- 19.10 Others
- 20. Ear, nose, throat and mouth preparations
 - 20.1 Ear—
 - 20.1.1 Anti-infective
 - 20.1.2 Anti-inflammatory
 - 20.1.3 Analgesic
 - 20.1.4 Wax removers
 - 20.1.5 Others
 - 20.2 Nose—
 - 20.2.1 Anti-infective
 - 20.2.2 Corticosteroid (plain and combination)
 - 20.2.3 Antihistamines (plain and combination)
 - 20.2.4 Other decongestants and anti-allergics
 - 20.2.5 Cauterising preparations
 - 20.2.6 Others
 - 20.3 Throat and mouth—
 - 20.3.1 Special dental preparations
 - 20.3.2 Mouth ulcer preparations
 - 20.3.3 Local analgesics/anaesthetics (including toothache and teething preparations)

 - 20.3.4 Antiseptic mouthwashes, gargles, sprays, paints, etc.
 - 20.3.5 Antiseptic lozenges
 - 20.3.6 Others
- 21. Drugs used in labour, delivery and contraception
 - 21.1 Labour and delivery—
 - 21.1.1 Pre-partum uterine contraction stimulants

- 21.1.2 Post-partum uterine contraction stimulants
 - 21.1.3 Uterine contraction inhibitors
 - 21.2 Hormonal contraceptives—
 - 21.2.1 Combined oral contraceptives
 - 21.2.2 Progesterone-only oral contraceptives
 - 21.2.3 Injectables
 - 21.2.4 Others
 - 21.3 Spermicides
 - 21.4 Intrauterine devices
 - 21.5 Barrier devices
- 22. Drugs acting on the respiratory tract
 - 22.1 Anti-asthmatic drugs—
 - 22.1.1 Systemic bronchodilators
 - 22.1.2 Inhalation bronchodilators
 - 22.1.3 Inhalation corticosteroids
 - 22.1.4 Other inhalation products
 - 22.1.5 Other systemic products
 - 22.2 Cough and cold preparations—
 - 22.2.1 Antitussives
 - 22.2.2 Expectorants
 - 22.2.3 Decongestants
 - 22.2.4 Mucolytics
 - 22.2.5 Combination products
 - 22.3 Inhalations and vapour rubs
- 23. Agents correcting or modifying body fluid composition
 - 23.1 Oral—
 - 23.1.1 Oral rehydration products

- 23.1.2 Oral electrolyte replacement
 - 23.2 Parenteral—
 - 23.2.1 Large volume infusions
 - 23.2.2 Injections
 - 23.3 Dialysis products—
 - 23.3.1 Peritoneal dialysis solutions
 - 23.3.2 Peritoneal dialysis solutions
 - 23.4 Ion exchange resins
 - 23.5 Agents modifying urinary pH
 - 23.6 Haemoperfusion products
24. Vitamins, minerals and tonics
- 24.1 Vitamins (excluding combinations)—
 - 24.1.1 Vitamin A and analogues
 - 24.1.2 Vitamin B group (single compounds, except B12, see 10.1.3)
 - 24.1.3 Vitamin C
 - 24.1.4 Vitamin D and analogues
 - 24.1.5 Vitamin E and analogues
 - 24.1.6 Vitamin K and analogues
 - 24.1.7 Other preparations of single vitamins (except folate, see 10.1.2)
 - 24.2 Vitamin B compound preparations
 - 24.3 Multivitamins (excluding vitamins plus minerals)
 - 24.4 Minerals (except iron, see 10.1.1, and electrolytes, see 13.1.2)—
 - 24.4.1 Single minerals
 - 24.4.2 Compound preparations
 - 24.5 Vitamins plus minerals
 - 24.6 Tonics—
 - 24.6.1 Tonics with vitamins

- 24.6.2 Tonics with minerals
- 24.6.3 Tonics with vitamins and minerals
- 24.6.4 Others
- 25. Nutritional agents
 - 25.1 Intravenous nutrition preparations
 - 25.2 Milk substitutes
 - 25.3 Special oral foods
- 26. Enzymes (excluding gi tract)
- 27. Enzymes inhibitors
- 28. Homeopathic, Herbal and dutch remedies
 - 28.1 Homeopathic remedies
 - 28.2 Herbal remedies
 - 28.3 Dutch remedies
- 29. Radioactive isotopes, and kits for their preparations
 - 29.1 Diagnostic
 - 29.2 Therapeutic
- 30. Environmental disinfectants and decontaminants

THIRD SCHEDULE (regs. 11,12 and 13)

CATEGORIES FOR THE DISTRIBUTION OF MEDICINAL PRODUCTS

Prescription only Medicines (POM) are medicinal products controlled under Division 1 of Part VI.

Pharmacist Initiated Medicines or (PIM) are medicinal products controlled under Division 2 of Part VI.

Pharmacy Medicines are medicinal products controlled as such under Division 2 of Part VI.

General Sales List Medicines (GSL) are medicinal products suitable for self medication and which are controlled under Division 3 of Part VI.

Controlled Drugs (CD) are medicinal products listed in the Tenth Schedule.

FOURTH SCHEDULE (reg. 34 (3))

CONDITIONS FOR WHICH ADVERTISING IS PROHIBITED

Alcoholism

Appendicitis

Arteriosclerosis

Cardiovascular disease

Cataract

Diabetes

Hernia

Kidney stone

Pneumonia

Prostrate gland disorders

Epilepsy

Gallstones

Gangrene

Glaucoma

Hypertension

Hypotension

Tuberculosis

HIV/Aids related diseases

FIFTH SCHEDULE (regs. 2 and 36)

PRESCRIPTION ONLY MEDICINES (POM)

Human Medicines

Acebutolol

Acetanilide

Acetazolamide

Acetohexamide

Acetylcarbromol

Acetylcysteine

Acetyldigoxin

Actinomycin-D

Acyclovir (excluding topical preparations)

Aescin, other than preparations for external use

Alclofenac

Alcuronium

Alfacalcidol

Alfadolonum

Alfaxalonum

Allopurinol

Alseroxylon

Amantadine

Amidopyrine

Amilorideaminocarproic acid

Amineptile

Amitriptyline

Amoxapine

Amoxicillin

Amphotericin

Ampicillin

Anaesthetic agents (including local anaesthetics for oral inhalation and injection excluding preparations for local use and procaine for oral use).

Anti-microbial substances (including those synthesized naturally or in the laboratory for treatment of specific infections except when used topically and for application into eye/ear).

Antimony

Apronal

Atenolol

Atracurium
Atropine
Aurothiomalate
Azacyclonal
Azapropazone
Azathioprine
Baclofen
Beclomethasone
Benactyzine
Benzatropine
Benzoctamine
Benzydamine
Betahistine
Betamethasone
Betanidine
Biperiden
Bromocriptine
Bromvaletone
Brucine
Bumadizon
Bumetanide
Bupivacaine
Buserelin
Busulfan
Butriptyline
Calcitonin
Calcium dobesilate

Cantharidates (excluding for topical use)

Cantharidin

Captodiame

Captopril

Carbamazepine

Carbenicillin

Carbidopa

Carbimazole

Carbochol

Caribromal

Carisoprodol

Ceftriaxone

Cefuroxime

Cephalosporins (all generations)

Cetirizine

Chlorambucil

Chloramphenicol

Chlormethiazole

Chlorotrianisene

Chlorpromazine

Chlorpropamide

Chlorprothixene

Ciclosporin

Cilazapril

Cimetidine

Cinchophen

Cisapride

Clavulanic acid
Clfibrate
Clindamycin
Clioquinol
Clobetasol
Clofazimine
Clomifene
Clomipramine
Clonidine
Clopamide
Cloreolone
Clothiapine
Clotiapine
Clotrimazole
Cloxacillin
Clozapine
Colestyramine
Conjugated oestrogens
Corticosteroids (excluding hydrocortisone 1 per cent)
Cortisone acetate
Cotarnine
Co-trimoxazole
Cromoglycic acid
Curate
Cyclandelate
Cyclarbamate
Cyclopentolate

Cyclofenil
Cyclopenthiazine
Cyclophosphamide
Cycrimine
Cyproterone
Cytarabine
Dacarbazine
Danazol
Dapsone (except in combination with pyrimethamine for malaria prophylaxis)
Daunorubicin
Deanol
Debrisoquine
Demecarium bromide
Desferrioxamine
Desipramine
Desmopressin acetate
Dexamethasone
Dibenzepin
Dichloralphenazone
Diethylcarbamazine
Digitalis digoxin and other cardiac glycosides
Dihydralazine
Dihydroergocristine
Diloxanide furoate
Diltiazem
Dimercaprol
Dimetotiazine

Dinoprost
Dinoprostone
Dioxyanthanol (dithranol)
Diphenidol
Diprocetyl
Dipyridamole
Dipyrocetyl
Disopyramide
Disulfiram
Diuretics
Dobutamine
Domperidone
Dopamine
Dosulepin
Doxapram
Doxazosin
Doxepin
Doxorubicin
Doxycycline
Droperidol
Dyflos
Ectylurea
Edrophonium
Emetine
Emylcamate
Enalapril
Enzymes (for injection)

Erythrityl tetranitrate

Erythromycin

Ethacrinic acid

Ethambutol

Ethchlorvynol

Ethinamate

Ethoheptazine

Ethosuximide

Etomidate

Famciclovir

Famotidine

Fenbufen

Fencamfamin

Fenfluramine

Fenlofenac

Fenoprofen

Flucloxacillin

Fluconazole

Flucytosine

Fludrocortisone

Flufenamic acid

Flumazenil

Fluocinolone

Fluorouracil

Fluoxetine

Fluphenazine

Flurbiprofen

Fluticasone
Folic acid
Folinic acid
Framycetin (other than topical)
Furazolidine
Furosemide
Fusidic acid
Gallamine
Gamolenic acid
Gelsenium
Gemfibrozil
Gentamicin
Gilibornuride
Glafenine
Glibenclamide
Griseofulvin
Guanethidine
Guanidine
Halofantrine
Halometasone
Haloperidol
Halothane
Hapatitis-B vacc
Heparin
Hexamethonium
Hexapropymate
Hormones natural or synthetic

Human chorionic gonadotropin

Hyaluronidase

Hycanthone

Hydralazine

Hydrochlorothiazide

Hydroxyprogesterone

Hydroxyzine

Hyoscine

Imipramine

Indapamide

Indinavir

Indomethacine

Indoprofen

Insulin

Iodozuridine

Iron injectable preparations

Isoconazole

Isoetarine

Isoflurane

Isoniazid

Isopyrine

Isosorbide

Isradipine

Ketaconazole (except topical)

Ketamine

Ketoprofen

Ketorolac

Ketotifen
Labetalol
Lamivudine
Lanatoside
Laudezium
Levallorphan
Levobunolol
Levocastine
Levodopa
Levonorgestrel
Lidoflazine
Lincomycin
Lisinopril
Lithium
Lobella
Loratidine
Loxapine
Lucanthone
Maprotiline
Mazindol
Medroxyprogesterone
Mefloquine
Meglumine
Melphalan
Mephenesin
Mephentyoin
Mephonoxalone

Mercaptopurine
MersalylMesna
Mesuximide
Metaraminol
Methamine
Methacarbamol
Methoxamine
Metformin
Methapyrilene
Methohexitone
Methofrexate
Metipranolol
Metoprol
Metrifonate
Metronidazole
Metyldopa
Metylsergide
Mexiletine
Mianserin
Milrinone
Minoxidil
Mitoxantrone
Moclobemide
Molindone
Monoamine oxidase inhibitors
Moxisylyte
Mupirocin

Nadolol

Nalidixic acid

Naloxone

Natamycin

Neostigmine

Nicotine

Nifedipine

Niflumic acid

Niridazole

Nitrofurantoin

Nizatidine

Nomifensine

Norfloxacin

Nux vomica

Nystatin (for intra-oral use only)

Oestradiol

Ofloxacin

Olanzapine

Omeprazole

Orphenadrine

Oxamniquine

Oxolinic acid

Oxprenolol

Oxyphenisatin

Oxytetracycline

Oxytocin

Pancuronium

Paraldehyde

Pargyline

Pefloxacin

Penbutolol

Penciclovir

Penicillins

Penterythritol tetranitrate

Perhexiline

Phenacaine

Phenacemide

Phenacetin

Phenaglycodol

Phenbutrazate

Phenindione

Phenothiazines (except promethazine, anthelmintics)

Phensuximide

Pentolamine

Phenytoin

Physostigmine

Phytomenadione

Picrotoxin

Pimozide

Pindolol

Piracetam

Piroxicam

Pituitary gland extracts intended for topical use and inhalants

Pizotifen

Poldine

Plasma expanders

Potassium chloride (only injection)

Practolol

Pravastatin

Praziquantel

Praxosin

Prednisolone

Prednisone

Prenylamine

Primidone

Probenecid

Procaine hydrochloride

Procainamide

Procarbazine

Procaterol

Prochlorperazine

Procycline

Prolintane

Propanidid

Propofol

Propranolol

Propylthiouracil

Protamine

Prothipendyl

Protryptiline

Pyrazinamide

Pyridostigmine
Pyritinol
Quinapril
Quinethazone
Quinidine
Quinine
Ranitidine
Rauwolfia
Reserpine
Rifampicin
Ritodrine
Rosoxacin
Roxithromycin
Sabadilla
Seriraline
Sodium calcium edetate
Sodium pentosan polysulphate
Sotalol
Spectinomycin
Spironolactone
Streptodornase and other similar enzymes
Streptokinase
Strophathus
Styramate
Sulfinpyrazone
Sulfiram
Sulindac

Sulphinpyrazone

Sulphonal

Sulphonamides (including combinations with other active ingredients) except in combination with pyrimethamine for treatment of malaria and for topical use and ophthalmic use.

Sulpiride

Sulthiamine

Sumatriptan

Suxamethonium

Syrosingopine

Talozamide

Talozoline

Tamoxifen

Tenoxicam

Terfenadine

Tetrabenazine

Tetracycline

Thiacetazone

Thiamphenicol

Thioguanine

Thionamide

Thiopentone

Thioridazole

Thiotepa

Thiothixine

Thymoxamine

Thyroid gland extract

Thyroxine

Tiaprofenic acid

Timolol

Tinidazole

Tolbutamide

Tolfenamic acid

Tolmetin

Tranexamic acid

Tranlycypromine

Tretamine

Tretion

Triamcinolone

Triamterene

Tribromomethyl alcohol

Trichlorethyl alcohol

Trifluoperidol

Trihexyphenidyl (benzhexol)

Trimethadion

Trimethaphan

Trimethoprim

Trimipramine

Trioxsalen

Tubocurarine

Turpicamide

Vaccines, Sera and Antigens

Valacyclovir

Valproic acid

Vancomycin

Vasopressin

Verapamil

Veratrum

Viloxazine

Vinblastine

Vincristine

Vindesine

Warfarin

Xameterol

Zidovudine

SIXTH SCHEDULE (regs. 2 and 39)

PHARMACIST INITIATED MEDICINES (PIM)

Human Medicines

Acetarsol

Acyclovir (topical use only)

Alimezamine

All topical anti-fungal medicines (excluding whitfields, undecylenic acid)

All vaginal anti-fungal medicines

Astemisole

Belladonna

Bismuth suppository (in combination with steroids)

Caramiphen

Cetirizine

Chloral all salts and derivatives

Chloramphenicol (topical use)

Chlorbenoxamine

Chlormezanone

Chloroquin

Chlorphenoxamine
Cinnarizine
Codeine (less than 10 mg per unit dose)
Colchicin
Crotamiton
Cyanocobalamine (except injection)
Cyproheptadine
Diclofenac (except injectable form)
Diclofenamide
Ephedrine (containing less than 30 mg per unit dose)
Fenoterol
Glyceryl trinitrate
Hexachlorophene
Ibuprofen (more than 200 mg per unit dose)
Kaolin/pectin (oral preparations)
Loperamide
Mefenamic acid
Methenamine (hexamine)
Nephesisin
Orciprenaline
Pholcodine
Pirbuterol
Podophyllin
Potassium chloride (for oral use)
Povidone-iodide pessary
Pyrental pamoate
Rimiterol

Salbutamol (except injectable forms but including for inhalation)

Salmeterol

Sodium aescinate (topical use only)

Sulphomamides (including those in combinations for intra-vaginal and ophthalmic use)

Sucralfate

Terbutalin (except injection but including inhalation)

Terfenadine

Tetracycline (topical only)

Theophylline (except injectable forms)

Thiabendazole Vitamin E (more than 100 mg per unit dose)

Yohimbine

SEVENTH SCHEDULE (regs. 2 and 39)

PHARMACY MEDICINES

Human Medicines

The salts, preparations and admixtures of the following—

aconite

aescin, preparations intended for topical use only

albendazole

alkali fluorides other than dentifrices containing not more than 0.3 per centum of the alkali salts of hydrofluoric acid

Aloxiprin

Aminopentamidine

Amino-alcohols, esterified with benzoic acid, phenylacetic acid, phenylpropionic acid, cinnamic acid, or the derivatives of these acids, their salts, being preparations for oral use only.

P-Aminobenzoic acid

Ammonia (see H.S.A)

Amyl nitrate

Anethole trithione

Anthraquinones

Antimicrobial substances (chemotherapeutic substances) synthesized in nature or a laboratory, for use as eye ointment containing 1 per cent chloramphenicol tetracycline or oxytetracycline for use in eye infections other than eye ointments containing 1 per centum tetracycline or oxytetracycline for the use in trachoma. Antihistamine substances, the following—

Antazoline

Bromazine

Buclizine

Carbenoxolone

Calamine (topical use)

Chlorphenamine

Chlorphenoxamine, preparations containing 10 mg or less per unit dose

Clemastine

Clemizole

Cyclizine

Dexchlorpheniramine

Diphenhydramine

Diphenylpyraline

Doxylamine

Isothipendyl

Mebhydrolin

Meclozine

Phenindamine

Pheniramine

Promethazine containing 25 mg or less per unit dose

Propylenediamine

Pyrrhobutamine

Thenalidine

Topropamine

Triprolidine

Tetra substituted N derivatives of ethylenediamine or propylenediamine

Apomorphine

Atropine for oral treatment and in combination with other active ingredients

Arsenic

Barium

Belladonna and the alkaloids thereof

Bemegride

Benzyl Benzoate (topical use)

Benzoyl peroxide

Benzoic acid (topical use)

Bephenium

Bisacodyl

Bitolterol mesylate

Bismuth subgallate

Bromelains

Bromhexine

Calciferol

Camylofin

Carbocysteine

Carbuterol

Cetrimide

Cetylpyridinium chloride

Chlorbutol, except when intended for use as a preservative

Chlormezanone, preparation containing 100 mg or less in combination with an analgesic or anti-asthmatic drug

Chloroform, other than preparations containing less than 10 per centum chloroform

Chlorhexidine

Chlorphenesin

Chlorphenoxamine

Choline theophyllinate

Chrysarobin

Clioquinol (Iodochlorhydroxyquinoline)

Clobutinol

Colocynth

Creosote, obtained from wood, other than substances containing less than 50 per centum creosote

Dapsone, preparations in combination with pyrimethamine and intended for prophylaxis of malaria

Dequalinium

Dextromethorphan

Detrophan

Dibromopropamide

Dicycloverine (Dicyclomine)

Diethylamine salicylate

Dimethicon

Diloxanide

Diphenoxylate, preparations containing 2.5 mg or less per unit dose in combination with other active ingredients

Domiphen bromide

Enzymes, except those intended for injection

Etafedrine

Ethylchloride

Fedrilate

Ferric and ferrous salts, and combinations

Floctafenine

Fluoride sodium, excluding dental pastes and gels
Folic acid

Formaldehyde, other than when used as a preservative

Gamma benzene hexachloride

Glucuronic acid

Halquinol (Chlorhydroxyquinoline) (Di-iodohydroxyquinoline)

Hexachlorophene, preparations containing less than 1 per centum hexachlorophene

Hexetidine

Hexoprenaline

Hydrochloric acid, as diluted solution for achlorhydria

Hydrotalcitelodine, iodidesIsoaminile

JalapLead, salts, other than preparations for hair containing less than 0.5 per centum of lead

Mebendazole

Mefenamic acid

Mepyramine maleate

Methoxyphenamine

Myrtecaïne

Naphazoline

Niclosamide

Nicotinic acid

Nitric acid (see H.S.A.)

Noscapine

Oxalic acid

Oxetacaine

Oxyphencyclimine

Oxymetazoline

Pancreatin

Pantothenic acid

Pentylilin

Pentoxyverine

Phenazone

Phenindamine

Phenolphthalein

Phenylephrine, other than preparations containing less than 0.2 per centum phenylephrine intended for topical use

Phenylpropanolamine

Povidone iodine, other than preparations intended for topical application

Potassium hydroxide

Promethazine, preparations containing 25 mg or less

Proguanil

Propamidine

Propantheline bromide

Pyridoxine

Pyrimethamine

Selenium

Sodium hydroxide

Stavesacre (*Staphisagria*) and alkaloids thereof, other than in soaps, ointments and lotions

Sulphuric acid (see H.S.A.)

Terpine hydrate

Tolazoline (intended for topical use)

Tribenoside

Trichloroacetic acid

Vitamin A other than preparations containing 10 thousand units or less of Vitamin A activity per unit dose

Xylometazoline

Zinc Sulphate

Any substance derived from any other substances referred to in any of the items in this Schedule unless expressly excluded therefrom.

EIGHTH SCHEDULE

GENERAL SALES LIST MEDICINES

Human Medicines

Acetylsalicylic acid (packs of less than 20 including strip or blister pack)

Aluminium hydroxide

Ascorbic acid (less than 500 mg per unit dose)

Caffeine

Camphor

Chlorinated xyleneol

Dequalinium

Hexetidine

Hydroquinone (for external use only containing 2 per centum or less hydroquinone)

Ipecacuana

Liquid paraffin

Magnesium hydroxide

Magnesium sulphate

Magnesium Trisilicate

Menthol

Methyl salicylate (in liniments only)

Paracetamol (packs of less than 20 including strips or blister packs)

Piperazine

Psyllium

Sulphomanide (only in combination with pyramethamine for treatment of malaria)

NINTH SCHEDULE (reg. 2)

PROHIBITED SUBSTANCES (PS)

Bufotenine

Glutethimide

Lysergamide

Lysergide and other N-alkyle derivatives of lysergamide which includes the drug commonly known as L.S.D., but not including methaergide maleate

Mescaline

Methaqualone

Methyprylon

Psilocin

N.N-Diethyltryptamine

N.N. Dimethyltryptamine

2,5-Demethoxy-4, a, dimethylpenthylamine

Any stereoisomerio form, ester, ether or salt of a substance prohibited and any preparation containing any proportion of the abovementioned drugs.

TENTH SCHEDULE (reg. 2)

CONTROLLED DRUGS (CD)

PART I

NARCOTICS

Acetyldihydrocodeine

Alfentanil

Cocaine

Codeine

Dextropropoxyphene

Dihydrocodeine

Diphenoxylate

Fentanyl

Hydrocodon

Methadone

Morphine

Opium

Pethidine

Pholcodine

Tilidine

PART II

PSYCHOTROPIC SUBSTANCES

Alprazolam

Bromazepam

Buprenorphine

Chlordiazepoxide

Clobazam

Clonazepam

Clorazepate

Diazepam and other compounds containing the chemical structure of dihydro-1, 4-Benzo-diazepine substituted to any degree

Dipotassium Clonazepate

Flunitrazepam

Flurazepam

Ketazolam

Lorazepam

Lormetazepam

Medazepam

Meprobamate

Methylphenidate

Midazolam

Nitrazepam

Oxazepam

Pentazocin

Pentobarbitone

Phenobarbitone

Phentermine

Prazepam

Temazepam

Triazolam

[Chap3502]CHAPTER 35:02

DANGEROUS DRUGS

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

1. Short title
2. Interpretation

PART I

COCA LEAVES, INDIAN HEMP, AND RAW OPIUM

3. Application of this Part
4. Restriction on import and export of drugs to which this Part applies and of plants from which such drugs are derived
5. Special restriction on export to certain countries of drugs to which this Part applies and of plants from which such drugs are derived
6. Regulations

PART II

PREPARED OPIUM

7. Interpretation in this Part
8. Import and export of prepared opium prohibited
9. Offences

PART III

MEDICINAL OPIUM, COCAINE, MORPHINE, AND OTHER DRUGS

10. Application of this Part
11. Restriction on import and export of drugs to which this Part applies
12. Power to control manufacture, sale, etc., of drugs to which this Part applies

PART IV

CONTROL OF TRADE IN NEW DRUGS

13. Prohibition of trade, etc., in new drugs
14. Power to apply Part III to new drugs

PART V

GENERAL

15. Appointment of inspectors
16. Powers of inspection
17. Powers of search, seizure, and forfeiture
18. Persons upon whom powers of inspection, etc., are conferred to produce proof of identity
19. Offences and penalties
20. Power of arrest
21. Licences and authorities Schedule

28 of 1955(F)

25 of 1956(F)

20 of 1995

G.N.224/1963

(F) 219/1964(N)

An Act to control the importation, exportation, production, possession, sale, distribution, and use of dangerous drugs, and for matters incidental thereto

[1ST APRIL 1956]

PRELIMINARY

[Ch3502s1]1. Short title

This Act may be cited as the Dangerous Drugs Act.

[Ch3502s2]2. Interpretation

(1) In this Act, unless inconsistent with the context—

“corresponding law” means a law stated in a certificate purporting to be issued by or on behalf of the government of another country to be a law providing for the control and regulation in that country of the manufacture, sale, use, export, and import of drugs in accordance with the Hague Convention, the Geneva Convention (No. 1), and the Geneva Convention (No. 2);

“Geneva Convention (No. 1)” means the International Opium Convention signed at Geneva on the 19th February, 1925;

“Geneva Convention (No. 2)” means the International Convention for limiting the manufacture, regulation, and distribution of narcotic drugs signed at Geneva on the 13th July, 1931;

“Hague Convention” means the International Opium Convention signed at the Hague on the 3rd January, 1912;

“inspector” means an inspector appointed under section 15;

“superior police officer” means a police officer above the rank of inspector of police.

(2) In any certificate such as is referred to in the definition of “corresponding law” in subsection (1), a statement as to the effect of the law mentioned in such certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive.

PART I

COCA LEAVES, INDIAN HEMP, AND RAW OPIUM

[Ch3502s3]3. Application of this part

(1) The drugs to which this Part applies are—

- (a) coca leaves;
- (b) "Indian hemp", "bhang", "camba", "dagga", "mbanje" or "intsangu", resins obtained therefrom and all preparations of which such resins form the base;
- (c) raw opium.

(2) In this section—

“coca leaves” means the leaves of any plant of the genus of the erythroxylaceae from which cocaine can be extracted either directly or by chemical transformation;

“Indian hemp”, “bhang”, “camba”, “dagga”, “mbanje” or “intsangu” means the whole or any portion, whether green or dry, of the plant, including the seeds thereof, but excluding—

(a) any fibre extracted from the plant for use as or in the manufacture of cordage, canvas or similar products; or

(b) any seed which has been crushed, comminuted or otherwise processed in such a manner as to prevent germination; or

(c) the fixed oil obtained from the seed;

“medicinal opium” means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“raw opium” includes powdered or granulated opium, but does not include medicinal opium.

(3) Any reference in this Part or in any regulation made thereunder to plants from which such drugs are derived shall include a reference to the plant “Indian hemp”, “bhang”, “camba”, “dagga”, “mbanje” or “intsangu”.

[Ch3502s4]4. Restriction on import and export of drugs to which this Part applies and of plants from which such drugs are derived

No person shall import into or export from Malawi any drugs to which this Part applies, or plants from which such drugs are derived, except under and in accordance with the terms of a licence issued by the Minister.

[Ch3502s5]5. Special restriction on export to certain countries of drugs to which this Part applies and of plants from which such drugs are derived

If at any time the importation into a foreign country of a drug to which this Part applies or plant from which any such drug is derived is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued under this Act authorizing the export of that drug or plant from Malawi, such conditions as appear necessary for preventing or restricting, as the case may be, the exportation of that drug or plant from Malawi to that country during such time as the importation of that drug or plant into that country is so prohibited or restricted, and any such licences issued before the prohibition or restriction came into force shall, if the Minister by order so directs, be deemed to be subject to the like conditions.

[Ch3502s6]6. Regulations

The Minister may by regulation—

- (a) prohibit, control, or restrict the production, possession, sale, or distribution of drugs to which this Part applies, and the cultivation of plants from which such drugs are derived;
- (b) prescribe measures to be taken for the eradication of plants, to which regulations made under paragraph (a) apply, found to be growing wild.

PART II

PREPARED OPIUM

[Ch3502s7]7. Interpretation in this Part

In this Part "prepared opium" means opium prepared for smoking and dross and any other residue remaining after opium has been smoked.

[Ch3502s8]8. Import and export of prepared opium prohibited

No person shall import into or export from Malawi any prepared opium.

[Ch3502s9]9. Offences

No person shall—

- (a) manufacture, sell, or otherwise deal in prepared opium;
- (b) have in his possession any prepared opium;
- (c) being the occupier of any premises, permit those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium;
- (d) be concerned in the management of any premises used for any purpose referred to in paragraph (c);
- (e) have in his possession any pipes or other utensils for use in connexion with the smoking of opium or any utensils used in connexion with the preparation of opium for smoking; or
- (f) smoke or otherwise use prepared opium or frequent a place used for the purpose of opium smoking.

PART III

MEDICINAL OPIUM, COCAINE, MORPHINE, AND OTHER DRUGS

[Ch3502s10]10. Application of this Part

(1) Save as is provided in Part IV, the drugs to which this Part applies are the drugs specified in the Schedule.

(2) If it appears to the Minister that any derivative of morphine or cocaine or of any salts of morphine or cocaine or any alkaloid of opium or any other drug of whatever kind not specified in the Schedule—

(a) is or is likely to be productive, if improperly used, of ill effects substantially of the same character or nature as or analagous to those produced by morphine or cocaine; or

(b) is capable of being converted into a substance which is likely to be productive, if improperly used, of such effects;

he may by notice published in the Gazette apply this Part to such derivative or alkaloid or drug in the same manner as it applies to drugs specified in the Schedule.

(3) The Minister may by notice published in the Gazette apply this Part, with such modifications as may be specified, to any of the following drugs—

methylmorphine (commonly known as codeine);

and ethylmorphine;

and their respective salts.

(4) If it is made to appear to the Minister that a finding with respect to a preparation containing any of the drugs to which this Part applies has, in pursuance of article 8 of the Geneva Convention (No. 1), been communicated by the Economic and Social Council of the United Nations to the parties to the said Convention, the Minister may by notice published in the Gazette, declare that this Part shall, as from such date as may be specified in the notice, cease to apply to the preparation specified therein.

[Ch3502s11]11. Restriction on import and export of drugs to which this Part applies

No person shall import into or export from Malawi any drugs to which this Part applies, except under and in accordance with the terms of a licence issued by the Minister.

[Ch3502s12]12. Power to control manufacture, sale, etc., of drugs to which this Part applies

(1) For the purpose of preventing the improper use of the drugs to which this Part applies, the Minister may by regulation prohibit, control, or restrict the manufacture, sale, possession, or distribution of those drugs and in particular, but without prejudice to the generality of the foregoing—

(a) prohibit the manufacture of any such drug except on premises licensed for the purpose by the Minister and subject to any conditions specified in the licence;

(b) prohibit the manufacture, sale, or distribution of any such drug except by persons licensed or otherwise authorized under the regulations by the Minister and subject to any conditions specified in the licence or authority;

(c) regulate the issue of prescriptions containing any such drug and the dispensing of any such prescriptions; and

(d) require persons engaged in the manufacture, sale, or distribution of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed by the regulations.

(2) Regulations made under this section shall provide for authorizing a person lawfully carrying on business in accordance with any law relating to pharmacy and poisons as an authorized seller of poisons—

(a) in the ordinary course of his retail business to manufacture, at any premises duly registered under any such law, any preparation, admixture or extract of a drug to which this Part applies; or

(b) to carry on at any such premises as aforesaid the business of retailing, dispensing, or compounding any such drug,

subject to the power of the Minister to withdraw the authorization in the case of a person who has been convicted of an offence against this Act and who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such drug.

(3) Nothing in any regulations made under this section shall be deemed to authorize the sale by retail of poisons by a person who is not qualified in that behalf under or otherwise than in accordance with any law relating to pharmacy and poisons or to be in derogation of any such law prohibiting, restricting, or regulating the sale of poisons.

PART IV

CONTROL OF TRADE IN NEW DRUGS

[Ch3502s13]13. Prohibition of trade, etc., in new drugs

No person shall trade in or manufacture for the purposes of trade any product obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, not being a product which was on the 13th July, 1931, being used for medical or scientific purposes:

Provided that if the Minister is satisfied that any such product is of medical or scientific value, he may by notice published in the Gazette direct that this section shall cease to apply to that product.

[Ch3502s14]14. Power to apply Part III to new drugs

If it is made to appear to the Minister that a decision with respect to any product mentioned in section 13 has, in pursuance of article 11 of the Geneva Convention (No. 2), been communicated by the Secretary-General of the United Nations to the parties to the said Convention, the Minister may by notice published in the Gazette, as the circumstances require, either declare that Part III shall apply to that product in the same manner as they apply to the drugs to which Part III applies, or apply Part III to that product with such modifications as may be specified in the notice.

PART V

GENERAL

[Ch3502s15]15. Appointment of Inspectors

(1) Subject to subsection (2), the Minister shall appoint one or more inspectors for the purpose of enforcing this Act.

(2) No person shall be qualified for appointment as an inspector unless he is a person duly authorized to act as a compounder or dispenser of poisons or drugs in terms of any law relating to pharmacy and poisons.

[Ch3502s16]16. Powers of inspection

(1) Any inspector shall, for enforcing this Act, have power at all reasonable times to enter the premises on which any chemist and druggist, general dealer, or licensed manufacturer of any drug to which this Act applies carries on business, and any premises owned or occupied by any person authorized to be in possession of any such drug, and to enter any other premises in which he has reasonable cause to suspect that an offence against this Act has been committed, and in either case shall have power to make such examination and inquiry and do such other things, including the checking of stocks and the taking, on payment therefor, of samples as may be necessary for ascertaining whether this Act is being complied with.

(2) All books, records, and documents required to be kept by any person under this Act shall be open to inspection by any superior police officer or by any other police officer authorized in writing by a magistrate or by a superior police officer.

(3) If any person wilfully delays or obstructs an inspector or a police officer in the exercise of his powers under this section, or refuses to allow any sample to be taken in accordance with this section, or fails without reasonable excuse to give any information which he is duly required under this section to give, he shall be guilty of an offence.

[Ch3502s17]17. Powers of search, seizure, and forfeiture

(1) Any inspector, any customs officer, any police officer of or above the rank of sergeant, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time—

(a) search any person suspected upon reasonable grounds of being in unlawful possession of drugs to which this Act applies or plants from which such drugs are derived:

Provided that a person shall be searched only by a person of like sex;

(b) search any premises, place, receptacle, aircraft, ship, train, or other vehicle of whatsoever description wherein or whereby it is suspected upon reasonable grounds that such drugs are being produced, kept, used, sold, or distributed in contravention of this Act.

(2) Any inspector, any customs officer, any superior police officer, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time enter upon and inspect any land, building, or other structure on or in which plants, from which drugs

to which this Act applies are derived, may be found, for the purpose of ascertaining if any such plants are being cultivated in contravention of this Act.

(3) If on any search or inspection made under this section any drug to which this Act applies, pipe, receptacle, or appliance for smoking or using the same, or any plant which it is suspected upon reasonable grounds is being cultivated in contravention of this Act is found, it may be seized and removed, together with any books, accounts, or documents relating thereto.

(4) Notwithstanding subsections (1) and (2), if any delay involved in securing written authority from a magistrate or a superior police officer would defeat the objects of this section, it shall be lawful for any police officer who is required by those subsections to have that written authority, to exercise, on the production by him, if he is not in uniform, of proof of his identity, the powers conferred by this section without written authority, but he shall as soon as possible thereafter report to his commanding officer or to a magistrate what he has done.

(5) Any person who resists, hinders, or obstructs an inspector or other person in the lawful exercise of his powers under this section shall be guilty of an offence.

(6) If on the trial of any person for contravening or failing to comply with any provision of this Act or any condition of any authority or licence issued thereunder it is proved that any drug, pipe, receptacle, appliance, or plant seized under this section was produced, possessed, kept, used, sold, distributed, or cultivated in contravention of this Act, it shall be forfeited.

[Ch3502s18]18. Persons upon whom powers of inspection, etc., are conferred to produce proof of identity

Any person upon whom powers of inspection, search, seizure, or forfeiture are conferred under this Act who fails on demand to produce—

(a) in the case of an inspector, a certificate under the hand of the Secretary for Health of his appointment as an inspector;

(b) in the case of—

(i) a customs officer; or

(ii) a superior police officer, who is not in uniform, proof of his identity.

(c) in the case of a police officer authorized in writing by a magistrate or by a superior police officer to exercise those powers, his authority in writing;

shall not, save as is provided in section 17 (4), thereafter be entitled to exercise those powers until he has produced that certificate, proof of identity, or authority in writing, as the case may be.

[Ch3502s19]19. Offences and penalties

(1) Any person—

20 of 1995(a) who acts in contravention of or fails to comply with any provision of this Act;

(b) who acts in contravention of, or fails to comply with, the conditions of a licence issued or authority granted under, or in pursuance of this Act;

(c) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant, or renewal of any such licence or authority as aforesaid, makes a declaration or statement which is false in any particular, or knowingly utters, produces, or makes use of any such declaration or statement or a document containing the same; or

(d) who in Malawi aids, abets, counsels, or procures the commission in a place outside Malawi of an offence punishable under a corresponding law in force in that place, or does an act preparatory to or in furtherance of an act which, if committed in Malawi, would constitute an offence against this Act,

20 of 1995 shall subject to subsection (2), be liable to a fine of K500,000 and to imprisonment for life.

20 of 1995(2) No person shall, on conviction for any offence or contravening or failing to comply with any provisions of this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing any drug to which this Act applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding K2,000 if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connexion with, the commission or intended commission of any other offence against this Act.

(3) Any drug or other article forfeited under this Act shall, unless the court otherwise directs, be burned or otherwise destroyed in the presence of a police officer of or above the rank of sergeant, who shall transmit to the court a certificate under his hand stating the circumstances in which the forfeiture took place, the quantity forfeited, and other particulars showing his compliance with the Act.

[Ch3502s20]20. Power of arrest

Any police officer may arrest without warrant a person who has committed, or attempted to commit, or is reasonably suspected by such officer of having committed or attempted to commit an offence against this Act if he has reasonable grounds for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to, and cannot be ascertained by, him.

[Ch3502s21]21. Licences and authorities

(1) A licence or authority issued for the purposes of this Act by the Minister may be issued on such terms and subject to such conditions, including in the case of a licence, the payment of a fee, as the Minister may fix.

(2) Whenever the Minister is empowered under any provision of this Act to issue any licence or authority, he may delegate to the Secretary for Health such power, subject to the right of any person to whom the issue of such licence or authority has been refused to appeal in writing to the Minister against such refusal.

SCHEDULE s. 10

DRUGS TO WHICH PART III APPLIES

1. Medicinal Opium.

2. Any medicinal extract or tincture derived from the plant *Cannabis sativa* L. and any preparation, not being a preparation capable of external use only, made from such medicinal extract or tincture.

3. Morphine and its salts.

4. Cocaine (including synthetic cocaine) and ecgonine and their respective salts, and the esters of ecgonine and their respective salts. (For the purposes of this Act, the expression "ecgonine" means laevoecgonine and includes any derivatives of ecgonine from which it may be recovered industrially).

5. Any solution or dilution of morphine or cocaine or their salts in an inert substance, whether liquid or solid, containing any proportion of morphine or cocaine, and any preparation, admixture, extract, or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth per cent. of morphine or one-tenth per cent. of cocaine or of ecgonine.

6. Diacetylmorphine (commonly known as diamorphine or heroin) and the other esters of morphine and their respective salts.

7. Dihydrohydroxycodone (also known as Oxycodone);

Dihydrocodeinone (also known as Hydrocodone);

Dihydromorphinone (also known as Hydromorphone);

Acetyldihydrocodeinone;

Dihydromorphine;

their esters, and the salts of any of these substances and of their esters.

8. Morphine-N-oxide (commonly known as genomorphine) also the morphine-N-oxide derivatives, and the other pentavalent nitrogen morphine derivatives.

9. Thebaine and its salts, and (with the exception of methylmorphine, commonly known as codeine, and ethylmorphine, and their respective salts), benzylmorphine and the other ethers of morphine and their respective salts.

10. Any preparation, admixture, extract or other substance containing any proportion of any of the substances mentioned in paragraphs 6, 7, 8 and 9.

11. The following substances and their salts, and any preparation, admixture, extract, or other substance containing any proportion of any of the substances or salts—

Pethidine (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester);

Ketobemidone (4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone or 1-methyl-4-metahydroxyphenyl-4-propionyl-piperidine);

Hydroxypethidine (1-methyl-4-(3-hydroxyphenyl)-piperidine-4-carboxylic acid ethyl ester or 1-methyl-4-metahydroxyphenylpiperidine-4-carboxylic acid ethyl ester);

Alphaprodine(a-1,3-dimethyl-4-phenyl-4-propionoxypiperidine);

Betaprodine (b-1,3-dimethyl-4-phenyl-4-propionoxypiperidine);

Betameprodine(b-1-methyl-3-ethyl-4-phenyl-4-propionoxypiperidine);

Methadone (4,4-diphenyl-6-dimethylaminoheptanone-3 or 6-dimethylamino-4,4-diphenyl-3-heptanone);

Isomethadone (4,4-diphenyl-5-methyl-6-dimethylaminohexanone-3 or 6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone);

Methadol (4,4-diphenyl-6-dimethylaminoheptanol-3 or 6-dimethylamino-4,4-diphenyl-3-heptanol);

a-Methadol(a-6-dimethylamino-4,4-diphenyl-3-heptanol);

Methadyl acetate(4,4-diphenyl-6-dimethylamino-3-acetoxyheptane or 6-dimethylamino-4,4-diphenyl-3-acetoxyheptane);

a-Acetylmethadol (a-6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane);

b-Acetylmethadol (b-6-dimethylamino-4,4-diphenyl-3-acetoxyheptane);

Phenadoxone (4,4-diphenyl-6-morpholinoheptanone-3 or 6-morpholino-4,4-diphenyl-3-heptanone);

Racemorphan (d,1-3-hydroxy-N-methylmorphinan);

Levorphan (1-3-hydroxy-N-methylmorphinan);

Racemethorphan (d,1-3-methoxy-N-methylmorphinan);

Levomethorphan. (1 -3-methoxy-N-methylmorphinan);

3-dimethylamino-1,1-di-(2'-thienyl)-1-butene;

3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene.

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DANGEROUS DRUGS REGULATIONS

under s. 2(1)

PRELIMINARY

1. Citation

These regulations may be cited as the Dangerous Drugs Regulations.

2. Interpretation

(1) In these Regulations, unless inconsistent with the context—

“authorized person” means a person authorized or treated as authorized in terms of regulation 8, 16 (1), 17, 18, 19, 20 or 39 (2), as the context in each case requires, to supply, administer, distribute, procure, advertise for sale, acquire, possess, carry on any process in the manufacture of or manufacture any drug by virtue of being a person or a member of a class of persons specified in that section, and “authorized” shall be construed accordingly;

“authorized seller of poisons” means any person authorized to sell poisons in terms of any pharmacy or poisons law;

“dangerous drugs register” means the register required to be kept in terms of regulation 9,28 or 33;

“dental surgeon” means a person (registered or exempted from registration as a dental surgeon or dentist under the Medical Practitioners and Dentists Registration Act; Cap. 36:01

“drug” means any Part I drug, any Part III drug, any any Part III preparation or any partially controlled drug;

“licensed person” means a person authorized to supply, distribute, procure, advertise for sale, acquire, possess or, as the case may be, carry on any process in the manufacture of or manufacture any drug or cultivate any plant from which a drug is derived by virtue of the terms and conditions of a licence issued to him for that purpose, and “licence” and “licensed” shall be construed accordingly;

“medical practitioner” means a person registered or exempted from registration as a medical practitioner under the Medical Practitioners and Dentists Registration Act; Cap. 36:01

“midwife” means a fully trained practising midwife who is in possession of a valid midwife’s supply order;

“midwife’s supply order” means an order in the form prescribed in the First Schedule for the supply of tincture of opium and any preparation containing pethidine;

“Part I drug” means any drug to which Part I of the Act applies, other than an extract or tincture of Indian hemp;

“Part III drug” means any drug to which Part III of the Act applies which is not—

- (a) a partially controlled drug; or
- (b) a Part III preparation;

“Part III preparation” means a preparation containing such proportion of any drug to which Part III of the Act applies, other than a partially controlled drug, as is sufficient to make the preparation a drug to which Part III of the Act applies, but does not include—

- (a) any preparation with respect to which the Minister has, in terms of section 10 (4) of the Act, declared that Part III of the Act shall not or shall cease to apply; or
- (b) any preparation specified in the Second Schedule;

“partially controlled drug” means any drug or product to which the Minister has, in terms of section 10 (3) or, as the case may be, section 14 of the Act, applied Part III of the Act with the modification that the said drug or product shall not be treated as a drug to which Part III of the Act applies for the purposes of Part II of these Regulations;

“pharmacist” means a pharmacist or chemist and druggist registered or exempted from registration in terms of the Pharmacy and Poisons Act; Cap. 35: 01

“prescription” means a prescription given for a single individual by—

- (a) a medical practitioner for the purpose of medical treatment;
- (b) a dental surgeon for the purpose of dental treatment;
- (c) a veterinary surgeon for the purpose of animal treatment;

“register” means a bound book and does not include any form of loose leaf register or card index;

“registered premises” means premises registered in terms of the Pharmacy and Poisons Act; Cap. 35: 01

“retail business” means the business of retailing, dispensing or compounding drugs carried on at a shop;

“wholesale dealer” means any person who carries on the business of selling drugs to persons who buy to sell again.

(2) Any reference in the Fourth Schedule to the percentage of a drug contained in any substance or preparation shall, unless it is otherwise expressly provided, be construed in the following manner, that is to say, a reference to a substance or preparation containing one per centum of any drug means—

(a) in the case of a solid, that one gramme of the drug is contained in every hundred grammes of the substance or preparation;

(b) in the case of a liquid, that one millilitre of the drug or, if the drug itself is a solid, one gramme of the drug is contained in every hundred millilitres of the substance or preparation; and so in proportion for any greater or lesser percentage.

PART I

PART I DRUGS

3. Occupier and owner

On this Part, in relation to land—

(a) “occupier” shall include any person in actual occupation of land or premises without regard to the title under which he occupies and, in case of premises subdivided and let to one or more tenants, the person receiving the rent payable by the tenants whether on his own account or as an agent for any person entitled thereto or interested therein;

(b) “owner” shall include any person, other than the Government, receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rent

or profits if such land or premises were let whether on his own account or as agent for any person other than the Government, entitled thereto or interested therein. The term includes any lessee or licensee from the Government and any superintendent, overseer or manager of such lessee or licensee residing on the lands or premises.

4. Restrictions on authorized or licensed persons

No person who is not an authorized or licensed person shall—

(a) acquire or possess a Part I drug; or

(b) supply to or procure for any person including himself a Part I drug or advertise for sale a Part I drug.

5. Restrictions on authorized or licensed persons

No authorized or licensed person shall—

(a) acquire or possess a Part I drug otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence; or

(b) supply to or procure for or offer to supply to or procure for any person who is not an authorized or licensed person a Part I drug.

6. Cultivation

(1) No person who is not a licensed person shall cultivate any plant from which a Part I drug is derived.

(2) No licensed person shall cultivate any plant from which a Part I drug is derived otherwise than in accordance with the terms and conditions of his licence.

7. Clearing of land

(1) Every owner or occupier of land shall clear or cause to be cleared from his land any plant from which a Part I drug is derived which is found to be growing wild or which is being cultivated in contravention of these Regulations.

(2) The owner or occupier of land who has cleared or caused to be cleared from his land any plants from which a Part I drug is derived shall destroy the plants so cleared by fire.

8. Persons permitted to acquire, possess, and supply Part I drugs

(1) Subject to these Regulations, any person who is—

(a) a medical practitioner;

(b) a veterinary surgeon;

(c) a pharmacist and an authorized seller of poisons;

- (d) a pharmacist—
 - (i) employed by an authorized seller of poisons;
 - (ii) employed in a hospital, clinic, dispensary or like institution administered by the Government or by a local authority or in any other hospital, clinic, dispensary or like institution approved by the Minister; or
 - (iii) employed in any medical store of the Government;
- (e) a person in charge of a laboratory used for the purposes of research or instruction and attached to—
 - (i) a university, university college or other educational institution approved by the Minister; or
 - (ii) any hospital referred to in paragraph (d) (ii);
- (f) an analyst employed by the Government; or
- (g) an inspector appointed under the Act or under the Pharmacy and Poisons Act; Cap. 35:01

is authorized in that capacity and so far as is necessary for the practice or exercise of his profession, function or employment to acquire, possess and supply Part I drugs.

(2) Every person authorized in terms of subregulation (1) to possess a Part I drug shall, unless the exigencies of the practice or exercise of his profession, function or employment otherwise require, keep every Part I drug in his custody in a locked receptacle which can only be opened by him or another authorized person.

9. Records

Every person authorized or licensed to supply Part I drugs shall—

- (a) keep in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the form specified in the Third Schedule true particulars with respect to—
 - (i) every quantity of a Part I drug acquired by him;
 - (ii) every quantity of a Part I drug supplied by him;
 - (iii) every quantity of a Part I drug used by him;
- (b) use a separate part of his register for entries relating to—
 - (i) raw opium;
 - (ii) coca leaves;

(iii) Indian hemp and the resins obtained from Indian hemp and all preparations, other than extract and tincture of Indian hemp, of which such resins form the base.

PART II

PART III DRUGS

10. Manufacture only by authorized persons

No person who is not an authorized or licensed person shall manufacture or carry on any process in the manufacture of a Part III drug.

11. Conditions of manufacture

No authorized or licensed person shall manufacture or carry on any process in the manufacture of a Part III drug—

(a) otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence; and

(b) otherwise than on authorized or licensed premises.

12. Supply by unauthorized person

No person who is not an authorized or licensed person shall supply to or procure for or offer to supply to or procure for any person including himself or advertise for sale a Part III drug or Part III preparation.

13. Supply and administration

(1) Subject to subregulation (2), no authorized or licensed person shall supply to or procure for or offer to supply to or procure for any person a Part III drug or Part III preparation otherwise than in accordance with this Part and, in the case of a licensed person, otherwise than in accordance with the terms and conditions of his licence.

(2) The administration of a Part III drug or Part III preparation by or under the direct personal supervision of and in the presence of a medical practitioner or by or under the direct personal supervision of and in the presence of a dental surgeon or by a midwife in accordance with regulation 19 shall not be treated, for the purposes of subregulation (1), as the supply to any person of a Part III drug or Part III preparation.

14. Possession

No person who is not an authorized or licensed person shall possess a Part III drug or Part III preparation.

15. Conditions on authorized possession

No authorized or licensed person shall possess a Part III drug or Part III preparation otherwise than in accordance with this Part and, in the case of a licensed person, in accordance with the terms and conditions of his licence.

16. Treatment

(1) Subject to subregulation (2), a person to whom a Part III drug or Part III preparation is lawfully supplied—

(a) by a medical practitioner or a veterinary surgeon; or

(b) on a prescription lawfully given by a medical practitioner, a dental surgeon or a veterinary surgeon,

shall be treated, for the purposes of this Part, as a person authorized to be in possession of that Part III drug or Part III preparation.

(2) A person who is supplied by a medical practitioner or on a prescription lawfully given by a medical practitioner with a Part III drug or Part III preparation shall not be treated, for the purposes of this Part, as a person authorized to be in possession of that Part III drug or Part III preparation if, at the time he is so supplied, he is also being supplied with a Part III drug or Part III preparation by or on a prescription given by another medical practitioner in the course of treatment and did not disclose that fact to the first-mentioned medical practitioner.

17. Persons authorized to administer treatment

(1) Subject to these Regulations, any person who is—

(a) a medical practitioner;

(b) a dental surgeon;

(c) a veterinary surgeon;

(d) a pharmacist—

(i) employed by an authorized seller of poisons;

(ii) employed in a hospital, clinic, dispensary or like institution administered by the Government or by a local authority or in any other hospital, clinic, dispensary or like institution approved by the Minister; or

(iii) employed in any medical store of the Government;

(e) a qualified nurse in charge of a ward, theatre or out-patients department in any hospital referred to in paragraph (d) (ii);

(f) a person in charge of a laboratory used for the purposes of research or instruction and attached to—

(i) a university, university college or other educational institution approved by the Minister; or

(ii) any hospital referred to in paragraph (d) (ii);

(g) an analyst employed by the Government; or

(h) an inspector appointed under the Act or under the Pharmacy and Poison Act; Cap. 35:01

is authorized in that capacity and so far as is necessary for the practice or exercise of his profession, function or employment to acquire, administer, possess and supply Part III drugs and Part III preparations.

(2) Nothing in subregulation (1) contained shall authorize—

(a) the supply by a dental surgeon of a Part III drug or Part III preparation which is not administered by him or under his direct supervision and in his presence to persons receiving treatment from him; or

(b) any qualified nurse in charge of a ward, theatre or out-patients department in a hospital—

(i) to procure a Part III drug or Part III preparation otherwise than from a person employed or engaged in dispensing medicines at that hospital and except upon a written order signed by her;

(ii) to supply a Part III drug or Part III preparation otherwise than in accordance with the directions of a medical practitioner in charge of any patient in that ward, theatre or, as the case may be, out-patients department.

(3) The matron of any hospital referred to in subregulation (1) (d) (ii) in which no pharmacist is employed or engaged in dispensing medicines is authorized in her capacity as matron and so far as is necessary for the purposes of that hospital and the exercise of her duties to procure Part III drugs and Part III preparations on the order in writing of a medical practitioner employed or engaged in that hospital and to be in possession of and to supply Part III drugs and Part III preparations so procured.

(4) Every person authorized in terms of this section to acquire, administer, possess or supply a Part III drug or Part III preparation shall, unless the exigencies of the practice or exercise of his profession, function or employment otherwise require, keep every Part III drug and Part III preparation in his custody in a locked receptacle which can only be opened by him or another authorized person.

(5) An order in writing signed by a qualified nurse to which subregulation (2) (b) (i) relates shall be marked, in such a way as to show that it has been fulfilled, by the person employed or engaged in dispensing medicines who fulfils that order and be kept in the dispensary, and a copy or note of the order shall be kept by the qualified nurse in charge of the ward, theatre or out-patients department of the hospital for use in which that Part III drug or Part III preparation was procured.

18. Authority of authorized seller

(1) Any person who is an authorized seller of poisons is authorized—

(a) in the ordinary course of his retail business to manufacture at his registered premises—

- (i) any extract or tincture of Indian hemp; and
- (ii) any Part III preparation;

(b) to carry on, subject to these Regulations, at his registered premises the business of retailing, dispensing and compounding Part III drugs and Part III preparations.

(2) Nothing in subregulation (1) contained shall be construed as authorizing any authorized seller of poisons to possess a Part III drug or Part III preparation otherwise than on his registered premises.

(3) Every authorized seller of poisons authorized in terms of subregulation (1) to manufacture and to carry on the business of retailing, dispensing and compounding Part III drugs and Part III preparations shall unless the exigencies of the exercise of his profession, function or employment otherwise require keep every Part III drug and Part III preparation in his possession in a locked receptacle which can only be opened by him or another authorized person.

19. Midwife's use of drugs

(1) In this regulation—

“drug” means tincture of opium and any preparation containing pethidine.

(2) An application for a midwife's supply order shall be made in writing to the Secretary for Health.

(3) A midwife's supply order shall be valid until the thirty-first day of December in the year it is issued.

(4) Subject to subregulation (5), a midwife is authorized, so far as is necessary for the practice of her profession or employment, to procure, be in possession of and administer drugs.

(5) The following provisions shall apply to the supply to a midwife and the possession and administration by a midwife of drugs—

(a) on each occasion a midwife procures drugs she shall, in addition to a signed order referred to in regulation 24, produce her midwife's supply order;

(b) the supplier shall note on the midwife's supply order the date on which the drugs are supplied, the name and quantity of the drugs supplied, and his name and registered address;

(c) on each occasion a midwife procures a drug, she shall enter in a drugs book to be kept by her and used solely for the purposes of this section the name and amount of the drug and the form in which it is procured and the date and the name and address of the supplier;

(d) a midwife shall not in any one year procure a quantity of a drug greater than the total amount of that drug specified in her midwife's supply order;

(e) a midwife shall, when she administers a drug, as soon as practicable thereafter, enter in her drugs book the name of the drug administered, the name and address of the woman to whom it was administered, the amount administered and the form in which it was administered;

(f) a midwife shall, except when the exigencies of the practice or exercise of her profession or employment as a midwife otherwise require, keep every drug in her custody in a locked receptacle which can only be opened by her.

20. Use of drugs by an aircraft operator

(1) In this regulation—

“aircraft” means any aircraft in which passengers are carried for hire or reward;

“operator” means any person who is the owner or operator of any aircraft;

“passengers carried for hire or reward” has the meaning assigned to it in regulation 2 of the Air Navigation Regulations. p. 14, Cap. 70:01

(2) Subject to subregulation (3), an operator is authorized to procure and possess Part III drugs and Part III preparations for the purposes of regulation 34 of the Air Navigation Regulations.

(3) The following provisions shall apply to the supply to and the possession by an operator of Part III drugs and Part III preparations—

(a) an order referred to in regulation 24 for the supply of Part III drugs and Part III preparations shall be made in duplicate on the official notepaper of the operator and shall be signed and dated by the operator or his authorized representative;

(b) it shall be stated in the order whether the order is for the initial supply of Part III drugs or Part III preparations or for the replacement of any Part III drugs or Part III preparations previously supplied in terms of this regulation, and in the latter case, the reasons for the replacement;

(c) the order shall be countersigned by the Director of Civil Aviation who shall send the duplicate to the Secretary for Health;

(d) Part III drugs and Part III preparations shall be in single dose ampoule-syringe form and shall be kept in a sealed container, adequately labelled to indicate the method of use and the quantity and nature of the contents, in the first-aid kit of the aircraft;

(e) the quantity of Part III drugs and Part III preparations carried in any aircraft shall not amount to more than the equivalent of one-quarter grain of morphine for any person who may lawfully be on board that aircraft at any one time;

(f) a responsible official appointed by the operator shall—

(i) satisfy himself at intervals not exceeding one month that the Part III drugs and Part III preparations carried in each aircraft have not been removed from the first-aid kit for any unauthorized purpose;

(ii) inspect and check at intervals not exceeding six months the Part III drugs and Part III preparations carried in each aircraft;

(g) the operator shall keep a permanent record at his principal place of business in Malawi of the receipt, distribution and disposal of all Part III drugs and Part III preparations obtained in terms of this section;

(h) Part III drugs and Part III preparations procured by an operator in terms of this section shall not be transferred, on the change of ownership of any of his aircraft, to another person without the permission of the Secretary for Health.

(4) Any person who ceases to be an operator shall—

(a) notify the Secretary for Health of that fact; and

(b) dispose of the Part III drugs and Part III preparations in his possession in accordance with the directions of the Secretary for Health.

21. Licensing by the Minister

(1) The Minister may at his discretion licence—

(a) any officer of the Government in charge of a station at which no Government medical officer is stationed or from which a Government medical officer is for the time being absent;

(b) any officer of the Government who undertakes a journey on duty during which he will be more than twenty-four hours distance from any Government station;

(c) any person in charge of a mission station of a missionary society;

(d) a police officer in charge of a police station,

to procure, possess and administer Part III drugs and Part III preparations, subject to subregulation (2) and such terms and conditions as he may fix.

(2) The following provisions shall apply to the supply to and the possession and administration by a person licensed in terms of subregulation (1) of Part III drugs and Part III preparations—

(a) on each occasion he procures a Part III drug or Part III preparation, he shall, in addition to a signed order referred to in regulation 24, produce to the supplier his licence;

(b) on each occasion he procures a Part III drug or Part III preparation, he shall enter in a drugs book to be kept by him and used solely for the purposes of this regulation the name and the amount of the Part III drug or Part III preparation and the form in which it is procured and the date and the name and address of the supplier;

(c) he shall, when he administers a Part III drug or Part III preparation, as soon as practicable thereafter, enter in his drugs book the name of the Part III drug or Part III preparation

administered, the name and address of the person to whom it was administered, the amount administered and the form in which it was administered;

(d) he shall, except when a Part III drug or Part III preparation is to be administered, keep every Part III drug or Part III preparation in his custody in a locked receptacle which can only be opened by him or another authorized person;

(e) he shall not administer a Part III drug or Part III preparation procured in terms of this regulation otherwise than for strictly medical, surgical or dental purposes.

22. Form of prescription

(1) In this regulation—

“recognized preparation” means a preparation contained in the British Pharmacopoeia or the British Pharmaceutical Codex.

(2) The following provisions shall apply to prescriptions prescribing Part III drugs and Part III preparations—

(a) a prescription shall be in writing and shall be signed and dated by the person giving it;

(b) a prescription shall specify the address of the person giving it;

(c) a prescription shall specify the name and address of the person for whose treatment it is given or, if it is given by a veterinary surgeon, the name and address of the person to whom the Part III drug or Part III preparation is to be delivered;

(d) a prescription shall have endorsed thereon, if given by a dental surgeon, the words “for dental treatment only” and, if given by a veterinary surgeon, “for animal treatment only”;

(e) if one or more recognized preparations are prescribed, the prescription shall specify the total amount of the preparation or, as the case may be, of each preparation, or, in the case of a preparation packed in ampoules, specify the total amount of the preparation or, as the case may be, of each preparation which it is intended to be administered;

(f) if the preparation prescribed is not a recognized preparation, the prescription shall specify the total amount of the Part III drug prescribed or, if the preparation is packed in ampoules, either the total amount to be supplied or the total amount intended to be administered.

(3) For the purposes of this Part, a prescription to be dispensed in a hospital and given for the treatment of a patient in that hospital which is written on the patient’s bed-card or case-sheet and signed by the person giving it shall be treated as a prescription which complies with subregulation (2).

23. Preconditions to supplying Part III drug or preparation

(1) No person shall supply a Part III drug or Part III preparation on a prescription unless—

(a) the prescription complies with this Part; and

(b) he is acquainted with the signature of the person by whom the prescription purports to be given and has no reason to suppose that it is not genuine; or

(c) he has taken reasonably sufficient steps to satisfy himself that it is genuine.

(2) Save as is provided in subregulation (3), no prescription shall authorize the supply of a Part III drug or Part III preparation more than once.

(3) If a prescription prescribing a Part III drug or Part III preparation states that it may, subject to the lapse of an interval or intervals specified in the prescription, be dispensed a second, third or fourth time, the Part III drug or Part III preparation thereby prescribed may be supplied a second, third or, as the case may be, fourth time after the specified interval or intervals.

(4) A person dispensing a prescription prescribing a Part III drug or Part III preparation shall—

(a) at the time he dispenses it, mark thereon the date on which it is dispensed or, if it is a prescription which may be dispensed a second, third or fourth time, the date of each occasion on which it is dispensed; and

(b) retain and keep the prescription on the premises where it is dispensed and so as to be at all times available for inspection.

(5) No person shall make or supply a copy of any prescription prescribing a Part III drug or Part III preparation, other than a copy of a prescription for submission to the Government or a medical aid society for the purpose of receiving payment for Part III drugs or Part III preparations supplied thereon, unless he is requested to do so by the Secretary for Health, an inspector, a superior police officer or any other police officer authorized in writing by a magistrate or by a superior police officer.

(6) A copy of a prescription made in terms of subregulation (5) shall be clearly and indelibly marked "Copy only. Not to be dispensed".

(7) Notwithstanding anything contained in these Regulations, where an authorized seller of poisons is reasonably satisfied that a person ordering any Part III drug or Part III preparation is a medical practitioner who is by reason of some emergency unable to furnish a prescription immediately, he may, notwithstanding that no prescription has been given, if the said person undertakes to furnish him within the seven days next following with a prescription, deliver the Part III drug or Part III preparation ordered in accordance with the directions of the said person, so, however, that, notwithstanding anything in any such directions, the supply shall not be repeated unless such a prescription has been given.

If any person by whom any such undertaking has been given fails to deliver to the seller a prescription in accordance with the undertaking, or if any person for the purpose of obtaining delivery of any Part III drug or Part III preparation under this subregulation makes a statement which is to his knowledge false, he shall be deemed to have contravened this regulation.

24. Procurement by an authorized or licensed person

An authorized or licensed person shall not procure a Part III drug or Part III preparation unless he produces to the supplier an order in writing signed and dated by him in which is stated—

- (a) the name and address of the person by whom the Part III drug or Part III preparation is required or the institution for which it is ordered;
- (b) the name and quantity of the Part III drug or Part III preparation required;
- (c) the use to which the Part III drug or Part III preparation is to be put; and
- (d) the name, address and profession or qualification of the person signing the order.

25. Report of necessity of prescribing a Part III drug

Any medical practitioner who considers it necessary for the purpose of the treatment of any patient to prescribe for him a Part III drug or a Part III preparation for a period greater than four months shall report the case to the Secretary for Health.

26. Addiction

(1) Save as otherwise provided in this regulation, no medical practitioner shall supply or administer to or prescribe for any person a Part III drug or Part III preparation merely for the purposes of addiction.

(2) A medical practitioner who considers it necessary for the purpose of the treatment or care of a patient who is a drug addict that he should receive rational supplies of a Part III drug or Part III preparation shall report the case to the Secretary for Health.

(3) Where a case is reported to the Secretary for Health in terms of subregulation (2), he may at his discretion permit, in writing, a medical practitioner to supply and additionally or alternatively administer and additionally or alternatively prescribe such quantities of the Part III drug or Part III preparation to which the patient is addicted as the Secretary for Health may in the circumstances consider necessary.

(4) No medical practitioner shall supply or prescribe for the treatment of a drug addict a Part III drug or Part III preparation in excess of the quantity permitted by the Secretary for Health.(5) No person authorized or licensed to have in his possession a Part III drug or Part III preparation who is not a person referred to in subregulation 16 (1) shall use or prescribe that Part III drug or Part III preparation for the purposes of self-administration.

27. Marking of package or bottle

(1) Subject to these Regulations, no person shall—

- (a) supply a Part III drug unless the package or bottle in which it is contained is plainly marked with the amount of the Part III drug contained therein; or

(b) supply a Part III preparation unless the package or bottle in which it is contained is plainly marked—

(i) in the case of a powder, solution or ointment, with the total amount of the power, solution or ointment in the package or bottle and the percentage of the Part III drug contained in the powder, solution or ointment;

(ii) in the case of tablets or other similar articles, with the amount of the Part III drug in each article and the number of articles in the package or bottle.

(2) Nothing in this regulation contained shall apply to a Part III preparation lawfully supplied in accordance with this Part by or on a prescription lawfully given by a medical practitioner, a dental surgeon or a veterinary surgeon.

28. Register of quantity dispersed

(1) Every person authorized or licensed to supply Part III drugs or Part III preparations shall—

(a) keep, in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the form specified in the Third Schedule true particulars with respect to—

(i) every quantity of a Part III drug or Part III preparation acquired by him;

(ii) every quantity of a Part III drug or Part III preparation supplied by him;

(iii) every quantity of a Part III drug or Part III preparation used by him;

(b) use a separate page in the register for each Part III drug and Part III preparation specified in the Fourth Schedule.

(2) For the purposes of subregulation (1) (b)—

(a) any ester, ether or derivative specified in item (41) of the Fourth Schedule shall be treated as including its salts and any preparation containing any such ester, ether or derivative or its salts;

(b) any substance specified in items (46) to (72) of the Fourth Schedule shall be treated as including its salts and any preparation, admixture, extract or other substance containing any proportion of the substance or its salts.

(3) Tablets, and other similar articles shall be recorded in the register by number and not by number of packages, and liquids, extracts and powders shall be recorded in volume or weight, according to their nature.

(4) Notwithstanding subregulation (1) an authorized seller of poisons may transfer to his dispensary small quantities of Part III drugs and Part III preparations for the dispensing of prescribed medicines containing less than the amount of Part III drugs or Part III preparations as is sufficient to make the medicine a drug to which Part III of the Act applies, but only if the transfer and the date of

the transfer are recorded in his register and a copy of each original prescription and a record of each repeat prescription is made in the prescription book.

29. Diacetylmorphine

No licence shall be issued to any person for the manufacture of diacetylmorphine or the import or export of diacetylmorphine or its preparations.

PART III

PARTIALLY CONTROLLED DRUGS

30. Possession and manufacture

No person who is not a licensed person shall—

- (a) possess a partially controlled drug in a quantity exceeding one pound avoirdupois; or
- (b) manufacture or carry on any process in the manufacture of a partially controlled drug.

31. Restrictions

(1) A wholesale dealer shall not possess, sell, supply or distribute a partially controlled drug unless he is licensed and otherwise than in accordance with this Part and the terms and conditions of his licence.

(2) Nothing in subregulation (1) contained shall apply to any wholesale dealer who is an authorized seller of poisons.

32. Marking and quantity

No wholesale dealer in or manufacturer of partially controlled drugs shall—

- (a) supply a partially controlled drug unless the package or bottle in which it is contained is plainly marked with the amount of the partially controlled drug contained therein;
- (b) supply a partially controlled drug in a quantity exceeding one pound avoirdupois unless the person to whom it is supplied is a licensed person.

33. Register of quantity and purchase

Every wholesale dealer in and every manufacturer of partially controlled drugs shall—

- (a) keep, in accordance with this regulation and regulation 42, a register and enter therein in chronological sequence in the form specified in the Third Schedule true particulars with respect to—
 - (i) every quantity of a partially controlled drug manufactured or, as the case may be, acquired by him;
 - (ii) every quantity of a partially controlled drug supplied by him;

(iii) every quantity of a partially controlled drug used by him;

(b) use a separate part of his register for entries relating to each partially controlled drug.

34. Exceptions

It is hereby declared for the avoidance of doubt that nothing contained in regulations 31 to 33 inclusive shall apply—

(a) to the sale, supply or distribution of a partially controlled drug by any person who is not a wholesale dealer in or a manufacturer of a partially controlled drug; or

(b) to the carrying on at his registered premises by an authorized seller of poisons who is not a wholesale dealer of the business of retailing, dispensing or compounding a partially controlled drug.

PART IV

GENERAL

35. Possession

A person shall be treated as in possession of a drug for the purposes of these Regulations if that drug is in his actual custody or is held by some other person subject to his control or for him or on his behalf.

36. Interpretation

Save as is otherwise expressly provided in these Regulations and, in the case of a licensed person, subject to the terms and conditions of his licence—

(a) a person authorized or licensed to manufacture a drug shall be treated, for the purposes of these Regulations, as authorized or, as the case may be, licensed to supply that drug;

(b) a person authorized or licensed to supply a Part I drug, Part III drug or Part III preparation shall be treated, for the purposes of these Regulations, as authorized or, as the case may be, licensed to be in possession of, to procure, to offer to supply or to procure and to advertise for sale that Part I drug, Part III drug or Part III preparation;

(c) a wholesale dealer licensed to supply a partially controlled drug shall be treated, for the purposes of these Regulations, as licensed to be in possession of more than one pound avoirdupois of that drug.

37. Revocation

The Minister may revoke a licence or permit at any time.

38. Withdrawal of authority

(1) If any authorized person is—

- (a) convicted of an offence against the Act or these Regulations;
- (b) adjudged or certified or otherwise lawfully proved to be mentally disordered or defective under the Mental Treatment Act; Cap. 34:02
- (c) undergoing treatment as a temporary or voluntary patient in terms of the Mental Treatment Act; or Cap. 34:02
- (d) proved to the satisfaction of the Minister to have become a drug addict,

the Minister may, if he is of the opinion that that person cannot properly be allowed to remain an authorized person, by notice published in the Gazette withdraw the authority of that person.

(2) If a person whose authority is withdrawn by the Minister in terms of subregulation (1) is a medical practitioner, a dental surgeon or a veterinary surgeon, the Minister may by notice published in the Gazette direct that it shall not be lawful for that person to give prescriptions prescribing a drug.

(3) The Minister may at any time—

- (a) restore any authority withdrawn in terms of subregulation (1);
- (b) suspend the withdrawal of any such authority; or
- (c) cancel the suspension of the withdrawal of any such authority.

(4) If the withdrawal of the authority of a person is suspended by the Minister as in subregulation (3) (b) is provided, that person shall continue to be an authorized person as if the authority had not been withdrawn.

39. Delivery to an agent of the recipient

(1) If a Part I drug, Part III drug or Part III preparation is to be lawfully supplied to a person (hereinafter in this regulation called the recipient) otherwise than by or on a prescription given by a medical practitioner, a dental surgeon or a veterinary surgeon, the person supplying that Part I drug, Part III drug or Part III preparation (hereinafter in this section called the supplier) shall not deliver it to any person who purports to be sent by or on behalf of the recipient unless—

(a) that person is authorized or licensed to be in possession of that Part I drug, Part III drug or Part III preparation; or

(b) that person produces to the supplier a statement in writing signed by the recipient stating that he is empowered by the recipient to receive that Part I drug, Part III drug or Part III preparation on behalf of the recipient and the supplier is reasonably satisfied that the document is a genuine document.

(2) A person to whom a Part I drug, Part III drug or Part III preparation is lawfully delivered as in subregulation (1) is provided shall be treated, for the purposes of these Regulations, as authorized to be in possession of that Part I drug, Part III drug or Part III preparation for such period as in the circumstances is reasonably sufficient to enable delivery to be made to the recipient.

40. Export from another country

(1) If a Part I drug, Part III drug or Part III preparation permitted under the law of any country outside Malawi to be exported therefrom to any destination outside Malawi is brought into Malawi no person shall cause or procure that Part I drug, Part III drug or Part III preparation to be diverted to any other destination unless he has been issued with a permit by the Minister and otherwise than in accordance with the terms and conditions of that permit.

(2) For the purposes of this regulation, the destination to which a Part I drug, Part III drug or Part III preparation is permitted to be exported shall be the destination stated in the permission for the export thereof from the country of export.

41. Exemption

No provision of these Regulations relating to the possession of any drug shall apply to a common carrier, his agent or servant who is in possession of a drug in the ordinary course of his business or, as the case may be, the business of his principal or employer.

42. Method of keeping a register

Any person required to keep a register in terms of regulation 9,28 or 33 shall—

(a) specify the type of drug to which the entries on any page of his register relate at the head of that page;

(b) make every entry required to be made in terms of regulation 9, 28 or 33, as the case may be, in his register on the day on which the drug is received, or as the case may be, on which the transaction with respect to the supply of the drug by him takes place or, if that is not reasonably practicable, on the day next following that day;

(c) not make any cancellation, obliteration or alteration of any entry;

(d) make any correction to an entry only by way of a marginal note or footnote which shall specify the date on which the correction is made;

(e) make all entries and corrections in ink or otherwise so as to be indelible;

(f) not use his register for any purpose other than the purposes of these Regulations;

(g) on the demand of the Secretary for Health or of any person empowered in writing by the Secretary for Health in that behalf or of an inspector—

(i) furnish such particulars as may be required with respect to the procuring or supplying by him of any drug or with respect to any stock of drugs in his possession;

(ii) for the purpose of confirming any such particulars, produce any stock of drugs in his possession; and

(iii) produce his register and such other books or documents in his possession relating to any dealings in drugs as may be required;

(h) keep a separate register in respect of each set of premises at which he carries on business;

(i) keep each register at the premises to which it relates and so as to be at all times available for inspection;

(j) save as in paragraph (h) is provided, not keep more than one register for each class of drug with respect to which he is required to keep a separate register or a separate part of a register unless the Secretary for Health has approved the keeping of a separate register for each department of the business carried on by him;

(k) if he is a wholesale dealer, submit to the Secretary for Health by the 7th of each month details of all entries made in his register during the preceding month.

43. Preservation of records

(1) All registers, records, books, prescriptions, signed orders and other documents issued, made or kept in pursuance of these Regulations or for the purposes of these Regulations shall be preserved—

(a) in the case of a register, book or other like record, for a period of two years from the date on which the last entry therein is made;

(b) in the case of any other document, for a period of two years from the date on which the document is issued or made.

(2) Every person required by the Act or by these Regulations to be in possession of any permit, licence, order or prescription shall be deemed to be without such permit, licence, order or prescription unless he produces or gives satisfactory proof of possessing it.

44. Form of application for a licence or permit

An application for a licence under section 4 or 11 of the Act or for a licence or permit under these Regulations shall be—

(a) made in a form from which shall be obtained from the Secretary for Health;

(b) accompanied, if the application is for a licence to export any drug from Malawi, by the original copy of the certificate of the country of importation officially approving the import of that drug;

(c) accompanied by the appropriate fee, if any, prescribed in the Fifth Schedule.

45. Import and export restrictions

In addition to such terms and conditions as may be fixed in his licence to import or export any drug, the importer, or, as the case may be, the exporter shall comply with the following provisions—

(a) he shall not import or export any drug by ordinary or registered letter post;

- (b) he shall, if he is an exporter of a drug—
 - (i) which is to be exported in one package, place the duplicate licence to export that drug inside the outer wrapper of that package;
 - (ii) which is to be exported in more than one package—
 - (A) place the duplicate licence to export that drug inside the outer wrapper of one package;
 - (B) consecutively number on the outer wrapper all the packages in which the drug is contained; and
 - (C) indicate on each package the number of the package in which the duplicate licence is to be found;
- (c) he shall advise the Secretary for Health within seven days of the import or export of any drug imported or exported by him.

46. Consignment of drugs

(1) No person shall in the course of supplying a drug to a person in Malawi consign that drug by road or rail by a route which entails the carriage of that drug beyond the borders of Malawi unless he is in possession of a movement licence.

(2) The holder of a movement licence shall comply with regulation 45 (b) and (c), as if the drugs to which that movement licence relates were drugs to be exported by him.

47. Cessation of practice

Any authorized or licensed person in possession of drugs shall, before ceasing to practise or exercise his profession, function or employment at any place—

- (a) if he is being succeeded by an authorized or licensed person—
 - (i) physically check with and hand over to his successor all drugs in his possession;
 - (ii) submit to the Secretary for Health a statement, signed by himself and by his successor, certifying that the said drugs have been physically checked and handed over in accordance with subparagraph (i); and
 - (iii) after handing over the drugs, rule off each page of the dangerous drugs register on which an entry has been made, and both he and his successor shall, when satisfied that it is a true record of the drugs on hand, sign each such page. If either person is not satisfied that it is a true record, he shall refuse to sign such page and shall immediately inform the Secretary for Health of the reasons for his refusal;
- (b) if he is not being succeeded by an authorized or licensed person, inform the Secretary for Health of the arrangements he has made for the disposal of the drugs in his possession.

If such arrangements have not been made or are not to the satisfaction of the Secretary for Health, the drugs shall be disposed of in such manner as the Secretary for Health shall order. Immediately after disposing of the drugs in accordance with the arrangements or order, as the case may be, previously made, such authorized or licensed person shall notify the Secretary for Health that he has done so and shall, at the same time forward the dangerous drugs register and the supporting prescriptions and written orders to the Secretary for Health who shall retain them for a period of two years from the latest date of entry.

FIRST SCHEDULE reg. 2

MIDWIFE'S SUPPLY ORDER

I hereby certify that of is a fully trained practising midwife and is authorized in pursuance of regulation 19 (4) of the Dangerous Drugs Regulations to procure during the period of validity of this supply order and for the purpose of her profession, tincture of opium and pethidine preparations not exceeding the quantities stated below.

.....

.....

This supply order shall remain valid until the 31st December of the year in which it is issued, and shall be returned to me immediately on becoming invalid.

Place Signed

Date of Issue Secretary for Health

MIDWIFE'S SUPPLY ORDER

(TO BE PRINTED ON REVERSE)

(1) This supply order shall be produced to the person from whom the drugs are procured.

(2) The supplier shall, at the time the transaction takes place, note under the appropriate heading in this order the date on which the drugs are supplied, the name and quantity of the drugs supplied, and his name and registered address.

PETHIDINE PREPARATIONS

Date Supplied	Details of preparation (strength of tablets, ampoules, etc.)	Quantity Supplied
Total Supplied to date	Name and Address of Supplier	

TINCTURE OF OPIUM

Date Supplied	Quantity Supplied	Total Supplied to date	Name and Address of Supplier
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SECOND SCHEDULE reg. 2

PREPARATIONS WHICH ARE NOT PART III PREPARATIONS

Ipecacuanha Pills with Squill B.P.C. 1934.

Pills of Mercury with Chalk and Opium B.P.C. 1949.

Aromatic Powder of Chalk with Opium B.P. 1953.

Powder of Ipecacuanha and Opium B.P. 1953.

Suppository of Lead with Opium B.P.C. 1949.

Eye-drops of Cocaine and Mercuric Chloride, Oily B.P.C. 1954.

Mixtures of Powder of Ipecacuanha and Opium B.P. 1953 with any of the following: —

Mercury with Chalk B.P. 1914 and B.P. 1948.

Acetylsalicylic Acid,

Phenacetin,

Quinine and its salts,

Sodium Bicarbonate.

NOTE.—

Only those provisions of the Act and regulations which relate to the import or export of drugs and the movement of drugs by road or rail beyond the borders of Malawi apply to the preparations specified in this Schedule.

THIRD SCHEDULE reg. 9, 28 and 33

FORM OF REGISTER

Name of drug or preparation—

Date on which acquired or supplied	Name and address of person from whom acquired or to whom supplied	Reference	Amount acquired	Amount supplied	Amount on hand
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FOURTH SCHEDULE reg. 2 and 28

Part III drugs and Part III preparations with respect to which entries shall be made separately:

- (1) medicinal opium;
- (2) any extract or tincture of Indian hemp, and any preparation, not being a preparation capable of external use only, made from extract or tincture of Indian hemp;
- (3) morphine and its salts, and any solution or dilution of morphine or its salts in an inert substance whether liquid or solid containing any proportion of morphine, and any preparation, admixture, extract or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth of one per centum of morphine (calculated in respect of anhydrous morphine);
- (4) diacetylmorphine (also known as diamorphine or heroin) and its salts, and any preparation, admixture, extract or other substance containing any proportion of diacetylmorphine;
- (5) cocaine (including synthetic cocaine) and ecgonine and their respective salts, and any solution or dilution of cocaine or its salts in an inert substance, whether liquid or solid, containing any proportion of cocaine, and any preparation, admixture, extract or other substance (not being such a solution or dilution as aforesaid) containing not less than one-tenth of one per centum of cocaine or any proportion of ecgonine;
- (6) dihydrohydroxycodone (also known as eucodal) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrohydroxycodone or its salts;
- (7) dihydrocodeinone (also known as dicodide) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrocodeinone or its salts;
- (8) dihydromorphinone (also known as dilaudide) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydromorphinone or its salts;
- (9) 6-methyldihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of 6-methyldihydromorphine or its salts;
- (10) acetyldihydrocodeinone and its salts, and any preparation, admixture, extract or other substance containing any proportion of acetyldihydrocodeinone or its salts;

- (11) dihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydromorphine or its salts;
- (12) morphine-N-oxide (also known as genomorphine) and any preparation, admixture, extract or other substance containing any proportion of morphine-N-oxide;
- (13) thebaine and its salts, and any preparation, admixture, extract or other substance containing any proportion of thebaine or its salts;
- (14) benzylmorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of benzylmorphine or its salts;
- (15) dihydrodesoxymorphine (also known as desormorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrodesoxymorphine or its salts;
- (16) pethidine and its salts, and any preparation, admixture, extract or other substance containing any proportion of pethidine or its salts;
- (17) the isopropyl and other esters of 1-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine) and their salts, and any preparation, admixture, extract or other substance containing any proportion of the isopropyl or other esters of 1-methyl-4-phenylpiperidine-4-carboxylic acid or their salts;
- (18) methyldihydromorphinone (also known as metopon) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldihydromorphinone or its salts;
- (19) alphaprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of alphaprodine or its salts;
- (20) methadone (also known as amidone) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadone or its salts;
- (21) betaprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of betaprodine or its salts;
- (22) hydroxypethidine and its salts, and any preparation, admixture, extract or other substance containing any proportion of hydroxypethidine or its salts;
- (23) isomethadone (also known as isoamidone) and its salts, and any preparation, admixture, extract or other substance containing any proportion of isomethadone or its salts;
- (24) ketobemidone and its salts, and any preparation, admixture, extract or other substance containing any proportion of ketobemidone or its salts;
- (25) methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadol or its salts;

(26) a-methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of a-methadol or its salts;

(27) b-methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of b-methadol or its salts;

(28) methadyl acetate and its salts, and any preparation, admixture, extract or other substance containing any proportion of methadyl acetate or its salts;

(29) a-acetylmethadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of a-acetylmethadol or its salts;

(30) b-acetylmethadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of b-acetylmethadol or its salts;

(31) phenadoxone and its salts, and any preparation, admixture, extract or other substance containing any proportion of phenadoxone or its salts;

(32) betameprodine and its salts, and any preparation, admixture, extract or other substance containing any proportion of betameprodine or its salts;

(33) methorphan other than dextrophan (that is to say levorphan and racemorphan) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methorphan or its salts;

(34) 3-methoxy-N-methylmorphinan other than dextromethorphan (that is to say levomethorphan and racemethorphan) and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-methoxy-N-methylmorphinan or its salts;

(35) methyl-desomorphine (6-methyl- μ -trif; 6-desoxymorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyl-desomorphine or its salts;

(36) 3-dimethylamino-1, 1-di-(2'-thienyl)-1-butene and its salts, and any preparation, admixture, extract, or other substance containing any proportion of 3-dimethylamino-1, 1-di-(2'-thienyl)-1-butene or its salts;

(37) 3-ethylmethylamino-1, 1-di-(2'-thienyl)-1-butene and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-ethylmethylamino-1, 1-di-(2'-thienyl)-1-butene or its salts;

(38) 3-diethylamino-1, 1-di-(2'-thienyl)-1-butene (diethylthiambutene) and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-diethylamino-1, 1-di-(2'-thienyl)-1-butene or its salts;

(39) 4,4-diphenyl -6-dimethylamino-3-hexanone and its salts, and any preparation, admixture, extract or other substance containing any proportion of 4, 4-diphenyl -6-dimethylamino -3-hexanone or its salts;

(40) 4, 4-diphenyl -6- piperidino -3- heptanone and its salts, and any preparation, admixture, extract or other substance containing any proportion of 4, 4-diphenyl -6- piperidino -3- heptanone or its salts;

(41) the esters of morphine (other than diacetylmorphine), ecgonine, dihydrohydrocodeinone, dihydrocodeinone, dihydromorphinone, acetyldihydrocodeinone and dihydromorphine and their respective salts, the ethers of morphine (other than benzylmorphine, methylmorphine, ethylmorphine and morpholinylethylmorphine) and their salts, and the morphine-N-oxide derivatives and any other pentavalent nitrogen morphine derivatives, and any preparation, admixture, extract or other substance containing any proportion of any drug included in this paragraph.

(42) 1 : 3-Dimethyl-4-phenyl-4-propionyloxyhexamethyl-eneimine, its salts and any preparation, admixture, extract or other substance containing any proportion of 1 : 3-dimethyl-4-phenyl-4-propionyloxyhexamethyleneimine.

(43) 3-Hydroxy-N-phenethylmorphinan, its salts and any preparation, admixture, extract or other substance containing any proportion of 3-hydroxy-N-phenethylmorphinan.

(44) 4-Morpholino-2: 2-diphenyl ethyl butyrate, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-morpholino-2: 2-diphenyl ethyl butyrate.

(45) 4-Dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane.

(46) Anileridine (1- [2- (p-aminophenyl)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester).

(47) Etoxidine (1- [2- (2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester).

(48) Dextromoramide, levomoramide and racemoramide [1- (3 methyl-4-morpholino-2: 2 diphenylbutyryl)-pyrrolidine].

(49) Morpheridine [1- (2-morpholinoethyl)-4-phenylpiperidine-4 carboxylic acid ethyl ester].

(50) Myrophine (myristyl ester of benzylmorphine).

(51) Oxymorphone (dihydro-14-hydroxymorphinone).

(52) Trimeperidine (1: 2: 5-trimethyl-4-phenyl-4-propionyloxy piperidine).

(53) Benzethidine [ethyl 1 (2-benzoyloxyethyl)-4-phenylpiperidine-4-carboxylate].

(54) Dimenoxadole (2-dimethylaminoethyl-2-ethoxy-2: 2 diphenylacetate).

(55) Furethidine [ethyl 1 (2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylate].

- (56) Norcodeine.
- (57) Normorphine.
- (58) Phenazocine [2'-hydroxy-5: 9 dimethyl-2- (2-phenylethyl)-6: 7-benzomorphan].
- (59) Allyprodine (3 allyl-1 methyl-4 phenyl-4 propionoxypiperidine).
- (60) Clonitazene (2-p-chlorobenzyl-1-1- (2-diethylaminoethyl)-5-nitrobenzimidazole).
- (61) Diphenoxylate [ethyl 1- (3-cyano-3: 3 diphenylpropyl)-4-phenylpiperidine-4-carboxylate].
- (62) Etonitazine [1- (2-diethylaminoethyl)-2-p-ethoxybenzyl-5-nitrobenzimidazole],
- (63) Hydromorphinol(14-hydroxydihydromorphine).
- (64) Levophenacymorphan [(-)-3 hydroxy-N-phenacymorphinan].
- (65) Metazocine (2'-hydroxy-2: 5: 9-trimethyl-6:7-benzomorphan).
- (66) Diampromide (N-[2- N-methylphenethylamino) propyl] propionanilide).
- (67) Norlevorphanol [(-)-3 hydroxymorphinan].
- (68) Phenampromide [N- (1-methyl-2-piperidincethyl) propionanilide].
- (69) Phenoperidine (ethyl 1 [3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate].
- (70) Piminodine [ethyl 1- (3-anilinopropyl)-4-phenylpiperidine-4-carboxylate].
- (71) Nicocodine.
- (72) Noracymethadol (oe-dl-3 acetoxy-6 methylamino-4:4 diphenylheptane).

NOTE.—

No entries are required to be made with respect to any preparation containing a drug specified in this Schedule which is a preparation specified in the Second Schedule or a preparation specified in any notice published in terms of section 10 (4) of the Act.

FIFTH SCHEDULE reg. 44

PRESCRIBED FEES

t

Licence to Import	50
Licence to Export	25

APPLICATION OF PART III OF THE ACT

under s. 10 (2)

G.N. 57/1956(F)

226/1956(F)

4/1959(F)

96/1960(F)

222/1961(F)

249/1963(F)

104/1982

The Minister has applied Part III of the Act to the substances set out in the Schedule in the same manner as Part II of the Act applies to drugs specified in the First Schedule to the Act.

SCHEDULE

I. The following substances, namely—

- (1) Allylprodine (3-allyl-1-methyl-4 phenyl-4-propionoxypiperidine);
- (2) Anileridine (1-[2-(p-aminophenyl)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester);
- (3) Benzethidine (Ethyl 1(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylate);
- (4) Clonitazene (2-p-chlorobenzyl-1-(2-diethylaminoethyl)-5-nitrobenzimidazole);
- (5) Dextromoramide, levomoramide and racemoramide 1-(3-methyl-4-morpholino-2:2-diphenylbutyryl)-pyrrolidine;
- (6) Diampromide (N-[2-(N-methylphenethylamino)-propyl]-propionanilide);
- (7) 3-Diethylamino-1, 1-di-(2'-thienyl)-l-butene (diethylthiambutene);
- (8) Dimenoxadole (2-dimethylaminoethyl-2-ethoxy-2: 2-diphenylacetate);
- (9) 3-Dimethyl-4-phenyl-4-propionyloxyhexamethyleneimine;
- (10) Diphenoxylate (ethyl 1-(3-cyano-3 : 3-diphenylpropyl)-4-phenyl piperidine-4-carboxylate);
- (11) 4,4-Diphenyl-6-dimethylamino-3-hexanone;
- (12) 4,4-Diphenyl-6-piperidino-3-heptanone;

- (13) Etonitazene (1-(2-diethylaminoethyl)-2-p-ethoxybenzyl-5-nitrobenzimidazole);
- (14) Etoxidine (1- [2- (2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester);
- (15) Furethidine (Ethyl 1(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylate);
- (16) Hydromorphenol (14-hydroxydihydromorphine);
- (17) 3-Hydroxy-N-phenethylmorphinan;
- (18) Levophenacymorphan ((-)-3-hydroxy-N-phenacymorphinan);
- (19) Metazocine (2/-hydroxy-2 : 5 : 9-trimethyl-6 : 7-benzomorphan);
- (20) b-methadol;
- (21) N-[2-(N-methylphenethylainino) propyl] propionanilide;
- (22) The esters of l-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine);
- (23) Morpheridine (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester);
- (24) 4-Morpholino-2: 2-diphenyl ethyl butyrate;
- (25) Myrophine (myristyl ester of benzylmorphine);
- (26) Noracymethadol (œ-3 acetoxy-6 methylamino-: 4-diphenylheptane);
- (27) Norcodeine;
- (28) Methaqualone (3, 4-dihydro-2-methyl-3-0-tolylquinazolin-4-one), its salts and any preparation, admixture, extract or other substance containing any proportion of Methaqualone.
- (28) Norlevorphanol ((-)-3-hydroxymorphinan);
- (29) Normorphine;
- (30) Oxymorphone (dihydro-14-hydroxymorphinone);
- (31) Phenampromide (N-(1-methyl-2-piperidinoethyl) propionanilide);
- (32) Phenazocine (2'-hydroxy-5:9-dimethyl-2-(2-phenylethyl)-6 : 7-benzomorphan);
- (33) Phenoperidine (ethyl 1(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate);
- (34) Piminodine (ethyl 1-(3-anilinopropyl)-4-phenylpiperidine-4-carboxylate);
- (35) Trimeperidine (1:2:5-trimethyl-4-phenyl-4-propionyloxypiperidine).

II. Any salt of a substance specified in paragraph I above.

III. Any preparation, admixture, extract or other substance containing any proportion of a substance for the time being specified in paragraph I or II above.

APPLICATION OF PART III OF THE ACT

under ss. 10 (3) and 14

G.N. 57/1956(F)

The Minister has applied Part III of the Act to the drugs specified in the Schedule hereto and their preparations with the modifications that—

(a) those drugs and products and their preparations shall not be treated as drugs to which Part III of the Act applies for the purposes of Part II of the Dangerous Drugs Regulations;
Above p. 13

(b) section 11 of the Act shall not apply to the import into or export from Malawi of Syrup of Codeine Phosphate B.P.C. 1954 or to any preparation containing not more than 2.5 per centum of methylmorphine, ethylmorphine or morpholinylethylmorphine calculated as a pure drug, associated with other medicinal substances.

SCHEDULE

Methylmorphine (commonly known as codeine);

Ethylmorphine;

Morpholinylethylmorphine;

Dihydrocodeine;

Acetyldihydrocodeine;

and their salts.

NOTE.—

The drugs and products specified in the Schedule to this notice are the drugs and products defined as “partially controlled drugs” for the purposes of the Dangerous Drugs Regulations.

DANGEROUS DRUGS (SECTION 10 EXEMPTION) NOTICE

under s. 10(4)

G.N. 58/1956(F)

223/1961(F)

1. Citation

This notice may be cited as the Dangerous Drugs (Section 10 Exemption) Notice.

2. Application

The provisions of Part III of the Act shall cease to apply to the preparations specified in the Schedule hereto.

SCHEDULE para. 2

A.—MORPHINE PREPARATIONS:

Substance Formula

1. Cereoli iodoformi et morphinae Iodoform 0.320 gramme

 Morphine Hydrochloride 0.016 gramme

 Oil of theobroma, sufficient to fill a 1-gramme
 mould.

2. Emplastrum opii Elemi 20 grammes

 Terebinthina 30 grammes

 Cera flava 15 grammes

 Olibanum pulvis 18 grammes

 Benzoes pulvis 10 grammes

 Opii pulvis 5 grammes

 Balsamum peruvianum 2 grammes

3. Emplastrum opii Extract of opium 25 grammes

 Refined elemi 25 grammes

 Diachylon plaster with gum 50 grammes

4. Emplastrum opii Elemi 8 grammes

 Terebinthinae communis 15 grammes

 Cerae flavae 5 grammes

 Olibani pulveratae 8 grammes

 Benzoes pulveratae grammes

 Opii pulverati grammes

- Balsami peruviani 1 gramme
5. Emplastrum opii Opium, in very fine powder 10 grammes
 Resin plaster 90 grammes
6. Emplastrum opii (see formula under 5) mixed with other plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.
7. Linimentum opii Tincture of opium 500 millilitres
 Liniment of soap 500 millilitres
8. Linimentum opii (see formula under 7) mixed with any other liniment of the British Pharmacopoeia or of the British Pharmaceutical Codex.
9. Linimentum opii ammoniatum Ammoniated liniment of camphor 30
 Tincture of opium 30
 Liniment of Belladonna 5
 Strong solution of ammonia 5
 Liniment of soap to 100
10. Linimentum opii ammoniatum (see formula under 9) mixed with any other British Pharmacopoeia or British Pharmaceutical Codex liniment.
11. Caustic "Nerve Pastes" Preparations containing, in addition to morphine salts, or morphine and cocaine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.
12. Diarrhoea pills Camphor 0.0648 gramme
 Lead acetate 0.013 gramme
 Bismuth subnitrate 0.162 gramme
 Tannic acid 0.0648 gramme
 Opium powder 0.026 gramme
13. Pilulae digitalis et Opii compositae Digitalis leaves, in powder 0.31 gramme
 Opium, in powder 0.19 gramme
 Ipecacuanha root, in powder 0.13 gramme

- Quinine sulphate 0.78 gramme
- Syrup of glucose, a sufficient quantity to make 12 pills.
14. *Pilulae hydrargyri cum Opio* Mercury pill 3.89 grammes
- Opium, in powder 0.19 gramme
- To make 12 pills.
15. *Pilulae hydrargyri cum Creta et Opii* Mercury with chalk 0.78 gramme
- Compound powder of ipecacuanha* 0.78 gramme
- Milk sugar, a sufficient quantity
- Syrup of glucose, a sufficient quantity
- To make 12 pills.
16. *Pilulae ipecacuanhae cum Scilla* Compound powder of ipe cacuanha* 30 grammes
- Squill, in powder 10 grammes
- Ammoniacum, in powder 10 grammes
- Syrup of glucose, a sufficient quantity.
17. *Pilulae hydrargyri bichlorati* Bichloride of mercury cum *Opii extracto triturat* 10 centigrammes
- Extract of opium 20 centigrammes
- Extract of couchgrass 20 centigrammes
- Liquorice root in powder, q.s. for 10 pills.
18. *Pilulae hydrargyri iodati cum Opii pulvere* Hydrargyrum iodatum
- freshly prepared 50 centigrammes
- Opium powder 20 centigrammes
- Powdered Liquorice 30 centigrammes
- White honey, q.s. for 10 pills.
19. *Pilula plumbi cum Opio* Lead acetate, in powder 80 grammes
- Opium, in powder 12 grammes
- Syrup of glucose (or a sufficient quantity) 8 grammes
20. *Pilulae terebinthinae composita* Opium 0.5 gramme

tae Chinina sulfas 2 grammes

 Styrax liquidus 2 grammes

 Terebinthina laricina 8 grammes

 Magnesii subcarbonas, a sufficient quantity to make 100 pills.

21. Pulvis Ipecacuanhae et Opii (Dover's Powder) Powdered Ipecacuanha 100 grammes

 Powdered Opium 100 grammes

 Potassium sulphate in powder 800 grammes

22. Mixtures of Dover's Powder (see formula under 21) with mercury and chalk, aspirin, phenacetin, quinine and its salts, and sodium bicarbonate.

23. Pulvis kino compositus Kino, in powder 75 grammes

 Opium, in powder 5 grammes

 Cinnamon bark, in powder 20 grammes

24. Suppositoria plumbi composita. Lead acetate, in powder 2.4 grammes

Syn.: Suppositoria plumbi Opium, in powder 0.8 gramme

cum opio Oil of theobroma, a sufficient quantity for 12 suppositories, each weighing about 1 gramme.

25. Coryza Tablets, No. 2 Powdered opium 0.0043 gramme

 Quinine sulph. 0.022 gramme

 Ammon. chlor. 0.022 gramme

 Camphor 0.022 gramme

 Ext. belladonna leaves 0.0043 gramme

 Ext. aconite root 0.0043 gramme

26. Diarrhoea Tablets, No. 2 Powdered opium 0.016 gramme

 Camphor 0.016 gramme

 Powdered ipecacuanha 0.008 gramme

 Lead acetate 0.011 gramme

34. Unguentum gallae cum Opio (see formula under 33) mixed with other ointments and plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.

35. Yatren—105 (Iodoxyquinoline-sulphonic acid) with 5 per centum opiumadmixture.

B.—COCAINE PREPARATIONS:

1. Bernatzik's Injections (a) Hydrargyrum bicyanatum 0.03 gramme
Cocainum 0.02 gramme

(b) Hydrargyrum succinatum 0.03 gramme
Cocainum 0.01 gramme

2. Stila's Injections (a) Hydrargyrum succinatum 0.03 gramme
Cocainum muriaticum 0.01 gramme

(b) Hydrargyrum succinatum 0.05 gramme
Cocainum muriaticum 0.03 gramme

3. Natrium biboracicum compo-situm cum Cocaino In tablets, compressed tablets, lozenges, pastilles and the like, difficult to break up, and containing not more than 0.2 per centum of cocaine salts in conjunction with not less than 20 per centum borax and not less than 20 per centum antipyrine, or some similar analgesic, and not more than 40 per centum of flavouring matter. Maximum weight of each tablet, etc., 1 gramme.

4. Caustic "Nerve Pastes" Preparations containing, in addition to cocaine salts or cocaine and morphine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.

5. Cocaine and Atropine Tablets, Atropinum sulphuricum 0.0003 gramme
with a content of not more Cocainum hydrochloricum 0.0003 gramme
than 0.0003 gramme of co- Mannite 0.003 gramme
caine salts and not less than ---
0.0003 gramme of atropine Weight of one tablet 0.0036 gramme
salts to each tablet Cocaine content, 8.3 per centum.

C.—DICODIDE PREPARATIONS:

1. Cardiazol-Dicodide Solutions Solutions containing not less than 10 per centum of cardiazol and not more than 0.5 per centum of dicodide salts.

D.—EUCODAL PREPARATIONS:

1. Anti-Opium Tablets Eucodal 1 gramme

Pulvis gentianae 35 grammes

Pulvis ipecacuanhae 20 grammes

Quinine sulphate 20 grammes

Caffeine 5 grammes

Sugar of milk 25 grammes

Mix up and make up 5-grain tablets.

2. Tablets B.B. Compound Berberis vulgaris powder 0.0324 gramme

Nux vomica 0.013 gramme

Eucodal 0.0032 gramme

Ipecacuanha 0.0648 gramme

Rhubarb 0.013 gramme

Pulvis cinnamoni compositus 0.0324 gramme

Aromatic chalk 0.0032 gramme

E.—DIPHENOXYLATE PREPARATIONS:

1. Tablets each weighing 0.8 gramme and containing 2.5 milligrammes of diphenoxylate hydrochloride and 0.025 milligramme of atropine sulphate.

2. Preparations containing 2.5 milligrammes of diphenoxylate hydrochloride 0.025 milligramme of atropine sulphate, 85 milligrammes of lactose 7 milligrammes of sugar, 21.6 milligrammes of starch, 3 milligrammes of talc, 1 milligramme of magnesium stearate and 0.7 milligramme of tartrazine.

DANGEROUS DRUGS (SECTION 13 EXEMPTION) NOTICE

under s. 13

G.N. 3/1959(F)

97/1960(F)

224/1961(F)

252/1963(F)

1. Citation

This notice may be cited as the Dangerous Drugs (Section citation 13 Exemption) Notice.

2. Application

Section 13 of the Act shall cease to apply to the products specified in the Schedule, being products obtained from any of the phenanthrene alkaloids of opium.

SCHEDULE para. 2

EXEMPTED PRODUCTS

1. Methyldesomorphine.
2. Dihydrodesoxymorphine.
3. 6-Methyldihydromorphine.
4. Methyldihydromorphinone.
5. N-allylnormorphine.
6. Diacetyl-N-allylnormorphine.
7. Myrophine (myristyl ester of benzylmorphine).
8. Oxymorphine (dihydro-14-hydroxymorphinone).
9. Norcodeine.
10. Normorphine.
11. Hydromorphinol (14-hydroxydihydromorphine).
12. Nicocodine.

APPLICATION OF PART III OF THE ACT

under s. 14

G.N. 57/1956(F)

144/1961(F)

251/1963(F)

The Minister has applied Part III of the Act—

(a) to the drugs and products specified in the First Schedule hereto without any modification; and

(b) to the products specified in the Second Schedule hereto with the modification that such products shall not be treated as a drug to which Part III of the Act applies for the purposes of Part II of the Dangerous Drugs Regulations. Above p. 13

FIRST SCHEDULE

Methyldesomorphine (6-methyl- Δ^1 ; 6-desoxymorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldesomorphine or its salts; Dihydrodesoxymorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrodesoxymorphine or its salts;

6-Methyldihydromorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of 6-methyldihydromorphine or its salts;

Methyldihydromorphinone and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldihydromorphinone or its salts.

SECOND SCHEDULE

4-Dimethylamino-1:2 diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1: 2-diphenyl-3-methyl-2-propionyloxybutane - commonly known as propoxyphene.

Nicocodine, and its salts, and any preparation, admixture, extract or other substance containing any proportion of nicocodine or its salts.

[Chap3503]CHAPTER 35:03

PESTICIDES

ARRANGEMENT OF SECTIONS

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12 of 2000

G.N. 14/2002

An Act to provide for the control and management of the import, export, manufacture, distribution, storage, disposal and use of pesticides; the establishment of a Pesticides Control Board; and further to provide for matters incidental thereto or connected therewith

[1ST MAY 2002]

PART I

PRELIMINARY

[Ch3503s1]1. Short title

This Act may be cited as the Pesticides Act.

[Ch3503s2]2. Interpretation

In this Act, unless the context otherwise requires—

“active ingredient” means the biologically and chemically active part of a pesticide present in a formulation;

"advertising" means the promotion of the sale and use of pesticides by print and electronic media, signs, displays, gift, demonstration or word of mouth;

"Board" means the Pesticides Control Board established under section 3;

"common name" means the name assigned to a pesticide active ingredient by the International Standards Organization to be used as a generic or non-proprietary name for that particular active ingredient only;

"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 and the natural and built environment;

"formulation" means the combination of various ingredients designed to render the product useful and effective for the purpose claimed;

"inspector" means an inspector designated as such under section 38;

"label" means the written, printed or graphic matter on, or attached to a pesticide, or its immediate container and the outside container or wrapper of the retail package of the pesticide;

"manufacture", in relation to a pesticide, means to prepare, compound, formulate, mix, make, pack, label, or otherwise treat the pesticide with a view to its sale, but does not include the carrying out of bona fide research relating to the pesticide or any act incidental to such research;

"pest" means unwanted species of animals or plants, including vectors of human or animal disease, causing harm during or otherwise interfering with, the production, processing, storage, transportation or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs;

“pesticide” means any substance or mixture of substances intended to be administered on animals, plants or humans for preventing, destroying or controlling any pest, and includes any substance intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport; and for purposes of this Act, any two pesticides which do not have the same manufacturer, formulation and trade name shall be treated as different pesticides;

"pictogram" means a symbol which conveys a message without words;

"Prior Informed Consent Procedure" means the procedure, provided for in the International Code of Conduct on the Distribution and Use of Pesticides, for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of pesticides that have been banned or severely restricted in order to protect human health or the environment, in any other country;

"Registrar" means the Registrar of Pesticides appointed under section 10;

"restricted pesticide" means a pesticide registered for certain specific use or to be used only under stipulated conditions;

"sell" includes offer for sale and offer to provide goods as part of a service of pest control even if the goods are described as free or included in the service;

"trade name" means that name under which the pesticide is labelled, registered and promoted by the manufacturer and which can be used exclusively by the manufacturer to distinguish the product from other pesticides containing the same active ingredient;

"technical committee" means any committee established under section 8.

PART II

ESTABLISHMENT, FUNCTIONS AND POWERS OF THE PESTICIDES CONTROL BOARD

[Ch3503s3]3. Establishment of Pesticides Control Board

There is hereby established a body to be known as the Pesticides Control Board (in this Act otherwise referred to as the "Board"), which shall be responsible for the control and management of all pesticides in Malawi and perform the functions assigned to it by this Act, and which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immovable, for the purposes of or in the course of carrying out its functions; and
- (d) capable of doing and performing all acts and things as bodies corporate may by law do and perform.

[Ch3503s4]4. Composition of the Board

- (1) The Board shall consist of—
 - (a) the Secretary for Agriculture;
 - (b) the Director of Agricultural Research;
 - (c) the Secretary for Commerce and Industry;
 - (d) the Director of Environmental Affairs;
 - (e) the Principal of Bunda College of Agriculture;
 - (f) the Chairman of the Pesticides Suppliers Association of Malawi;
 - (g) the Executive Secretary of the Consumers Association of Malawi;
 - (h) the Director of the Malawi Bureau of Standards;
 - (i) the Registrar of the Pharmacy, Medicines and Poisons Board;
 - (j) a public health officer, appointed by the Minister; and
 - (k) four other members representing the private sector, appointed by the Minister.

(2) The Minister shall designate the Chairperson of the Board from among members of the Board appointed under subsection (1) (j), and the term of office of the Chairperson shall be three years.

(3) A member of the Board appointed under subsection (1) (j) shall hold office for a period of not longer than three years, and may be removed from office by the Minister at any time.

(4) Each member of the Board may nominate a person by name from the same institution for appointment by the Minister as an alternate member, and if a member is unable to attend a meeting of the Board the appointed alternate member may attend, participate and vote in place of the absent member.

(5) The Board may invite any person to assist the Board in dealing with any matter, and the person invited may participate in the proceedings of the Board concerning that matter but shall not be entitled to vote.

[Ch3503s5]5. Meetings of the Board

(1) Subject to subsection (2), the Board shall hold ordinary meetings for the dispatch of business at least four times a year.

- (2) An extraordinary meeting of the Board—
 - (a) may be convened by the Chairperson at anytime;

(b) shall be convened within twenty-one days of receipt by the Chairperson of a request in writing signed by at least four members and specifying the purpose for which the meeting is being convened.

(3) The Chairperson shall decide where and when the Board shall meet.

(4) At any meeting of the Board—

(a) the Chairperson shall preside;

(b) if the Chairperson is absent, the members present shall elect one of their number to preside at the meeting;

(c) five members, including the Chairperson or other member chairing the meeting, shall form a quorum; and

(d) all questions raised at the meeting shall be determined by the decision of the majority of members present and entitled to vote, but if there is a tie the matter shall be put to the vote and the Chairperson or other member presiding shall have a casting vote.

(5) The Registrar shall serve as secretary to the Board.

(6) Subject to this section, the Board may regulate its own procedure.

[Ch3503s6]6. Allowances of members of the Board

A member of the Board shall be paid out of the funds of the Board, such allowances as the Minister may determine.

[Ch3503s7]7. Non-liability of members of the Board, etc.

No member of the Board or any technical committee of the Board shall be liable for any act or default of his, or of the Board done in the exercise in good faith of the functions or powers of the Board.

[Ch3503s8]8. Technical committees

The Board may establish one or more technical committees, to advise it in implementing the provisions of this Act.

[Ch3503s9]9. Secretariat of the Board

There shall be a secretariat of the Board which shall consist of a Registrar of Pesticides (in this Act otherwise referred to as the "Registrar") and such other staff of the Board, subordinate to the Registrar, appointed in accordance with section 10.

[Ch3503s10]10. Appointment of Registrar and other staff

(1) The Board shall appoint, on such terms and conditions as it may determine, the Registrar who shall be the chief executive officer of the Board and shall in addition perform such duties as the

Board may assign to his office and ensure the effective administration and implementation of this Act.

(2) Without prejudice to the generality of subsection (1), the Registrar shall—

- (a) issue licences, permits and other authorizations required under the Act as directed by the Board;
- (b) issue certificates of registration as directed by the Board;
- (c) maintain a public register of registered pesticides;
- (d) maintain registers of manufacturers, importers and commercial applicators of pesticides.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff, subordinate to the Registrar, as it considers necessary for the performance of its functions and to assist the Registrar in discharging his functions and responsibilities.

[Ch3503s11]11. Functions of the Board

(1) The Board shall be responsible for the registration, control and management of all pesticides in Malawi and perform such other functions assigned to it under this Act.

(2) Without prejudice to the generality of subsection (1), the Board—

- (a) shall register pesticides and issue certificates and permits in accordance with this Act;
- (b) shall monitor and control the import, export, manufacture, distribution, sale, storage, use and disposal of pesticides in Malawi;
- (c) may issue guidelines on the environmentally sound handling and use of pesticides after consultation with such persons or bodies as seem to the Board to be broadly representative of the interests concerned;
- (d) may, in consultation with the relevant authorities, conduct public educational campaigns on the safe handling and use of pesticides;
- (e) may advise the Minister on whether or not the Minister should use the power granted under section 23 (3) to exempt a pesticide or class of pesticides from the licensing requirements under the Act, taking into consideration the potential implication for human and animal health and the environment;
- (f) may advise the Minister in connexion with all matters relating to pesticides and the performance of functions assigned to the Minister under this Act;
- (g) may propose regulations to be made under this Act by the Minister; and
- (h) may, subject to the approval of the Minister, delegate any of its powers to any government officer.

PART III

FINANCIAL PROVISIONS

[Ch3503s12]12. Funds of the Board

(1) The funds of the Board shall consist of—

- (a) such money as may be appropriated by Parliament for the purposes of the Board;
- (b) registration and licence fees prescribed under Parts IV and V;
- (c) any levy imposed pursuant to section 13;
- (d) such moneys as may be received by the Board under subsection (2); and
- (e) such moneys as may otherwise vest in or accrue to the Board.

(2) The Board may—

- (a) accept money by way of grants or donations from any source in or outside Malawi;
- (b) with the approval of the Minister, raise by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, documents and other services provided by the Board.

(3) The Board may invest in such manner as it thinks fit, such of its funds as it does not immediately require for the performance of its functions.

[Ch3503s13]13. Levy

The Minister, acting on the advice of the Board, and in consultation with the Minister responsible for finance, may by order published in the Gazette, impose a levy on the importation into, or manufacturing in, Malawi of pesticides and the levy shall be appropriated for the general operations of the Board or for certain operations of the Board specified in the Order.

[Ch3503s14]14. Books and other records of accounts and audit

(1) The Board shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Board shall—

- (a) be audited annually by independent auditors appointed by the Board; and
- (b) be examined by the Auditor General before being presented to the Minister in accordance with section 15.

[Ch3503s15]15. Annual reports

(1) The Board shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Board, and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information relating to the Board as the Board may consider appropriate or as the Minister may require.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Board may publish the report for sale to the public.

[Ch3503s16]16. Financial year

The financial year of the Board shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or such other dates the Minister may specify by Order published in the Gazette:

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Minister shall determine, but being not less than six months nor more than eighteen months.

PART IV

REGISTRATION OF PESTICIDES

[Ch3503s17]17. Registration of pesticides

(1) Subject to subsection (2), no person shall import, manufacture or sell a pesticide which has not been registered under this Act.

(2) An unregistered pesticide may be—

(a) imported under an import permit issued under section 20 for the purpose of analysis, registration or research, or under a pest emergency permit issued under section 52; and

(b) manufactured for export in accordance with a licence to manufacture issued under section 24.

[Ch3503s18]18. Application for registration of pesticides

(1) An application for the registration of a pesticide shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(2) An application under subsection (1) shall furnish whatever information the Board may require in order to satisfy itself in respect of each of the matters set out in section 19 (3).

(3) Subject to subsection (4), the Board shall not disclose any confidential information submitted to it in connexion with an application for registration.

(4) For the purpose of subsection (3) “confidential information” shall not include—

- (a) trade names or other commonly used names;
- (b) broad or general descriptions on use;
- (c) safe handling precautions to be observed in the manufacture, storage, transport and use of chemicals;
- (d) recommended methods of disposal and elimination;
- (e) safety measures in case of accident;
- (f) physical and chemical data with the exception of data revealing the chemical identity of a pesticide;
- (g) summaries of health, safety and environmental data, including precise figures and interpretations.

(5) The Board shall give the applicant a reasonable opportunity of participating in the preparation of the summaries referred to in subsection (4) (g).

[Ch3503s19]19. Consideration of applications

(1) The Board shall consider each application as soon as reasonably practicable and shall—

- (a) register the pesticide, subject to any condition which the Board may consider appropriate; or
- (b) refuse to register the pesticide; or
- (c) direct that the applicant furnish additional information or undertake further investigations, tests, trials or analysis in connexion with the pesticide, and communicate its decision to the applicant in writing.

(2) If the Board gives directions to an applicant under subsection (1) (c), the Board shall reconsider the application in accordance with the procedure in subsection (1) after the Board has received the additional information required and evidence that the applicant has complied with directions.

(3) Subject to subsection (4), the Board shall register a pesticide if the Board is satisfied that the pesticide—

- (a) is suitable and effective for the purposes for which it is intended;
- (b) does not pose a significant danger to human or animal health or the environment;

(c) is desirable in that overall the effects of the pesticide are likely to be more beneficial than detrimental to Malawi, its people and the environment; and

(d) will be properly packaged and labelled in accordance with this Act.

(4) The Board shall not register a pesticide if the Board has reason to believe that information furnished or any representation made in, or in connexion with, the application is false or incorrect in a material respect.

(5) If the Board decides not to register a pesticide, it shall promptly notify the applicant in writing giving reason for its decision.

(6) If the Board decides to register a pesticide it shall—

(a) assign a registration number to the pesticide;

(b) enter the purchase in the register of pesticides; and

(c) issue a certificate of registration to the applicant.

(7) The Board shall cause to be published in the Gazette periodically a list of all pesticides registered under this section.

[Ch3503s20]20. Importation of unregistered pesticides

(1) The Board may issue a permit authorizing the importation of a pesticide which has not been registered if the Board is satisfied that the pesticide will be used solely for the purposes of analysis, registration or research.

(2) An application for a permit under subsection (1) shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(3) A permit issued under subsection (1) shall state—

(a) the period of validity, which shall not exceed one year;

(b) the maximum quantity of the pesticide covered by the permit; and

(c) any conditions which the Board considers appropriate to impose to protect human and animal health and the environment, and to give effect to this Act.

(4) A permit issued under subsection (1) shall only authorize the importation of a single consignment, which may contain more than one pesticide, which shall not exceed—

(a) in the case of a liquid pesticide, two litres; and

(b) in the case of a powder pesticide, one kilogram, and the permit shall be surrendered to an inspector at the place of importation.

[Ch3503s21]21. Duration of registration and renewal of registration

(1) The registration of a pesticide shall be valid for a period of five years.

(2) The Board may, upon the application of a person desiring to renew the registration of a pesticide, renew the registration for further period of five years if the Board continues to be satisfied in respect of the matters referred to in section 19 (3).

(3) If the Board refuses to renew the registration of the pesticide in accordance with subsection (2), it shall give its reasons in writing to the applicant.

[Ch3503s22]22. Cancellation and suspension of registration and permits

(1) The Board may suspend or cancel the registration of a pesticide or a permit to import an unregistered pesticide if—

(a) the registration or permit was secured in contravention of any of the provisions of this Act;

(b) the Board considers that continued registration or authorization under a permit is undesirable on the ground that the pesticide is harmful to human and animal health or the environment or is not effective for the intended use;

(c) the conditions subject to which the registration or permit was granted have not been complied with;

(d) the pesticide has fallen into disuse, or the pesticide is no longer required for the purpose for which the permit was granted;

(e) the pesticide has been withdrawn from the market and use and the person upon whose application the pesticide was registered has notified the Board in writing of such withdrawal;

(f) the Board is no longer satisfied in respect of any matter referred to in section 19 (3) as a result of the becoming aware new facts or of an unforeseen change in circumstances.

(2) Before cancelling the registration of a pesticide or a permit, the Board shall give the party to whom the registration or permit was granted an opportunity to make representations as to why the registration or permit should not be cancelled.

(3) The Board shall give reasons in writing for the cancellation of a registration or permit to the party to whom the registration or permit had been granted.

PART V

LICENSING OF MANUFACTURE, EXPORT, STORAGE FOR SALE AND DISTRIBUTION OF PESTICIDES

[Ch3503s23]23. Prohibition on manufacture, sale, etc., of pesticides without a licence

(1) Subject to subsection (3), no person shall manufacture, export, distribute, store for sale, or sell a pesticide without a licence issued by the Board and in accordance with any conditions prescribed by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Minister, acting on the advice of the Board, may by order published in the Gazette, prescribe that a pesticide or class of pesticides may be manufactured, exported, distributed, stored for sale, or sold without a licence.

[Ch3503s24]24. Licence to manufacture pesticide

(1) An application for a licence to manufacture a pesticide shall be made in the prescribed manner to the Board which, on payment of the prescribed fee, may issue a licence if the Board is satisfied that—

- (a) the applicant is technically competent to manufacture the pesticide;
- (b) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it, and is equipped and able to effectively avoid or minimize the risks; and
- (c) the premises and manner in which, and conditions under which, the pesticide will be manufactured are appropriate for the purpose and will not endanger human or animal health or the environment and are in accordance with such conditions as may be prescribed.

(2) A licence under this section—

- (a) shall specify the specific location and premises at which the manufacture of the pesticide is authorized and shall not apply to more than one premises;
- (b) shall be valid for five years from the date of issue, but may be renewed on payment of the prescribed fee;
- (c) may require the licensee to monitor the health of employees who may be exposed to the pesticide;
- (d) may authorize the manufacture of more than one pesticide; and
- (e) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

[Ch3503s25]25. Licensing of premises to store for sale and sell pesticides

(1) An application for a licence to store for sale or sell a pesticide at specified premises shall be made in the prescribed manner to the Board which shall, on payment of the prescribed fee, issue a licence if the Board is satisfied that—

- (a) the application relates to a pesticide which is currently registered under the Act;

(b) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it;

(c) the premises and manner in which, and the conditions under which, the pesticide will be stored or offered for sale are appropriate for the intended purpose, and will not endanger human or animal health or the environment, and are in accordance with such conditions as may be prescribed; and

(d) the applicant is a proper person to be granted a licence.

(2) A licence under this section—

(a) shall specify the location and premises at which the sale or storage for sale of the pesticide is authorized, and shall not apply to more than one premises;

(b) may authorize both the sale and storage for sale of one or more pesticides;

(c) shall be valid for the period specified in the licence which may not exceed three years from the date of issue but may be renewed on payment of the prescribed fee; and

(d) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of the application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

[Ch3503s26]26. Licensing of commercial applicators

(1) No person shall apply pesticides for gain except in accordance with a commercial applicator's licence issued by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Board may issue a commercial applicator's licence if the Board is satisfied that—

(a) the applicant is aware of the beneficial uses and potential effects of the pesticides and of the risks involved in using and handling it and is equipped and able to effectively avoid or minimize the risks;

(b) the applicant and any employees who will be involved in handling or applying pesticides have been adequately trained in the safe handling and use of pesticides;

(c) the applicant has insurance which is adequate to cover any reasonably foreseeable legal liability which the applicant may incur in respect of death, injury or loss arising from the use, transportation or storage of pesticides by the applicant.

(4) The Board shall cause to be published in the Gazette periodically a list of the names of all commercial applicators licensed under this section.

[Ch3503s27]27. Suspension and cancellation of licence

(1) The Board may suspend, cancel or refuse to renew a licence issued under sections 24, 25 or 26 if the Board is satisfied that—

- (a) the application for the licence contained a material misrepresentation;
- (b) the conditions in the licence have not been complied with; or
- (c) it is necessary to do so to protect human or animal health or the environment.

(2) Before taking any action under subsection (1), the Board shall give the licensee an opportunity to make representations as to why the contemplated action should not be taken.

(3) Where the Board has delegated its powers to issue a licence then the delegate may exercise the powers in subsection (1) and shall comply with subsection (2).

PART VI

PRESENTATION OF PESTICIDES

[Ch3503s28]28. Pesticide containers

(1) No person shall manufacture, import, export, sell, distribute or store any pesticide which is packed in a container which—

- (a) is unsafe for storage, handling or use in that it is inadequate to prevent harm to human and animal health or to the environment; or
- (b) does not meet any standards which may be prescribed under this Act; or
- (c) is required to be approved under this Act and has not been approved.

(2) No person shall, contrary to any directions given by the Registrar, or an inspector, use a pesticide container for any purpose other than to contain pesticides.

[Ch3503s29]29. Labels

(1) No person shall distribute, sell, offer for sale, or hold in stock for sale, any pesticide unless it is in a container which prominently displays a clearly legible label which has been approved by the Board and is firmly attached to the container.

(2) The text of the label and of any publication relating to a pesticide which is intended to be distributed or displayed with the pesticide shall be in English and in any other language or languages spoken in Malawi which the Board may require, and shall comply with such other requirements as may be prescribed.

(3) No person shall alter or deface the label of any pesticide or of any publication referred to in subsection (2) in such a way as to cause it to contravene the Act.

[Ch3503s30]30. Advertising of pesticides

(1) No person shall advertise any pesticide which has not been registered under this Act.

(2) No person shall advertise any pesticide in a manner that—

(a) is false or misleading in any material particular or is intended to deceive;

(b) is inconsistent with the statement required under section 29 to be included in the label;

(c) employs any false or misleading comparisons with other pesticides; and

(d) is contrary to the conditions of registration of the pesticide and with such other requirements as may be prescribed.

PART VII

HEALTH ENVIRONMENTAL MATTERS

[Ch3503s31]31. Control of pesticide residues in food

(1) No person shall manufacture, export, sell or distribute any food or feed for human or animal consumption if a pesticide has been applied to it, or to the crops from which it was made, in contravention of this Act.

(2) The Minister, acting on the advice of the Board and in consultation with the Minister responsible for health and the Minister responsible for environmental affairs, may by regulation—

(a) prohibit or restrict the use of certain pesticides in any food products, feedstuffs or food by-products;

(b) prohibit or restrict the use of certain pesticides at any period in the growth of food crops; or

(c) establish standards of maximum residue limits of pesticides in food, food products, feedstuffs and food by-products.

[Ch3503s32]32. Duty of care when selling food and animal feeds

(1) Any person who sells food or animal feed and who has reason to suspect that the food or animal feed may contain an excessive level of pesticide shall not sell or dispose of the food or feed for human or animal consumption without taking all reasonable steps to ensure that it does not contain an excessive level of pesticide.

(2) If any person or domestic animal suffers ill-health or dies after consuming food or animal feed which contains an excessive level of pesticide, for the purposes of a prosecution under this Act, the seller of the food or animal feed shall be presumed to have contravened subsection (1) unless the seller satisfies the court that, on a balance of probabilities, the food or animal feed did not contain an excessive level of pesticides when sold.

(3) The Minister may by regulation prescribe steps which shall be taken to comply with the duty imposed by subsection (1) and if a person charged with contravening subsection (1) proves that

all the relevant steps prescribed by regulation were complied with, that person shall be presumed to have complied with subsection (1).

(4) For the purposes of this section “an excessive level of pesticide” means a level of pesticide in food or animal feed which—

- (a) exceeds the maximum pesticide residue limits prescribed by law regardless of the cause of the excessive level of pesticide; and
- (b) is proved to have caused actual injury or death to any person or domestic animal.

[Ch3503s33]33. Imposition and sampling

(1) An inspector shall have power—

- (a) to enter and inspect premises where food or animal feeds are stored or sold;
- (b) to seize, detain, remove and take samples of any food or animal feed which the inspector reasonably believes may be contaminated by pesticides, wherever found; and
- (c) to submit such samples for analysis.

(2) No person shall be entitled to charge or claim compensation for any reasonable amount of food or animal feed taken as a sample under this section.

(3) The Minister may by regulation prescribe procedures to be followed in taking samples and for analysis of food and animal feeds.

[Ch3503s34]34. Duties of employers

(1) No person shall use or require an employee to use a pesticide in a manner or for a purpose contrary to the manner or purpose permitted by the Board on the registration of the pesticide or as may be prescribed.

(2) No person shall compel an employee to use any pesticide in a manner or for a purpose contrary to the provisions of this Act.

(3) Every employer who requires or permits an employee to use a pesticide shall provide and require the employee to use facilities, equipment and clothing conducive to the safe handling of the pesticide.

(4) The Registrar may by written notice require any employer to take steps to reduce the risks to the health of employees from pesticides, including requiring the employer to monitor the health of employees exposed to pesticides.

[Ch3503s35]35. Notification of death, ill-health or injury

(1) If a person dies, becomes ill or is injured and there are grounds for believing that this was wholly or partially caused by exposure to a pesticide, the Registrar shall be notified immediately by—

(a) the owner or person in charge of premises, land, or a vessel, aircraft, vehicle or other mode of transport, where the exposure occurred;

(b) the employer of a person who was or may have been exposed to the pesticide in the course of his employment;

(c) any registered medical practitioner who, upon examination of a person, has reason to believe that such a person has died or suffered injury as a result of exposure to pesticide; or

(d) any public health officer who has reason to believe that exposure to a pesticide may be linked to any death or detrimental effects on human health in an area for which the officer is responsible.

(2) Any person responsible for livestock, wildlife or fisheries who has reason to believe that exposure to a pesticide may have caused the death of any mammal, bird, fish or reptile which is not a pest, whether domestic or wild, or may be harming animal health or the environment shall notify the Registrar as soon as possible.

[Ch3503s36]36. Inquiries

(1) If the Board has reason to believe that any pesticide or pesticides may be having a detrimental effect on human or animal health or the environment, the Board may appoint a suitably qualified person or persons to hold an inquiry into the matter.

(2) The person or persons appointed to hold the inquiry shall have the power of a magistrate to summon witnesses and compel the production of documents and material objects.

(3) The Registrar shall report to the Board on the findings and recommendations of the inquiry and the measures taken pursuant to them.

[Ch3503s37]37. Disposal of pesticides and pesticide containers

No person shall dispose of any pesticide or pesticide container or packaging in a manner that is unduly hazardous to human or animal health or the environment or is contrary to any written law.

PART VIII

ENFORCEMENT

[Ch3503s38]38. Designation of inspectors

The Board may by notification in the Gazette designate any duly qualified person to be an inspector for the purposes of this Act.

[Ch3503s39]39. Powers and duties of inspectors

An inspector may—

(a) enter on any land, premises, aircraft, vessel or vehicle, at or in which any pesticide is or may be reasonably suspected to be manufactured, stored, transported, sold, distributed or used to determine whether the provisions of this Act are being complied with;

(b) require the production of, inspect, examine and copy licences, registers, records and other documents relating to this act;

(c) make examinations and inquiries to discover whether this Act is complied with;

(d) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for tests and analysis;

(e) carry out periodic inspections of all establishments which manufacture, import, export, store, sell, distribute or use pesticides to determine whether the provision of this Act are being complied with;

(f) enter and inspect farmers' fields to ensure that only the recommended pesticides are used on specific crops and according to the prescribed procedures;

(g) seize any equipment, pesticide, document, record or other things which the inspector believes has been used in, or which appears to afford evidence of, a contravention of this Act.

(h) require any person whom the inspector suspects of having committed, or of having knowledge of, an offence under this Act, to state his or her name and residential address; and

(i) cause a police officer to investigate any person whom the inspector on reasonable grounds suspects of having committed an offence against this Act.

(2) Notwithstanding subsection (1), any inspector shall—

(a) require a warrant to enter any private dwelling place without the consent of the occupier; and

(b) on request produce their authority to enter upon any premises, place, aircraft, vessel or vehicle.

(3) The inspector shall give a receipt to the person from whose custody any thing has been seized under subsection (1) (g), and the thing shall be returned to that person immediately if it is decided that no prosecution will be instituted or if the trial of the person has been concluded, unless the thing was declared forfeited under section 48.

[Ch3503s40]40. Record keeping

(1) The Board shall cause to be kept records of all pesticides manufactured in, imported into, and exported from, Malawi.

(2) Every person who manufactures, imports, or exports pesticides, or is a commercial applicator of pesticides, shall keep a record of the quantities of pesticides manufactured, imported,

exported, or used by the commercial applicator, and of any other information that may be prescribed.

(3) The records kept in accordance with subsection (2) shall be made available to the Board or the Registrar upon request, and the Minister may by regulation require that the records be transmitted periodically to the Board.

(4) The Board and the Registrar shall keep confidential all information disclosed under subsection (3).

PART IX

ANALYSIS

[Ch3503s41]41. Procedure for taking samples of pesticides

(1) Any sample of a pesticide taken under this Act shall be taken into three parts each of which shall immediately be sealed and suitably labelled or marked in the presence of the person in charge of or in possession of the pesticide, or their representative; one part shall be sent to an analyst together with a certificate in the prescribed form signed by the inspector or officer; the second part together with a copy of the certificate shall be delivered or posted in accordance with guidelines issued by the Board to the person in possession of the pesticide; the third part shall be retained by the Register.

(2) In the event of a dispute relating to a sample, the Board or the court may have both the sample delivered to the Registrar and the sample delivered to the person in possession of the pesticide, sent to a laboratory for analysis.

(3) No person shall be entitled to charge or claim compensation for any pesticide taken as a sample under this section.

(4) For purposes of this section "sample" means a quantity of pesticide not exceeding—

- (a) in the case of a liquid pesticide, two litres; and
- (b) in the case of a powder pesticide, one kilogram.

[Ch3503s42]42. Analysis

(1) The Minister may by notice published in the Gazette appoint any competent person to be a designated analyst and any suitable laboratory to be a designated laboratory for the purposes of this Act.

(2) Any analyst of a laboratory designated under section (1) may analyse any pesticide sample, food, water, air, or soil submitted by any court, the Board or an inspector for any purpose which they may consider necessary to implement the provisions of this Act.

[Ch3503s43]43. Certificate of analysis

After conducting any analysis under this Act the designated analyst or laboratory shall issue a certificate of analysis in the prescribed form; and the certificate of analysis shall state the method of analysis used and shall be signed by either the designated analyst or the chief chemist of the laboratory, as the case may be.

PART X

OFFENCES AND PENALTIES

[Ch3503s44]44. Offences

(1) Any person who—

- (a) give false information in an application for the registration of a pesticide;
- (b) imports, manufactures, stores for sale, sells or advertises, an unregistered pesticide contrary to section 17;
- (c) manufactures, exports, distributes, stores for sale, or sells a pesticides contrary to section 23;
- (d) carries on the business of a commercial pesticides applicator without a licence contrary to section 26;
- (e) manufactures, imports, exports, stores for sale, sells, or distributes a pesticide in contravention of section 28 or 29; and
- (f) sells any food or feedstuff or human or animal consumption which that person knows to contain pesticides residue levels in excess of any limits prescribed by law or in contravention of section 30,

is guilty of an offence and is liable to imprisonment for two years and to a fine of K100,000.

(2) Any person who—

- (a) manufactures, exports, distributes, stores for sale, sells or uses any pesticides, in contravention of the provisions of a licence issued under section 23, 24, 25 or 26;
- (b) advertises a pesticide in contravention of section 30;
- (c) manufactures, imports, exports, sells, distributes or stores any pesticide which has been adulterated, or which has decomposed or deteriorated so as to be ineffective, or is hazardous to human health or the environment or which is packed in containers which have deteriorated or have been damaged rendering them dangerous to store, handle or use safely,

is guilty of an offence and is liable to imprisonment for three years and to a fine of K150,000.

(3) Any person who—

- (a) sells or disposes of any food or animal feed for human or animal consumption in contravention of section 32 (2);

(b) obstructs an inspector in the course of his or her duties contrary to section 38 or 41;
or

(c) alters a sample or the seals placed on such a sample by an inspector or the Board under section 38 or 41,

is guilty of an offence and is liable to imprisonment for six months and to a fine of K20,000.

(4) Any person who contravenes any provision of this Act for which no other penalty is specifically provided is liable—

(a) on first conviction to imprisonment for three months and to a fine of K10,000; and

(b) on any subsequent conviction for the same offence to imprisonment for six months and to a fine of K20,000.

(5) If a person convicted of an offence under this Act continues to commit the offence after the conviction the person commits a further offence is liable to a fine of K1,000 for every day on which the offence is committed.

[Ch3503s45]45. Fixed penalties

(1) The Minister may by regulation—

(a) prescribe offences under this Act in respect of which a fixed penalty may be paid;

(b) prescribe the fixed penalty applicable to each such offence which may not exceed K2,000; and

(c) authorize government officers, other than inspectors under this Act, to receive payment of fixed penalties.

(2) An inspector who has reason to believe that a person has committed an offence prescribed by the Minister under subsection (1) may, as soon as reasonably possible after the alleged commission of the offence, give an infringement notice to the alleged offender.

(3) An infringement notice shall—

(a) describe the alleged offence; and

(b) state that if the alleged offender pays the fixed penalty specified in the notice to an authorized person identified in the notice within 30 days of the giving of the notice, the alleged offender will not be charged for the alleged offence before a court.

(4) An authorized person may, at any time—

(a) extend the period of 30 days for payment of the fixed payment in any particular case;

(b) send a letter to the alleged offender withdrawing the infringement notice in which case any amount paid in response to the infringement notice shall be refunded.

(5) If the prescribed fixed penalty is paid within the period allowed and the infringement notice is not withdrawn, the alleged offender shall not be prosecuted and if a person charged with committing an offence under this Act proves that a fixed penalty has been paid in respect of the offence in response to an infringement notice which has not been withdrawn, the accused shall be acquitted of the alleged offence.

(6) Any sum of money received under this section shall be dealt with as if it were a fine imposed by a court.

[Ch3503s46]46. Personal liability of directors, partners and managers

If an offence under this Act that is committed by a corporation is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of any director, partner or manager of the corporation, that person as well as the corporation, commits the offence.

[Ch3503s47]47. Evidence

(1) In any criminal proceedings under this Act—

(a) any quantity of pesticides in or upon any premises, place, aircraft, vessel or vehicle at the same time a sample of it is taken under this Act shall, unless the contrary is proven, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;

(b) any person who is proved to have tampered with any sample or to have made a written statement falsely indicating that food or feedstuff did not contain pesticide residues in excess of any limits prescribed, shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(c) any person who is proved to have sold food or feedstuffs for human or animal consumption which contains pesticide residues in excess of any limits prescribed shall be deemed to have known that the food or feedstuff contained excessive pesticide residues unless the contrary is proved;

(d) where a person is charged with having committed an offence under which a licence or the authorization of any person is required for the doing of any act, the burden shall be on the accused person to prove that at the time to which the charge relates, the requisite licence or authorization was duly held.

(2) Subject to subsection (3), in any prosecution under this Act the following documents shall be admissible in evidence and in the absence of evidence to the contrary, shall be sufficient proof of the facts stated in the document—

(a) a certificate stating the result of an analysis or test carried out under section 43 and purporting to be signed by the analyst who carried out the analysis or test: Provided that a copy of the certificate of analysis has been transmitted to the person to be charged at least twenty-one days before the prosecution is instituted and the analyst shall be summoned to give oral evidence at the request of the accused made not less than ten days before the hearing; or

(b) any document kept by any pesticide dealer or by the owner of a pesticide or his employee or agent, around, on, in or upon any premises occupied by, or aircraft, vessel or vehicle used in the business of such person.

(3) Any document referred to in subsection (2) shall not be admissible unless the accused has been given ten days' written notice that it will be tendered as evidence and an opportunity to inspect and copy it and the court has not, on the application of the accused person brought before the trial, ruled the document inadmissible on the basis that there are reasonable grounds for doubting its accuracy or validity.

[Ch3503s48]48. Closure of premises and seizure of pesticides, etc.

Where the Board believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Board may, subject to subsection (2), order—

- (a) the closure of any premises; and
- (b) the seizure of any pesticide, equipment, instrument or any other thing,

by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any pesticide, equipment, instrument or any other thing shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Board, 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 and the pesticide, equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence under this Act or regulations made thereunder, any pesticide, equipment, instrument or other thing by means of or in relation to which the offence was committed may, in addition to any other penalty imposed by the court, be forfeited to such person, and may be disposed of in such manner and at time and place, as the court may direct; but no such pesticide, equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or before the time within which the appeal may be taken has expired.

[Ch3503s49]49. Forfeiture, cancellation and other orders

(1) Where a court convicts a person for an offence under this Act the court may, in addition to any other sentence, or that—

- (a) any substance or equipment used in the commission of the offence be forfeited to the State and be disposed of as the court directs;
- (b) the costs of disposing of any such substance or equipment be borne by the accused person;

(c) some or all of the reasonable costs of and incidental to any testing or analysis or other steps undertaken by or on behalf of the prosecution to investigate the alleged offence and obtain evidence, be borne by the accused person; or

(d) the registration of a pesticide, or a licence or permit granted to the person convicted under this Act be cancelled.

(2) If a person is convicted for a second or subsequent time of an offence under this Act the court may, in addition to any other sentence, order that the person convicted be disqualified from holding a licence or permit under this Act for a period not exceeding two years.

(3) If at the conclusion of the trial the court is satisfied that an offence was committed even though no person has been convicted of it, the court may, in addition to any other order, make one or more of the orders referred to in paragraphs (a), (b) and (c) of subsection (1).

PART XI

MISCELLANEOUS PROVISIONS

[Ch3503s50]50. Appeals

(1) An applicant for, or holder of, a pesticide registration or a licence or permit under this Act may appeal to the Minister against—

- (a) the refusal of the Board to grant the registration, licence or permit;
- (b) any conditions attached to the registration, licence or permit;
- (c) the deregistration of a pesticide or the cancellation of a licence or permit.

(2) Every appeal under subsection (1) shall be made in writing within sixty days from the date the applicant or holder receives the reasons for the decision of the Board.

(3) Any person may appeal to the Minister against any decision of the Board on the basis that the decision of the Board does not adequately protect human or animal health or the environment as required by this Act.

(4) Every appeal under subsection (3) shall be made in writing within sixty days from the date the decision is made or the date the appellant receives notification of the decision of the Board, whichever is the later.

(5) The High Court in the exercise of its supervisory jurisdiction may review any decision made under this Act on matters of law.

[Ch3503s51]51. Exemptions for Government activities

The Board may exempt any pesticide imported and distributed in Malawi by the Government from fees levied under this Act.

[Ch3503s52]52. Pest emergencies

(1) The Board may issue pest emergency permits if it is necessary—

(a) to deal effectively with a pest emergency which has been declared by the Minister [or any authorized organ of Government]; or

(b) to maintain stocks of pesticides held by the Government to deal with pest emergencies.

(2) An application for a pest emergency permit shall be made to the Board in the manner and form prescribed by the Board and shall be accompanied by the prescribed fee.

(3) A pest emergency permit—

(a) shall specify details of the pesticide concerned, the maximum quantity of pesticide to which it relates, and measures for dealing with unused pesticides after the expiry or lapsing of the permit;

(b) shall lapse when the pest emergency is terminated;

(c) may authorize the importation and use of an unregistered pesticide;

(d) may authorize a registered pesticide to be used for uses other than those for which it has been registered;

(e) may exempt any pesticide from the requirements under this Act to be licensed, labelled, or to have fees levied on it;

(f) may restrict the use of a pesticide to specified geographical areas or crops; and

(g) shall contain whatever terms and conditions the Board considers appropriate to protect human and animal health and the environment and to achieve the purpose of this Act.

(4) The Board shall only authorize the importation of a registered pesticide under a pest emergency permit if, and only to the extent that, it is not possible to obtain the pesticide in adequate quantities or sufficiently, quickly from the party who has registered the pesticide in Malawi.

[Ch3503s53]53. Regulations

The Minister, on the advice of the Board, may make regulations for carrying out or giving effect to this Act and, without prejudice to the generality of this provision, the regulations may—

(a) prescribe the forms and contents of applications, certificates of registration, licences, permits, authorizations, labels, registers and other documents and records required for the purposes of this Act;

(b) prescribe the procedure and information to be given in connexion with applications or documents required under this Act and the evidence to be supplied in support;

(c) regulate commercial applicators of pesticides and the manufacture, import, export, storage, transportation, distribution and sale of pesticides;

- (d) regulate the advertising of pesticides;
- (e) regulate the maximum residue limits of pesticides in food and measures to minimize such residues such as dose rates, pre-harvest intervals and frequency of application;
- (f) prescribe the requirements for pesticide containers and packaging and the procedures for approving pesticide containers and packaging;
- (g) regulate the environmentally sound disposal of pesticides and their containers;
- (h) prescribe the qualifications required and duties of inspectors and analysts;
- (i) prescribe the qualifications required by persons involved in the commercial applications of pesticides;
- (j) prescribe the methods of sampling and analysis to be followed;
- (k) prescribe methods for field evaluation of pesticides;
- (l) prescribe measures to be taken by employers to protect the health of employees who are or may be exposed to pesticides;
- (m) provide for measures for the compensation of persons injured by pesticides;
- (n) provide for the implementation of the Prior Informed Consent Procedure, including control over the export of, and notification procedures for, pesticides which are banned or severely restricted in other countries;
- (o) prescribe measures to ensure that the confidentiality of information submitted to the Board is maintained;
- (p) prescribe the fees or charges payable in respect of any application, registration, licence, permit, or document under this Act; and
- (q) provide, that the contravention of any provision of the regulations constitutes an offence and may prescribe penalties for any offence not exceeding a fine of K2,000.

SUBSIDIARY LEGISLATION

PESTICIDES REGULATIONS

under s. 53

G.N. 5/2002

PART I

PRELIMINARY PROVISIONS

1. Citation

These Regulations may be cited as the Pesticides Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“permit” means a permit, under section 20 of the Act, authorizing the importation of a pesticide which has not been registered;

“registration” means registration of a pesticide under section 18 of the Act;

“sale licence” means a licence, under section 25 of the Act, authorizing the holder thereof to sell one or more pesticides;

“storage licence” means a licence, under section 25 of the Act, authorizing the holder thereof to store for sale one or more pesticides.

PART II

REGISTRATION OF PESTICIDES

3. Application for registration

(1) An application for registration or re-registration shall be in the form set out in the First Schedule.

(2) Every application for registration shall be accompanied by—

(a) a commercial sample of the pesticide unless this requirement is waived by the Board in writing;

(b) three copies of the drafts of all labels intended to be used on the container of the pesticide; and

(c) any additional information relating to the physical and chemical properties, analytical method, efficacy, safety and environmental effects of the pesticide which is not included in or required by the application form.

4. Invalid application

An application for registration shall be invalid if—

(a) it relates to more than one pesticide; or

(b) it is not made by a company incorporated in Malawi.

5. Proprietary information

The Board shall treat any information submitted to it in connexion with an application for registration as proprietary information of the applicant for twenty years from the earliest date on which the pesticide was registered in any country and during this period of twenty years the information shall not be used in connexion with an application by another applicant without the written consent of the first applicant.

6. Form of certificate of registration

A certificate of registration of a pesticide issued under section 19 (6) of the Act shall be in the form set out in the Second Schedule.

PART III

LABELLING

7. Information to be contained on a label

(1) Every pesticide container shall bear a label containing—

- (a) trade name of the pesticide;
- (b) description, type or use of the pesticide;
- (c) type of formulation of the pesticide;
- (d) names, using common names approved by the International Standards Organization, of all active ingredients in the pesticides, together with the minimum guaranteed amount of each active ingredient present expressed as—
 - (i) grams per kilogram (g/kg) for solids, viscous liquids, aerosols and volatile liquids; and
 - (ii) grams per litre (g/l) for other liquids;
- (e) net contents of the pack expressed in metric units;
- (f) name and address of the individual or company in whose name the pesticide is registered;
- (g) directions for use which shall clearly indicate how, when and where the product can be legally, effectively and safely used and shall, where applicable, include—
 - (i) warnings to prevent incorrect or inappropriate use;
 - (ii) stage of the crop and a description of the crop on which and the conditions under which it is recommended that the pesticide be used;
 - (iii) application rates, timing and method of application; and
 - (iv) a statement, where required, of the period which should elapse between last application, re-entry, harvest, grazing or slaughter;
- (h) precautions to be taken in relation to preparing, mixing and applying the pesticide, storage and safe disposal of unwanted pesticides and used pesticide containers;
 - (i) incompatibility with other products, where appropriate;
 - (j) date of manufacture of the product;

- (k) manufacturing/packaging lot or batch number;
- (l) registration number,
- (m) warnings and steps to take to prevent ill effects on beneficial organisms;
- (n) safety precaution to inform the user on handling of the product with minimum hazard;
- (o) first-aid advice and medical treatment to take in case of poisoning;
- (p) safety pictograms in accordance with guidelines approved by the Board; and
- (q) any other information which the Board may require.

8. Label to bear a band

(1) A label shall bear a band—

- (a) of the stipulated colour determined on the basis of the hazard of the formulation of the pesticide in accordance with the classification system in the Third Schedule;
- (b) which shall comprise at least 15 per cent of the label area; and
- (c) which shall appear at the bottom of the label.

(2) No label shall contain any information other than the information required under these Regulations unless the prior written permission of the Board has been obtained.

9. Hazard statement

The appropriate hazard statements and symbols based on the classification of pesticides in the Third Schedule shall be prominently printed on a label.

10. Terms not to be printed on label

The terms "safe", "harmless", "non-toxic", "non-poisonous", "non-injurious", "the best", "most effective", "superior control" or "unrivalled" or such other similar terms or their equivalents in another language, shall not be printed on the label.

PART IV

IMPORTATION, MANUFACTURING, EXPORTATION, SALE, STORAGE AND APPLICATION OF PESTICIDES

11. Application for permit

- (1) An application for a permit shall be in the form set out in the Fourth Schedule.
- (2) An application shall be made in respect of each and every single consignment.

12. Form of permit

A permit shall be in the form set out in the Fifth Schedule.

13. Limitation on use of imported pesticides

(1) If a pesticide is imported for use by a person other than the permit holder, the permit holder shall not dispose of the pesticide except to the person.

(2) No person shall—

(a) apply a pesticide imported under a permit to a crop other than the crop specified in the application; or

(b) apply a pesticide with long persistence to a short-term crop.

14. Destruction of crop

(1) Where a pesticide is applied to a crop in circumstances set out in regulation 13, the person entitled to the crop shall cause the whole crop to be destroyed.

15. Persistent pesticide

No person shall use as food or animal feed a crop that he knows or has reason to believe to be a crop harvested from a plant to which a persistent pesticide was applied.

16. Application for a licence to manufacture or export pesticides

(1) An application for a licence to manufacture or export a pesticide shall be in the form set out in the Sixth Schedule.

(2) A licence to manufacture or export a pesticide shall be in form set out in the Seventh Schedule.

17. Application for a commercial applicator's licence

(1) An application for a commercial applicator's licence shall be in the form set out in the Eighth Schedule.

(2) A commercial applicator's licence shall be in the form set out in the Ninth Schedule.

18. Application for a sale or storage licence

(1) An application for a sale licence or storage licence shall be in the form set out in the Tenth Schedule.

(2) An applicant for a sale licence or storage licence shall furnish such further information as the Board may require.

(3) Where an applicant for a sale licence or storage licence is a body corporate, the application shall be completed and signed by a person or persons duly authorized in that behalf by the body corporate.

19. Extend of sale licence

(1) In addition to authorizing sale of a pesticide, a sale licence shall authorize storage, at the premises specified in the licence, of the pesticide whose sale is thereby authorized.

(2) A storage licence shall extend to the sale of the pesticides whose storage is thereby authorized.

20. Form of sale or storage licence

A sale licence and storage licence shall be in the form set out in the Eleventh Schedule.

21. Persons to whom licence may be issued

A licence shall not be issued to a person unless—

(a) the person is registered under the Business Names Registration Act and he holds a licence issued under the Businesses Licensing Act; or Cap. 46:02, Cap. 46:01

(b) the person has been exempted from the provisions of the Business Names Registration Act or the Businesses Licensing Act, as the case may be. Cap. 46:02, Cap. 46:01

22. Display of licence, etc.

(1) A licensee shall cause a licence to be displayed at all times in a conspicuous part of the premises.

(2) The licensee shall display such other information in such manner as the Registrar may from time to time require.

PART VI

MISCELLANEOUS PROVISIONS

23. Offence

Any person who contravenes regulation 13, 14 and 15 or any condition of any exemption shall be guilty of an offence and liable to a fine of K2,000.

24. Fees

The fees prescribed in the Twelfth Schedule shall be payable in respect of the matters specified therein in relation to such fees.

FIRST SCHEDULE reg. 3

APPLICATION FOR REGISTRATION/RE-REGISTRATION OF A PESTICIDE

The Registrar

Pesticides Control Board

P.O. Box 5748

Limbe

Malawi.

1. I/We*

(name of applicant)

of

(Address of applicant)

hereby apply under section 18 of the Pesticides Act for registration/ re-registration* of the pesticide described in paragraphs 2 to 5 to enable the pesticide to be imported into*, or manufactured in *Malawi.

2. This pesticide has never been registered in Malawi*/was last registered/ re-registered* by the Pesticides Control Board on with registration number.....

3. Addresses of applicant's places of business—

(a)

(b)

(c)

(d)

4. (This paragraph need only be completed if it is intended that the pesticide will be manufactured in Malawi).

(a) Name and address of the factory, building or premises at which the pesticide would be manufactured.

.....

.....

(Applicable to a manufacturer only)

(b) Nature of intended manufacturing activity:

.....

.....

(State whether preparing, compounding, formulating, mixing, making, packing, labelling or treating the pesticide in any other manner with a view to its sale)

5. Names and addresses of premises at which the pesticide would be stored—

(a)

(b)
.....
.....

6. Trade name of the pesticide

7. Details of active ingredient(s)—

(a) common name synonyms—

(b) chemical name(s)

(c) structural formula

(d) Purity (g/kg; g/l; etc.) of the pesticide—

Name Concentration

(i)
.....
.....

(ii)
.....
.....

(iii)
.....
.....

(iv)
.....
.....

8. Composition (g/kg; g/l; etc.) of the pesticide—

Name Concentration

- (a)
- (b)
- (c)
- (d)

9. Concentration of active ingredient in the pesticide

10. Formulation of the pesticide

11. Type of pesticides

(fungicide, herbicide, nematocide, viricide, acaricide, growth regulators, insecticide, etc.)

12. The following toxicological information on the active ingredient/ pesticide as a whole is given in Appendix

(indicate with a tick).

- (a) acute toxicity—
 - (i) acute oral LD50 (in at least two unrelated species);
 - (ii) acute dermal LD50 (with name(s) of test animals);
 - (iii) inhalation toxicity;
 - (iv) toxicity to fish, bees and other non-target organisms.

(b) sub acute toxicity studies (90 days);

(c) Chronic toxicity studies (2 years);

(d) Poisoning symptoms and antidote statement;

(e) Protective clothing recommended when handling;

(f) Safety precautions to be observed in handling, use and storage;

(g) Precautions to be observed for the protection of wildlife, livestock and the environment.

13. Residue data on food crops

.....
.....

14. Proposed use (crop, pest, rate and mode of application).....

.....
.....

15. Recommended pre-harvest interval so that the residue remaining on the crop at harvest is within acceptable limits

.....
.....

16. The following information on efficacy is given in Appendix

..... (Indicate with a tick) —

- (a) Evidence to show that the pesticide will perform as claimed;
- (b) Phytotoxicity of the pesticide.

17. Details of net contents and nature of pesticide containers and retail packaging

.....
.....

18. Distribution of the pesticide will be throughout Malawi*/restricted to the following areas* —

.....
.....

(Please specify)

(This information is required for the purposes of determining the language requirements for the labels).....

19. Name of distributor in Malawi

20. Pesticides and formulations with which the pesticide is known to be incompatible

.....
.....

21. The pesticide meets the following specifications (indicate with a tick)—

- (a) FAO Specification;
- (b) WHO Specification;
- (c) any other

(Identity of specification)

22. The pesticide has been registered in the country of origin and an authenticated copy of the certificate of registration is attached as Appendix * has not been registered in the country of origin for the following reasons*

.....
.....
.....

(Country)

Particulars

.....
.....

23. Particulars of registrations of the pesticide in other countries—

- (a) countries
 - (i) trade name of pesticide
 - (ii) formulation of pesticide
 - (iii) uses allowed
 - (iv) restrictions (if any)
- (b) Country
 - (i) trade name of pesticide
 - (ii) formulation of pesticides
 - (iii) uses allowed
 - (iv) restrictions (if any).....

.....

(Copy of the certificate attached)

24. I/We* the applicants, hereby declare that all the information given in this application (which includes the annexes) is to the best of my/our* knowledge and belief, true and correct.

Dated this day of, 20.....
.....

(Signature)

Name of signatory (printed)

Capacity of signatory (if applicant is not an individual).....

(Director/Secretary/duly authorized attorney)

For and on behalf of

(Name of applicant if applicant is not an individual)

(Affix seal or stamp of applicant if not an individual) (.....)

INSTRUCTIONS ON COMPLETING THIS FORM

An original and two copies of this form must be submitted for registration.

If the space provided in this form is insufficient to record the required information the information must be included in annexes attached to this form which must be numbered to correspond with the numbering on this form.

For Official Use only

Application received by on

Fees paid MK (in words)

Date:

.....

Pesticides Control Board

SECOND SCHEDULE reg. 6

CERTIFICATE OF REGISTRATION OF A PESTICIDE

The Pesticides Control Board, in exercise of its powers under section 19 (b) of the Pesticides Act, has registered the pesticide described below in the name of the registrant, for a period of five years expiring on subject to the conditions appearing below.

The registration number of the pesticides is

The name of distributor in Malawi is

Particulars of the Pesticide

Registrant

Trade name

Active ingredient

Active ingredient content

Concentration

Formulation

CONDITIONS

1. The label(s), which have been approved by the Board for use in connexion with the pesticide, are attached.

2. Registration of this pesticide is subject to the special conditions, which appear on the reverse side of this certificate.

Issued this day of 20.....

.....

Chairman

Pesticides Control Board

Registrar

Pesticides Control Board

THIRD SCHEDULE reg. 8 and 9

Determination or WHO hazard classification based on acute LD50n (rat) or Formulated product (mg/kg)

WHO Hazard Class

Information to appear on label

..... Hazard

Statement

Band

Colour

Symbol

Symbols

and words

Ia

Extremely hazardous

VERY

TOXIC

PMS RED

199 C

VERY TOXIC

IB

Highly hazardous

TOXIC

PMS RED

199 C

TOXIC

II

Moderately hazardous

HARMFUL

PMS

Yellow C

X

X

HARMFUL

III

Slightly hazardous

CAUTION

PMS Blue

293 C

Products unlikely to present a hazard in normal use PMS Green

347 C

*PMS is a colour matching system, mainly used by printers, devised and patented by Pantone, Inc. USA. See Table 5 of the WHO Recommended Classification of Pesticides by Hazard: Bibliography reference 6.

Acute LD50 of information (mg/kg)

FOURTH SCHEDULE reg. 11

APPLICATION FOR A PERMIT TO IMPORT, MANUFACTURE AND USE OF UNREGISTERED PESTICIDES

(Three copies to be completed)

The Registrar

Pesticides Control Board

P.O. Box 5748

Limbe

Malawi

I/We

of

.....

desiring to import/manufacture/use the pesticide(s) whose particulars are given in the attached form(s), do hereby apply for a permit in that behalf under the Pesticides Act.

1. I/We intend to import/manufacture/use the pesticide(s) within six months.

2. I

the applicant/authorized agent of the applicant, hereby declare that all the information I have given in this application and the attached form(s) is to the best of my knowledge and belief true and correct.

.....
Signature of applicant or authorized agent

for and on behalf of:

(Affix seal or stamp of applicant)

Date:

Address:

For Official Use only

Application received by on Fee paid MK
..... (in words)

Date:

Registrar

Pesticides Control Board

PARTICULARS FORM

NOTE: Each form is intended for one pesticide. Any information required, if cannot conveniently be given in the form, may be provided in appendices.

1. Details of pesticides—

- (a) product or trade name
- (b) common name of active ingredient
- (c) code name of active ingredient
- (d) type of pesticide (e.g. insecticide, nematocide)
- (e) chemical group.....
- (f) type of formulation
- (g) percentage of active ingredient

(h) quantity to be imported/manufactured

(i) organization, institution, or person for whom imported/ manufactured

.....

2. Toxicological information on the pesticide as a whole (stating name/species of test animal)

(a) acute oral LD50;

(b) acute dermal LD50;

(c) inhalation toxicity;

(d) chronic toxicity;

(e) fish toxicity;

(f) other information.

3. Particulars where pesticide is sold in any other country—

(a) country

(b) uses allowed

(c) country of manufacture

(d) country where the pesticide is imported from

.....

4. Particulars where pesticide is being experimented with, or being used in any other country

.....

(a) country

(b) uses allowed (state whether commercial or experimental)

.....

5. The experiment with the pesticide will be conducted in

.....

(State locality)

on the following crops/animals

FIFTH SCHEDULE reg. 12

PERMIT TO IMPORT PESTICIDES

.....

of is permitted under section 20 of the Pesticides Act to import in one consignment, manufacture or use the pesticide(s) whose particulars appear below.

This permit is valid within the period of six months from the date of permit subject to the conditions stated on the reverse of this permit.

PARTICULARS OF PESTICIDE(S)

Trade Name	Common Name	Formulation	Quantity per cent a.i.
------------	-------------	-------------	------------------------

CONDITIONS

Date issued:.....

Registrar

Pesticides Control Board

SIX SCHEDULE

APPLICATION FOR A LICENCE TO MANUFACTURE OR EXPORT PESTICIDES

(Three copies to be completed)

The Registrar

Pesticides Control Board

P.O. Box 5748

Limbe

Malawi

1. I/We*

of

desiring to manufacture/export the pesticide(s) whose particulars are given in the attached form(s), do hereby apply for a licence in that behalf under the Pesticides Act.

2. I/We intend to manufacture/export the pesticide(s) within twelve months.

3. I/We*

the applicant/authorized agent of the applicant, hereby declare that all the information I have given in this application and the attached form(s) is to the best of my knowledge and belief true and correct.

Date:

Address:

For Official Use only

Application received by on

Fee paid MK (in words)

Date:

Registrar Pesticides Control Board

PARTICULARS FORM

NOTE: Each form is intended for one pesticide. Any information required, if cannot conveniently be given in the form, may be provided in appendices.

1. Details of pesticides—

- (a) product or trade name
- (b) common name of active ingredient
- (c) code name of active ingredient
- (d) type of pesticide (e.g. insecticide, nematicide)
- (e) chemical group
- (f) type of formulation
- (g) percentage of active ingredient
- (h) quantity to be imported/manufactured
- (i) organization or person for whom imported/manufactured
.....
- (j) organization or person for whom imported/manufactured
.....

2. Toxicological information on the pesticide as a whole (stating name/species of test animal)

- (a) acute oral LD50;
- (b) acute dermal LD50;
- (c) inhalation toxicity;
- (d) chronic toxicity;
- (e) fish toxicity;
- (f) other.

3. Particulars where pesticide is registered in any other country—

- (a) country.....
- (b) uses allowed
- (c) country of manufacture
- (d) country where the pesticide is imported from
.....

4. Particulars where pesticide is being experimented with, or being used in any other country
.....

- (a) country
- (b) uses allowed (state whether commercial or experimental)
.....

5. The experiment with the pesticide will be conducted in
.....

(State locality)

on the following crops/animals

SEVENTH SCHEDULE reg. 16 (2)

LICENCE TO MANUFACTURE OR EXPORT PESTICIDES

LICENCE No

1. Licence is hereby granted to
of

to manufacture/export *pesticides whose particulars appear below, subject to the conditions specified herein.

2. Unless earlier revoked or suspended, this licence is for one year from the date of issue.

3. The licence is not transferable.

PARTICULARS OF PESTICIDE(S)

CONDITIONS

Date issued:

Registrar

Pesticides Control Board

EIGHTH SCHEDULE reg. 17 (1)

APPLICATION FOR A COMMERCIAL APPLICATOR'S LICENCE

(Three copies to be completed)

The Registrar

Pesticides Control Board

P.O. Box 5748

Limbe

Malawi

1. I/We*

of desiring to apply for gain pesticides belonging to the type/types specified below at

.....

(Address of premises)

do hereby apply for a Commercial Applicator's Licence under section 26 of the Pesticides Act.

2. This application is for

(a) a new licence

(b) renewal of licence

Current licence No.

.....

(Indicate with a tick)

3. Period of licence: From to (annually)

4. The type of pesticides I/We desire to apply are—

- (a) fumigants;
- (b) insecticides;
- (c) acaricides;
- (d) nematocides;
- (e) fungicides;
- (f) herbicides.

5. The intended purpose—

- (a) fumigation of produce;
- (b) field crops;
- (c) household pests;
- (d) termite proofing;
- (e) weed control.

6. I/We* also forward a certified copy of Competence Fumigation Certificate No
whose date of issue is

7. I/We* also forward account payee bank draft/cash/money order/postal order to the value
of made payable to Pesticide Control Board as the application fee.

I/We* declare that all the information given in this application is true and correct. Signature
or thumbprint of the applicant/person duly authorized

.....

.....

(Means of identification)

for and on behalf of:

(Affix seal or stamp of applicant)

Date:

For Official Use only

Application received by on Fee paid MK
..... (in words)

Date:.....

.....

Registrar

Pesticides Control Board

NINTH SCHEDULE reg. 17 (2)

COMMERCIAL APPLICATOR'S LICENCE

1. Commercial Applicator's Licence is hereby granted, under section 26 of the Pesticide Act,
to

of to apply for gain pesticides
whose particulars appear below, subject to conditions specified herein.

2. Unless earlier revoked or suspended, this licence is valid for one year from the date of
issue.

3. This licence is not transferable.

PARTICULARS OF PESTICIDES

- (a) fumigants
- (b) insectides
- (c) acaricides
- (d) nematicides
- (e) fungicides
- (f) herbicides

CONDITIONS

Date issued:

.....

Registrar

Pesticides Control Board

TENTH SCHEDULE reg. 18

APPLICATION FOR A SALE LICENCE OR STORAGE LICENCE

(Three copies to be completed)

The Registrar

Pesticides Control Board

P.O. Box 5748

Limbe

Malawi

1. I/We* of
..... desiring to sale/store for sale* the pesticides
belonging to the class/classes specified below at

.....

(Address of premises)

do hereby apply for a sale licence/storage licence* under section 19 of the Pesticides Act, to
sell/store* the said pesticides.

2. This application is for—

(a) a new licence;

(b) renewal of licence. (Indicate with a tick) Current licence No.

.....

3. Period of licence: From to (annually)

4. The type of pesticides I/We* desire to sell/store are

(a) class Ia

(b) class Ib

(c) class II

(d) class III

(e) Restricted pesticides.

5. The floor area—

(a) number of exit doors

(b) ventilation

(c) number of exit doors

(d) type of floor

- (e) drainage system
- (f) distance from restaurants, canteens or any other eating houses
.....
- (g) protective clothing
- (h) washroom(s)

6. Other items sold or stored at the premises are—

(Indicate with a tick)

- (a) foodstuff;
- (b) sundries;
- (c) hardware;
- (d) pharmaceuticals;
- (e) clothing;
- (f) other (specify)—

.....
.....

7. I/We* forward a certified copy of the certificate of registration under the relevant law.

8. I/We* also forward account payee bank draft/money order/postal order* to the value of made payable to Pesticide Control Board as the application fee.

I/We* declare that all information given in this application is true and correct.

Signature or thumbprint of Applicant/person duly authorized

.....

(Means of identification)

for and on behalf of:

(Affix seal or stamp of applicant)

Date

For Official Use only

Application received by on

Fee paid MK (in words)

Date:

.....

Registrar

Pesticides Control Board

ELEVENTH SCHEDULE reg. 20

SALES/STORAGE* LICENCE

LICENCE No.

1. Licence is hereby granted

to

of to sell/store pesticides
belonging to class/classes

at

.....

(address of premises) subject to the conditions specified herein.

2. Unless earlier revoked or suspended, this licence is valid for one year from the date of issue.

3. This licence is not transferable.

CONDITIONS

Signature

Pesticides Control Board

TWELFTH SCHEDULE reg. 24

Item Matter Fees

K t

- 1. On application for registration of a pesticide 2,000 00
- 2. On registration for a pesticide 50,000 00
- 3. On application for a permit to import 2,000 00

4.	On application for a licence to manufacture or export a pesticide	2,000	00
5.	On application for a sale licence or storage.	2,000	00
6.	On issuance of a permit to import unregistered pesticide	2,000	00
7.	On issuance of a licence to manufacture or export a pesticide	50,000	00
8.	On application for a commercial applicator's licence	2,000	00
9.	On issuance of a commercial applicator's licence	5,000	00

[Chap3601]CHAPTER 36:01

MEDICAL PRACTITIONERS AND DENTISTS

ARRANGEMENT OF SECTIONS

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17 of 1987

22 of 1989

30 of 1991

19 of 1995

G.N. 18/1988

An Act to provide for the establishment of the Medical Council of Malawi, the registration and disciplining of medical practitioners and dentists, the licensing of private practice of medical practitioners and dentists, the regulation of training within Malawi of medical personnel and generally for the control and regulation of the medical profession and practice in Malawi and for matters incidental to or connected therewith

[5TH FEBRUARY 1988]

PART I

PRELIMINARY

[Ch3601s1]1. Short title

This Act may be cited as the Medical Practitioners and Dentists Act.

[Ch3601s2]2. Interpretation

30 of 1991In this Act, unless the context otherwise requires—

“Council” means the Medical Council of Malawi established by section 3;

“dentist” means a person registered as such under section 17;

“medical practitioner” means a person registered as such under section 17;

“member” in relation to the Council means a member thereof appointed, elected, or ordained under section 4 (1) or (4) or section 6;

“Registrar” means the Registrar to the Council appointed under section 13;

PART II

THE MEDICAL COUNCIL OF MALAWI

[Ch3601s3]3. Establishment of the Medical Council

There is hereby established a council to be known as the Medical Council of Malawi, which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

[Ch3601s4]4. Composition of the Council

22 of 1989, 30 of 1991(1) The Council shall consist of the following members all of whom shall, save in the case of an ex officio member, be citizens of Malawi—

- (a) the Chief of Health Services who shall be a member ex officio;
- (b) one medical practitioner serving in the public service, appointed by the Minister;
- (c) one dentist serving in the public service, appointed by the Minister;
- (d) one medical practitioner nominated by the Private Hospitals Association of Malawi and appointed by the Minister;
- (e) five members who shall be medical practitioners or dentists elected by the Medical Association of Malawi and at least one of whom shall be elected from amongst full-time private practitioners;
- (f) one representative of the College of Medicine of the University of Malawi who shall be a medical practitioner nominated by the Faculty and appointed by the Minister;
- (g) the Solicitor General or his duly designated alternate who shall be a member ex officio;
- (h) not more than three other members appointed by the Minister from the general public all of whom shall be persons of good character and good standing in the community and at least one of whom shall be a medical practitioner or a dentist in the private sector.

(2) A member of the Council, not being a member ex officio, shall hold office for three years.

(3) The Minister may appoint to the Council for a period not exceeding three years such other persons, not exceeding two in number, from amongst the teaching or other staff of the University of Malawi as he considers suitably qualified to assist the Council in its work and deliberations, and such persons shall not have the right to vote at any meeting of the Council.

(4) Where the Medical Association of Malawi is for any reason whatsoever unable to elect any number of members of the Council it is required to elect under subsection (1), the Minister may appoint to the Council an equal number of members from amongst persons eligible for election

under that subsection, and the members so appointed shall hold office until substituted by elected members or for such period, not exceeding three years, as the Minister may, either at the time of making the appointment or at any time thereafter, direct in writing.

(5) Upon the appointment or election to the Council of any member, the Minister shall cause notice of such appointment or election to be published in the Gazette and shall in such notice specify the current membership of the Council resultant upon such appointment or election.

[Ch3601s5]5. Vacation, etc., of members from office

(1) The Minister may require a member of the Council to vacate his office if the Minister is satisfied that the member—

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors; or

(b) has been absent from three consecutive meetings of the Council, of which he has had notice, without the leave of the Council; or

(c) has been disqualified under this Act from carrying on his profession or calling; or

(d) has been convicted of an offence under this Act or the repealed Act or any law relating to poisons or drugs; or

(e) has been convicted—

(i) within Malawi of a criminal offence; or

(ii) outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence,

and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(f) is mentally or physically incapable of efficiently performing his duties as a member of the Council; or

(g) has had a penalty imposed upon him under this Act by the Council.

(2) The Minister may suspend from office a member of the Council against whom—

(a) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

(b) disciplinary proceedings under this Act are instituted by the Disciplinary Committee, and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Council may resign his office by notice in writing—

(a) in the case of an elected member, to the Chairman of the Council;

- (b) in the case of an appointed member, to the Minister.

[Ch3601s6]6. Filling of vacancies on the Council

On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed or elected in accordance with the relevant provisions of section 4 (1) under which the former member was appointed or elected:

Provided that if the remaining period is less than six months, then—

- (a) in the case of an appointed member, the Minister may decide not to have the vacancy filled until the expiry of the period; and
- (b) in the case of an elected member, it shall not be necessary to hold an election and the Council may, if it sees fit, either decide not to have the vacancy filled or to co-opt a person to fill the vacancy until the expiry of the remaining period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch3601s7]7. Co-opted persons

The Council may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

[Ch3601s8]8. Chairman and Vice-Chairman

(1) The Minister shall, by writing under his hand, designate one member of the Council to be the Chairman thereof.

(2) The Council shall elect a Vice-Chairman from amongst its members. The Vice-Chairman shall, subject to subsection (3), hold office for the duration of his membership on the Council.

(3) The office of the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Council; or
- (b) if the holder of the office ceases to be a member of the Council; or
- (c) if the Council so directs.

(4) Wherever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-chairman shall discharge the functions of the Chairman.

[Ch3601s8A]8A. Executive Committee of the Council

30 of 1991(1) There shall be an Executive Committee of the Council which shall consist of—

(a) the Chairman and the Vice-chairman of the Council respectively as chairman and vice-chairman thereof; and

(b) such number of other members of the Council as the Council shall appoint.

(2) The Executive Committee shall have the following functions—

(a) to consider—

(i) all recommendations to the Council;

(ii) all reports of other committees to the Council;

(iii) any matter requiring a decision of the Council, and in appropriate cases make decision thereon on behalf of the Council, subject to the approval of the Council;

(b) to monitor and evaluate the implementation of the decisions of the Council; and

(c) in cases where any committee of the Council is unable to meet or otherwise transact its business, to deal with any matter before that committee, and the Executive Committee shall report to the Council any of its actions and decisions taken pursuant to this paragraph.

PART III

MEETINGS OF THE COUNCIL

[Ch3601s9]9. Meetings of the Council

22 of 1989(1) Subject to the provisions to this Act, the Council shall hold ordinary meetings for the dispatch of business at least four times in each year.

(2) An extraordinary meeting of the Council—

(a) may be convened by the Chairman at any time; and

(b) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(a) the Chairman or, in his absence the Vice-Chairman, shall preside;

(b) in the absence of both the Chairman and Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

22 of 1989(c) the quorum shall be formed by any seven members.

(4) At any meeting the decision of the Council on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulations of its proceedings and may vary, suspend or revoke any such standing orders.

(6) The record of any meeting of the Council shall be made available to any person registered under this Act at all reasonable times at the offices of the Council:

Provided that the provisions of this subsection shall not be construed as entitling a registered person to peruse the records of—

- (a) a meeting of the Disciplinary Committee or any other committee of the Council; or
- (b) the Council where the Council has resolved that it shall sit as a committee.

PART IV

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch3601s10]10. Functions of the Council

The Council shall be the sole registering authority of all persons required to be registered under this Act and shall have the following further functions—

- (a) to assist in the promotion and improvement of the health of the population of Malawi;
- (b) to control and to exercise authority affecting the training of persons in, and the performance of the practices pursued in connexion with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human beings;
- (c) to exercise disciplinary control over the professional conduct of all persons registered under this Act and practising in Malawi;
- (d) to promote liaison in the field of medical training both in Malawi and elsewhere and to promote the standards of such training in Malawi;
- (e) to advise the Minister on any matter falling within the scope of this Act; and
- (f) to communicate to the Minister any information acquired by the Council relating to matters of public health.

[Ch3601s11]11. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

- (a) to remove any name from any register or, subject to such conditions as the Council may impose, restore it thereto;
- (b) to appoint examiners and moderators, conduct examinations and approve certificates, and charge such fee in respect of such examinations and certificates as may be prescribed;

- (c) to approve of institutions in Malawi for the training of medical and related personnel;
- (d) to acquire, hire or dispose of property, and borrow money on the security of the assets of the Council or accept and administer any trust or donation;
- (e) to consider any matter affecting the medical, dental or psychology professions and make representations thereon to the Minister or take such action in connexion therewith as the Council considers necessary;
- (f) upon application by any person, to recognize any qualifications held by that person (whether such qualifications have been obtained in Malawi or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;
- (g) to perform such other functions as may be prescribed or assigned to the Council by the Minister; and
- (h) generally, to do such things as the Council deems necessary or expedient to achieve the objects of this Act.

[Ch3601s12]12. Committees of the Council

22 of 1989, 30 of 1991(1) In addition to Executive Committee, the Disciplinary Committee the Education and Training Committee and the Inspectorate Committee and save as otherwise provided in relation to each of those committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairman of the Council shall by reason of his office be a member of every committee established under subsection (1).

(3) The chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may co-opt as members of such committee persons who are not members of the Council and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of a committee may, at any time and place, convene a meeting of the committee of which he is chairman.

(6) The Council may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(8) Any member of a committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council, such allowances as the Council may determine.

PART V

MANAGEMENT

[Ch3601s13]13. Appointment of Registrar and other staff

(1) Subject to the provisions of this section, the Council—

- (a) shall appoint a Registrar upon terms and conditions approved by the Minister; and
- (b) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Registrar, after consultation with the Chairman of the Council, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(3) The Registrar shall be the secretary to the Council and to every committee thereof and shall, on the instructions of the Chairman of the Council or the chairman of any committee, convene a meeting of the Council or the committee, as the case may be.

(4) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any other officer of the Council shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairman of the Council may designate.

PART VI

FINANCIAL PROVISIONS

[Ch3601s14]14. Funds, accounts, audit

(1) The funds of the Council shall consist of—

- (a) such sums as may be appropriated by Parliament for the purposes of the Council;
- (b) all fees payable under this Act;
- (c) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise, including any penalty or costs payable to the Council under this Act; and
- (d) the levy imposed under section 15.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

[Ch3601s15]15. 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 registered under this Act and such levy shall be appropriated for the general operations of the Council or for such operations of the Council as the Minister may specify in the Order.

[Ch3601s16]16. Remuneration and expenses of members of the Council

Members of the Council shall be paid from the funds of the Council such allowances as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee of the Council in connexion with the business of the Council or the committee.

PART VII

REGISTERS

[Ch3601s17]17. Registers

(1) Subject to the provisions of this Act, the Council shall continue to keep and maintain the registers which were established before the commencement of this Act relating to medical practitioners and dentists and may establish or continue to keep and maintain—

- (a) a register of interns, being persons referred to in section 30;
- (b) a register of vocational trainees, being persons referred to in section 37;
- (c) a register of persons who may be provisionally registered under section 32; and
- (d) a register of persons temporarily employed in Malawi, being persons referred to in section 33.

(2) The Council may establish a register of students who are undergoing training in Malawi or a qualification required for admission as a medical practitioner or dentist.

(3) There shall be entered in a register under this section in relation to a registered person his name, address, qualifications and date of first registration and such other particulars as the Council may from time to time determine.

(4) The Council may alter the title of any register and every person registered in a register bearing the former title shall for all purposes be considered as registered in the register bearing the new title.

(5) Where the Council intends to establish a register or to alter the name of a register, the Council shall cause to be published in the Gazette and in one issue of a newspaper in general circulation in Malawi notice of such intention and the date with effect from which it is intended that the register will be established or the name of the register will be altered.

[Ch3601s18]18. Specialist Register

(1) The Council may establish and keep a register of medical practitioners or dentists who have acquired special knowledge and experience in particular branches of surgery, medicine or dental surgery.

(2) If the Council establishes a register under subsection (1), it may, by rule or otherwise, determine—

(a) the requirements to be satisfied, including the experience to be acquired, the nature and duration of the training to be undertaken and the degree, diploma or certificate to be held by a medical practitioner or dentist before he can be registered on that register;

(b) the conditions which shall exempt any person from the requirement, experience or training referred to in paragraph (a);

(c) the conditions governing the practice of medical practitioners or dentists who have been registered on a register kept under subsection (1), including conditions restricting the practice of any such medical practitioner or dentist to a particular branch of surgery, medicine or dental surgery, as the case may be;

(d) the circumstances in which the Council may remove the name of a person from a register kept in terms of subsection (1).

(3) There shall be entered in a register kept under subsection (1) in relation to a registered person such particulars as the Council may from time to time determine.

[Ch3601s19]19. Duties of Registrar

(1) All registers shall be kept under the custody of the Registrar at the offices of the Council.

(2) It shall be the duty of the Registrar, under the direction of the Council, to—

(a) enter in any register the particulars required under this Act of every person whom he registers in that register;

(b) make in a register any necessary alterations in the name, address, qualifications and other particulars of a registered person;

(c) erase from a register the name of a registered person who dies; and

(d) when required to do so by or under this Act or in pursuance of an order of a court—

(i) to mark in a register the registration of an applicant or, as the case may be, the suspension from practice of a registered person; and

- (ii) to erase from a register the name of a registered person;
- (e) generally to comply with the requirements imposed on him by this Act.

(3) Where the Registrar erases from a register the name of a registered person he shall enter in that register a record of the reasons therefor.

[Ch3601s20]20. Certificates

(1) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—

- (a) registers any person, he shall issue to him a certificate of registration;
- (b) erases from a register the name of a registered person or marks in a register the suspension from practice of a registered person, he shall, wherever possible, notify him in writing accordingly.

(2) On application by a registered person the Registrar may issue to that person a duplicate certificate of registration—

- (a) if he is satisfied as to the identity of the applicant; and
- (b) on production by the applicant of an affidavit certifying that the certificate of registration has been lost or destroyed; and
- (c) on payment by the applicant of the appropriate prescribed fee, if any.

[Ch3601s21]21. Offences in connexion with registers and certificates

A person who—

- (a) makes or causes to be made an unauthorized entry or alteration or deletion in a register or a certified copy thereof or an extract thereof or on a certificate of registration; or
- (b) procures or attempts to procure for himself or another person registration or a certificate of registration by means of fraud or false representation or by the concealment of a material fact; or
- (c) makes or causes to be made in connexion with an application for registration a false declaration in a document used for the purpose of establishing his identity; or
- (d) wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in a register; or
- (e) without the permission of the holder, wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible a certificate of registration; or
- (f) forges or utters or, knowing the same to be forged, possesses or holds a document purporting to be a certificate of registration,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for six months.

[Ch3601s22]22. Publication of registers

(1) The Registrar shall, from time to time, under the authority of the Council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and erasures made since the last publication of the complete registers to be published in the Gazette.

(2) Copies of the registers shall be published in such form as the Council may direct and may contain, in lists separate from the main registers, such particulars as the Council may require to be published.

[Ch3601s23]23. Registers to be evidence

(1) Subject to the provisions of subsection (2), the last published copy of a register, as read with any supplementary list, purporting to be published under the authority of the Council under section 22, shall be prima facie evidence in any legal proceedings of the facts therein recorded and the omission of the name of any person from such copy shall be evidence, prima facie evidence, that such person is not registered.

(2) In the case of a person—

(a) whose name does not appear in a published copy of a register and whose name has been added to a register after the date of the last published copy thereof, a certificate under the hand of the Registrar of the entry of the name of that person in that register shall be prima facie evidence that that person is so registered on that register; or

(b) whose name has been erased from a register since the date of the last published copy thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of that person has been erased from the register shall be prima facie evidence that that person is not registered on that register; or

(c) who has been suspended from practice in accordance with this Act, a certificate under the hand of the Registrar that that person has been so suspended from practice for a period specified in that certificate shall be prima facie evidence that that person has been suspended from practice for that period.

PART VIII

REGISTRATION

[Ch3601s24]24. Persons registered before the commencement of this Act

30 of 1991 Every person who, immediately before the commencement of this Act was registered in any register of medical practitioners or dentists in Malawi and is resident in Malawi, shall be deemed to have been registered under this Act in that register.

[Ch3601s25]25. Residence of registered persons

(1) Subject to subsection (2), an applicant for registration shall not be registered unless at the time of his application—

(a) he resides in Malawi; or

(b) he intends, if he is registered, to take up residence in Malawi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Council may from time to time specify for the purposes of this subsection by notice in the Gazette may be registered if, but for residing outside Malawi, he is otherwise qualified for registration.

[Ch3601s26]26. Persons eligible to be registered as medical practitioners or dentists

(1) Subject to the provisions of this section, a person shall be eligible for registration under this Act as a medical practitioner or dentist if he is a holder of a degree, diploma or other qualification which is recognized by the Council as making him eligible for registration and—

(a) after obtaining such degree, diploma or other qualification, he has engaged as an intern in one or more institutions approved by the Council for such period, being not less than one year, as the Council may prescribe; and

(b) he satisfies the Council that, whilst engaged in training employment as required under paragraph (a), he has acquired sufficient knowledge of, and experience in, the practice of medicine or dentistry, as the case may be; and

(c) he satisfies the Council that he is a person of good moral character and is a fit and proper person to be registered under this Act.

(2) No qualification from an examining authority outside Malawi shall be recognized or accepted under subsection (1) as a qualification for registration of the holder, unless the qualification entitles the holder to registration in the country, state or territory in which the examining authority has jurisdiction.

(3) In any case where the Council does not recognize a degree, diploma or other qualification in medicine or dentistry held by any person as making him eligible for registration, the Council may take steps to assess his suitability for registration and for the purpose of so doing may require him to attend any interview or to undergo any oral or written examination.

(4) The Council may, after assessing the suitability for registration of a person under subsection (3), direct that before registration that person shall undergo such further period of training (hereinafter referred to as "vocational training") or pass such further examination as the Council may specify.

(5) The Council may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (3) to a committee of the Council which shall, after making such assessment, make such recommendations to the Council as it considers appropriate.

[Ch3601s27]27. Person registered may have additional qualifications inserted in register

Every person registered under this Act who has obtained any higher or further degree or qualification than the degree or qualification in respect of which he has been registered shall be entitled, upon payment of the prescribed fee, to have such higher degree or additional qualification inserted in the register in substitution for or in addition to the qualification previously registered.

[Ch3601s28]28. Certificate not valid unless signatory registered

No certificate or other document required by any law to be signed by a duly qualified medical practitioner or dentist shall be valid unless signed by a person registered as a medical practitioner or dentist under this Act.

[Ch3601s29]29. Procedure for registration

(1) Any person desiring to be registered under this Act may apply in writing to the Registrar and shall submit with his application—

(a) a certificate of any qualification on which he relies for registration or a certified photostat copy thereof:

Provided that a certificate showing his registration in the country, state or territory in which he qualified is submitted and that such certificate contains details of the qualifications on which registration was based; and

(b) if other practical experience or training is required in the country, state or territory in which he qualified before registration in that country, state or territory—

(i) evidence that such experience has been acquired or that such training has been obtained; and

(ii) a certificate of registration in that country, state or territory or a certificate photostat copy thereof; and

(c) if so required by the Council, such evidence of identity, of good character and reputation, of compliance with the conditions, if any, prescribed by the Council in relation to him and of the authenticity and validity of the certificate submitted as the Council may require; and

(d) save in the case of a person referred to in section 25 (2), evidence that he resides or intends, if he is registered, to reside in Malawi.

(2) The Council may require any statement in connexion with an application under subsection (1) to be supported by a solemn or statutory declaration.

(3) If the Registrar is satisfied that the qualification and the particulars or documents submitted under subsection (1) are in accordance with the requirements of this Part, he shall, upon payment by the applicant of the appropriate prescribed fee, register the applicant in the appropriate register.

(4) If the Registrar is not satisfied that the qualification or the particulars or documents submitted with an application under subsection (1) are in accordance with the requirements of this Part, he shall refer the application to the Council for decision.

(5) The Council may refuse to register an applicant if in its opinion the applicant, notwithstanding that he is otherwise qualified, is not a fit and proper person to be registered by reasons of—

- (a) his physical or mental health; or
- (b) the fact that he is not of good character and reputation; or
- (c) the fact that he does not have adequate knowledge of the English language; and
- (d) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct or conduct which, when regard is had to the profession for which that person has applied to be registered, is improper or disgraceful:

Provided that, before refusing registration under paragraph (d), the Council shall refer the matter to the Disciplinary Committee and the provisions of Part IX shall, mutatis mutandis, apply as if the applicant were registered on the register on which he has applied to be registered.

[Ch3601s30]30. Register of interns

(1) Any person having the qualifications referred to in section 26 (1) who is employed in Malawi in the practice of medicine, surgery or dentistry as an intern in a hospital or an institution approved by the Council shall, subject to the provisions of this Part, be entitled, on payment by him of the prescribed fee, to be registered in the register of interns.

(2) A person registered in the register of interns shall be deemed to be registered on the register of medical practitioners in so far as is necessary—

- (a) to enable him to be employed in the practice of medicine, surgery or dentistry at a hospital or institution approved by the Council;
- (b) for the purpose of any other enactment or such other purposes as the Council may specify.

[Ch3601s31]31. Register of vocational trainees

Any person who is required under section 26 (4) after the acquisition of any qualification to undergo a period of training before he is entitled to be registered and who is employed otherwise than as an intern shall, subject to the provisions of this Part and if he satisfies the Registrar that he is employed at an institution or by an employer approved by the Council, be entitled, upon payment of the prescribed fee, to be registered in the register of vocational trainees appropriate to the profession or calling for which he intends to be registered.

[Ch3601s32]32. Provisional registration

(1) The Council may accept any qualification which has not been recognized under section 26 as entitling the holder to be registered if, in all other respects, he satisfies the conditions and requirements of this Part for registration on a register kept under this Act:

Provided that the acceptance of a particular qualification for provisional registration of one person shall not confer any right to any form of registration on any other person holding the same qualification.

(2) The Council may require an applicant for provisional registration as a condition of such registration—

(a) to undertake a specified period of practice on the staff of a hospital or other institution specified by the Council or with an employer approved by the Council; and

(b) to pass, during the period of his provisional registration, such examination as the Council may specify.

(3) An application for provisional registration under subsection (1) shall be made in writing to the Registrar and shall be accompanied with the prescribed fee.

[Ch3601s33]33. Register of persons temporarily employed

Any person qualified to practise the profession or calling of a medical practitioner or dentist, who intends to practise that profession or calling in Malawi but does not intend to reside for a period exceeding twelve months in Malawi may, if he satisfies the Registrar that he is so qualified, be registered on a register of persons temporarily employed:

Provided that in circumstances considered by the Registrar to be exceptional, the Registrar may extend the period of registration for two months.

[Ch3601s34]34. Erasures from register

(1) The Council may direct the Registrar to erase from a register of medical practitioners or register of dentists—

(a) the name and all particulars of a person whose registration has been cancelled in accordance with this Act or who—

(i) not being a citizen of Malawi; has been absent from Malawi for a continuous period of three years preceding such erasure; or

(ii) fails to pay the prescribed fee payable under this Act within three months after the date on which that fee became payable; or

(iii) has failed within a period of six months after the date of an inquiry sent by the Registrar by registered letter to the address as shown in the register to notify the Registrar of his present address:

Provided that if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason the Council may forthwith direct that the name of the person be erased from the register; or

(iv) has requested that his name be removed from the register and, if so required by the Council, has lodged an affidavit proceedings are being or are likely to be taken against him in connexion with the practice of his profession or calling; or

(v) is resident or practising in Malawi and whose name has been removed from the roll, register or record of any university, hospital, college, training school or institution, society or other body from which that person received the qualification on the basis of which he was registered; or

(b) any entry which is proved to the satisfaction of the Council to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.

(2) The name and all particulars of a person shall be erased from—

(a) the register of interns, register of vocational trainees, provisional register or temporary register—

(i) when the person is registered on the register of medical practitioners or the register of dentists; or

(ii) on the expiration of the period of registration on such register;

(b) in case of the provisional register, on the cancellation of the registration of that person.

(3) If a person referred to in section 25 (1) fails to take up residence in Malawi within the period referred to in that paragraph, his name and particulars shall be erased from the register on the expiration of that period.

(4) The Registrar shall erase from the register of interns or register of vocational trainees, as the case may be, the name of a person who is registered on that register—

(a) who advises the Registrar that he is leaving Malawi whether after completion of his service as interns or trainee or otherwise; or

(b) on the expiration of eighteen months from the date of his registration unless he satisfies the Registrar that due to illness or other cause the period of his training has been extended; or

(c) on the termination of the period of training which has been extended in the circumstances referred to in paragraph (b); or

(d) if the Council instructs the Registrar to erase the name of that person from the register.

(5) Before the Council directs an erasure to be made under subsection (1) (a) (v) or subsection (4) (d) the Council shall afford the person concerned an opportunity of showing cause before the Council as to why the erasure should not be made.

[Ch3601s35]35. Method of erasure

In order to effect the erasure of the name and particulars of a person from a register, a line of red ink shall be drawn through such name and particulars but so as to leave them remain legible.

[Ch3601s36]36. Consequence of erasure

Any certificate of registration issued to a person whose name has been erased shall be deemed to have been cancelled on the date of erasure and the person concerned shall be deemed not to be registered with effect from that date.

[Ch3601s37]37. Appeals against refusal to register or erasure from register

(1) A person aggrieved by—

(a) the refusal of the Council to register him or any qualification or particular which he wishes to be registered in under this Act; or

(b) the erasure from a register of his name or of any qualification or particular which he considers he is entitled under this Act to have entered against his name in a register,

may after notice to the Council and within three months after the date on which notice is given to him by the Registrar of such erasure, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court against such erasure.

(2) On an appeal under subsection (1) the High Court may—

(a) dismiss the appeal; or

(b) if it is of opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or the qualification or particular, as the case may be, be entered in the appropriate register; or

(c) refer the matter back to the Council for further consideration, and may,

make such other order as to costs or otherwise as it may deem just.

PART IX

PRIVATE PRACTICE

[Ch3601s38]38. Licence for private practice

22 of 1989(1) The Council may authorize the Registrar to issue to a medical practitioner or a dentist who has applied in the prescribed manner and whom the Council considers has had suitable experience in medicine, surgery or dentistry, as the case may be, a licence to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) A licence under subsection (1) shall—

- (a) be subject to such conditions as the Council may either generally or specially determine;
- (b) be issued upon payment of the prescribed fee;
- (c) be in such form as may be prescribed;
- (d) be valid from the date of issue to 31st March next following the date of issue; and
- (e) state whether the person so licensed may practise as a private practitioner on his own behalf or may be employed by a private practitioner.

(3) The Council may, for good cause refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Council have been fulfilled.

(4) No premises shall be habitually used for the purpose of private practice, unless they are authorized for such use by the Council, and any person duly authorized by the Council in that behalf may at any reasonable time enter upon and inspect such premises.

(5) Any person aggrieved by any decision of the Council under this section may appeal to the High Court, and in such appeal the High Court may annul or vary the decision as it thinks fit.

22 of 1989(6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made thereunder shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

[Ch3601s39]39. Issue, etc., of licences to be published in the Gazette

The issue, cancellation and withdrawal of any licence under section 38 of this Act shall be notified in the Gazette.

[Ch3601s40]40. No fees recoverable unless practitioner licensed for private practice

No person in private practice shall be entitled to recover any charge for any medical treatment, operation, advice or other medical service which he has rendered, or for any medicine which he has prescribed or supplied, as a medical practitioner or dentist, unless he is at the time appropriately licensed under section 38 for private practice.

PART X

EDUCATION AND TRAINING

[Ch3601s41]41. Education and Training Committee

(1) There shall be an Education and Training Committee which shall consist of—

- (a) one member of the Council appointed by the Council and designated by the Council as chairman of the committee;

(b) any number of other persons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Education and Training Committee shall be—

(a) to advise the Council on all matters relating to the education and training requirements of medical and related personnel in Malawi;

(b) to satisfy itself and the Council that the curricula in every teaching institution in Malawi in the medical field are such that graduates will have a sufficient basic knowledge for the practice of their profession or calling; and

(c) to satisfy itself and the Council in such other matters as may be vested in it by the Council in relation to the supervision of other aspects of medical education and training.

(3) For the purpose of carrying out its functions the Education and Training Committee may, subject to the general direction and guidance of the Council—

(a) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where instruction is given to or examinations are conducted for students who intend to apply for registration under this Act and to evaluate such instructions or examinations; and

(b) to submit reports to the Council on the courses and curriculum followed at, and examinations conducted by, any institution referred to in paragraph (a).

[Ch3601s42]42. Reports on training qualifications and practice of persons who are registrable

The Council may, and if so required by the Minister shall, consider and report to the Minister and advise him upon any matter relating to professional or technical training to other qualifications required for admission to a profession or calling in respect of which a register is kept and the conditions of practice after registration.

[Ch3601s43]43. Approval of institutions, curricula and qualifications

30 of 1991The Council shall have powers to approve of—

(a) teaching hospitals;

(b) medical and dental schools;

(c) a basic medical education curriculum;

(d) post-graduate medical education;

(e) the basic medical qualification of persons to be registered as medical practitioners or dentists;

(f) registration of medical practitioners and dentists as consultants after approving their post-graduate qualifications;

(g) and such other matter of training as may be within its competence under this Act or as may be expedient for the purposes and objects of this Act.

[Ch3601s44]44. Degrees, diplomas and certificates instituted by the Council

30 of 1991(1) The Council may institute and issue degrees, diplomas and certificates of competence for any class of medical personnel trained or employed at an approved institution in Malawi other than medical practitioners, dentists and personnel of a class for which there is established a separate examining or qualifying authority:

Provided that degrees, diplomas or certificates of competence of the College of Medicine of the University of Malawi shall be instituted with the approval of the Council.

(2) The Registrar shall keep lists of all persons to whom a degree, diploma or certificate instituted under this section has been issued.

[Ch3601s45]45. Rules for training and examinations

30 of 1991The Council may, by notice in the Gazette, make rules as to—

- (a) the form of degrees, diplomas and certificates of competence instituted by the Council;
- (b) the issue of duplicates and certified copies of degrees, diplomas and certificates of competence issued by the Council and the fees payable to the Council therefor;
- (c) the requirements to be fulfilled by persons as a condition of the issue of a degree, diploma or certificate of competence to them, including the training and courses of instruction to be undergone and the examinations to be passed, and exemptions from the fulfilment of such requirements;
- (d) the institutions and other places at which the training and courses of instruction referred to in paragraph (c) shall be undergone, the standards of education and character required to qualify persons to undergo such training and courses of instruction and the supervision of persons undergoing such training and courses of instruction;
- (e) the holding of examinations referred to in paragraph (c) including—
 - (i) the appointment and remuneration of examiners and invigilators;
 - (ii) the entry and disqualification of candidates for examination;
 - (iii) the fees payable to the Council by candidates for examination; and
 - (iv) the publication of the results of examinations.

PART XI

DISCIPLINARY PROVISIONS

[Ch3601s46]46. Disciplinary Committee

- (1) There shall be a Disciplinary Committee of the Council which shall consist of—
- (a) the Chairman of the Council who shall be the Chairman of that committee; and
 - (b) not less than two and not more than four other persons specially appointed by the Chairman of the Council for the particular inquiry, who shall—
 - (i) in the case of an inquiry into the conduct of a medical practitioner, be members of the Council who are medical practitioners;
 - (ii) in the case of an inquiry into the conduct of a dentist, be members of the Council who are dentists;
 - (iii) in the case of an inquiry concerning an allegation implicating one or more medical practitioners jointly with one or more dentists, be members of the Council representing both callings;
 - (c) two other members who may or may not be members of the Council.

(2) In any disciplinary inquiry the Council may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.

(3) At any meeting of the Disciplinary Committee the Chairman and two other members shall form a quorum.

(4) For the purposes of any inquiry the Chairman of the Council may appoint to the Disciplinary Committee any other person he considers reasonably qualified to assist the committee in the conduct of the inquiry.

(5) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.

(6) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(7) The Disciplinary Committee shall have power to regulate its own procedure.

[Ch3601s47]47. Function of Disciplinary Committee

(1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under section 50 (2) alleging that a registered person—

- (a) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or

(b) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function with respect to any person, the Disciplinary Committee shall—

(a) cause to be served upon him a notice setting out the allegations against him; and

(b) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

[Ch3601s48]48. Taking of evidence by Disciplinary Committee

(1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—

(a) under the hand of the Chairman of the Council or the Registrar summon witnesses and require the production of any book, record, document or thing; and

(b) administer an oath or affirmation to any person; and

(c) examine any book, record, document or thing which a witness has been required to produce.

(2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—

(a) in the form prescribed; and

(b) signed by the Chairman or the Registrar.

(3) Any person who—

(a) has been summoned under subsection (2) and who—

(i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to be sworn or to affirm; or

(iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(b) attends a witness before the Disciplinary Committee and refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him,

shall be guilty of an offence and liable to a fine of K200 and to imprisonment for three months.

(4) Any person who gives false evidence on oath at an inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K400 and to imprisonment for six months.

(5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

[Ch3601s49]49. Exercise of disciplinary powers on conviction for offence

(1) A registered person who has been convicted of an offence by a court of law within or outside Malawi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance with the provisions of this Part if the Disciplinary Committee is of opinion that such offence constitutes—

- (a) improper or disgraceful conduct; or
- (b) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.

(2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct.

(3) If, after the termination of proceedings before a court in Malawi—

- (a) it appears to the court that there is prima facie evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Council; or
- (b) the Council requests that a record of the proceedings before a court in Malawi or part of such record be supplied to it on the ground that it is of direct interest to the Council in the exercise of its functions under this Act, the court shall transmit to the Council a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material.

[Ch3601s50]50. Council to refer cases to Disciplinary Committee

(1) Whenever there is brought to the notice of the Council an allegation which might be the subject of inquiry by the Disciplinary Committee the Council shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) After any investigation pursuant to subsection (1) the Council—

- (a) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;
- (b) if it considers that—

(i) the conduct complained of would not constitute improper or disgraceful conduct; or

(ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee,

may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairman of the Council to admonish that person and the Chairman shall report the fact thereof to the Council;

(c) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

[Ch3601s51]51. Exercise of disciplinary powers

(1) After due inquiry, the Disciplinary Committee shall report its findings to the Council with such recommendations as the Disciplinary Committee considers appropriate.

(2) After considering the findings and recommendations of the Disciplinary Committee the Council—

(a) if it is satisfied that the registered person—

(i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful and that such conduct warrants the cancellation of his registration; or

(ii) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner,

the Council shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Council any costs or expenses incidental to the inquiry;

(b) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

(i) order his suspension for a specified period from practising or performing acts specially pertaining to his profession or calling;

(ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;

(iii) order him to pay to the Council a penalty not exceeding K 1,000;

(iv) order him to pay any costs or expenses of and incidental to the inquiry;

(v) censure him; and

(vi) caution him and postpone, for a specified period not exceeding three years any further action against him on such conditions as the Council may determine as to his future conduct, including conduct or nature of his practice during that period.

(c) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Council may if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.

(3) If at any time the Council is satisfied that during the period of any postponement under subsection (2) (b) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Council after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

[Ch3601s52]52. Appeal to High Court

(1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Council under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.

(2) On an appeal under subsection (1) the High Court may—

(a) confirm, vary or set aside any finding, decision or penalty appealed against; or

(b) refer the matter back to the Council, for further consideration,

and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Council or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

[Ch3601s53]53. Publication of result of disciplinary proceedings

(1) The Registrar shall by notice in the Gazette publish the name of any person—

(a) whose registration has been cancelled; or

(b) who has been suspended from practice and shall, in such notice, specify the period of suspension.

[Ch3601s54]54. Council or Disciplinary Committee not to be liable

(1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Council or the Disciplinary Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part.

(2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under this Part, whether by the Council or the Disciplinary Committee, and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

[Ch3601s55]55. Improper or disgraceful conduct

(1) The Council may in regulations made under this Act—

(a) define what, in the case of any class of registered persons shall constitute improper or disgraceful conduct;

(b) provide for the manner in which complaints or charges against a registered person may be lodged; and

(c) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.

(2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under Part XII the conduct of such registered person shall, for the purposes of this Part, constitute improper or disgraceful conduct:

Provided that the provisions of this subsection shall not be construed as exempting such registered person from prosecution in a court for any offence which such conduct may constitute.

(3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Disciplinary Committee or on the Council to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

PART XIA

INSPECTORATE PROVISIONS

[Ch3601s55A]55A. Inspectorate Committee

22 of 1989(1) There shall be an Inspectorate Committee appointed by the Council which shall, subject to the general or special directions of the Council, perform all such inspectorate functions for the purpose of setting and maintaining the standards of health care in relation to—

(a) premises, equipment and supplies;

(b) qualifications and credentials of personnel employed at health establishments;

(c) behaviour and conduct of health personnel towards patients and clients; and

(d) such other matters as the Council may deem expedient, and to report its findings to the Council.

(2) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to subsection (1) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

PART XII

OFFENCES AND PENALTIES BY UNREGISTERED PERSONS

[Ch3601s56]56. Remuneration not recoverable by unregistered persons

No remuneration shall be recoverable in respect of any act pertaining to a profession or calling in respect of which a register is kept under this Act when performed by a person who is not registered on the appropriate register.

[Ch3601s57]57. Certain certificates invalid if signed by unregistered person

No certificate required by law from any member of a profession or calling in respect of which a register is kept under this Act shall be valid unless the person signing such certificate is registered on the appropriate register.

[Ch3601s58]58. Proof required for issue of licences

No licence required under any law to be obtained by a registered person shall be issued to such person unless the person applying for such licence produces proof that he is registered on the appropriate register.

[Ch3601s59]59. Unregistered persons practising as medical practitioners

30 of 1991(1) Subject to the provisions of subsection (2) and to any exemption granted under this Act any person who, not being registered as a medical practitioner—

(a) for gain, practises or carries on business as a medical practitioner, whether or not purporting to be registered or performs or undertakes to perform any act specially pertaining to the practice of a medical practitioner; or

(b) pretends or, by any means whatsoever, holds himself out to be a medical practitioner, whether or not purporting to be registered; or

(c) uses the title “medical practitioners” or any name, title description or symbol indicating or calculated to lead any person to infer that he possesses a degree, diploma or other qualification as a medical practitioner, doctor of medicine, physician or surgeon or that he is registered as a medical practitioner under this Act,

shall be guilty of an offence and liable to a fine of K2,000 or to imprisonment for one year.

(2) The provisions of subsection (1) shall not apply in relation to—

(a) a body corporate which is a local authority in respect of which there is a medical practitioner appointed, engaged, employed or otherwise to supervise the health services provided by that local authority; or

(b) a body corporate which—

(i) employs a medical practitioner principally for the purpose of providing health services for its employees; and

(ii) is exempted under subsection (4).

30 of 1991(c) any person who, or any body corporate or unincorporate which, establishes a health facility and in respect thereof employs persons registered to practise in accordance with this Act and that the health facility so established meets the minimum requirements prescribed by or under this Act for the category of such health facility.

(3) In paragraph (a) of subsection (2)—

“local authority” means—

(a) a city or municipal council, a town council or a district council; or

(b) any other body or organization which the Minister may, by notice in the Gazette, declare to be a local authority for the purposes of that paragraph.

[Ch3601s60]60. Unregistered persons practising as dentists

30 of 1991(1) Subject to the provisions of subsections (3) and (4) and to any exemption granted under this Act, any person who, not being registered as a dentist—

(a) for gain, practises or carries on business as a dentist, whether or not purporting to be registered, or performs or undertakes to perform any act specially pertaining to the practice of dentistry; or

(b) pretends or, by any means whatsoever, holds himself out to be a dental surgeon, whether or not purporting to be registered, or to be entitled to practise dentistry or to perform any act specially pertaining to the practice of dental surgery; or

(c) uses the title “dental surgeon” or “dentist” or any name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a degree, diploma or other qualification as a dental surgeon or dentist or that he is registered under this Act; or

(d) by any means whatsoever gives advice in dentistry or in any act specially pertaining to the practice or dentistry, shall be guilty of an offence and liable to a fine of K2,000 or to imprisonment of one year.

(2) For the purposes of subsection (1), the following acts are specified as specially pertaining to the practice of dental surgery—

(a) the performance of any operation and the treatment of any disease, deficiencies or lesions on or of the human teeth or jaws, the correction of the malpositions thereof and the performance of radiographic work in connexion with the human teeth or jaws;

(b) the giving of any anaesthetic in connexion with any operation on the human teeth or jaw;

(c) the making, repairing, re-alteration or supply of artificial dentures, restorative dental appliances or other similar dental appliances;

(d) the taking in the mouth of any impression or bite with a view to the making, repairing, altering or supplying any artificial dentures, restorative dental appliances or other similar dental appliances;

(e) the trying or fitting in the mouth of any artificial dentures, restorative dental appliances or other similar dental appliances;

(f) the performance of any such operation, treatment, attendance or the giving of such advice as is usually performed or given by a dentist or any operation, treatment, advice or attendance preparatory to or for the purpose of or in connexion with the making, repairing, altering, supplying, fitting, inserting or fixing of artificial dentures, restorative dental appliances or other similar dental appliances;

(g) cleaning and polishing teeth; and

(h) scaling teeth, that is to say, the removal of tartar deposits, accretions and stains from those parts of the surfaces of the teeth which are exposed or which are directly beneath the free margins of the gums, including the application of medicaments appropriate thereto.

(3) Nothing in this section shall be constructed as preventing—

(a) the—

(i) performance of any operation or the treatment of any disease, deficiency or lesion of the jaws and soft tissue of the mouth; or

(ii) giving of any anaesthetic in connexion with a dental operation; or

(iii) performance of any radiographic work, by a medical practitioner in the ordinary course of his practice;

(b) the extraction of a tooth—

(i) by a medical practitioner, where the services of a dentist are not readily available; or

(ii) by any person, where the case is urgent and no registered medical practitioner or dentist is available and the operation is performed without the application of a local or general anaesthetic;

(c) the performance in any public service of dental work by any person in accordance with conditions of his employment;

(d) the carrying on, in accordance with conditions approved by the Minister, of the practice of dental surgery at any hospital or other institution approved for the purpose of this paragraph by the Minister;

(e) the performance, in relation to the practice of dental surgery, of any radiographic work at a hospital or nursing home or at the request or under the direction of a registered medical practitioner or dentist; and

(f) the making, repairing or altering of artificial dentures, restorative dental appliances or other similar dental appliances by any person who is registered as a dental technician:

Provided that nothing in this paragraph shall be construed as permitting a registered dental technician to perform an operation in the mouth of any person including the taking of an impression or a bite.

(4) The provisions of paragraph (a) of subsection (1) shall not apply in relation to—

(a) a body corporate which is a local authority in respect of which there is a dentist appointed, employed or otherwise engaged to supervise the dental services provided by that local authority; or

(b) a body corporate which—

(i) employs a dentist principally for the purpose of providing dental services for its employees; and

(ii) is exempted under subsection (6);

(c) any person who, or any body corporate or unincorporate which, establishes a health facility and in respect thereof employs persons registered or otherwise qualified to practise in accordance with this Act and that the health facility so established meets the minimum requirements prescribed by or under this Act or required by the Council for the category of such health facility.

(5) In paragraph (a) of subsection (4)—

“local authority” means—

(a) a city or municipal council, a town council or a district council, or

(b) any other body or organization which the Minister may by notice in the Gazette, declare to be local authority for the purposes of that paragraph.

PART XIII

MISCELLANEOUS PROVISIONS

[Ch3601s61]61. African systems of therapeutics allowed

Nothing contained in this Act shall be construed to prohibit or prevent the practice of any African system of therapeutics by any person in Malawi:

Provided that nothing in this section shall be construed to authorize the performance by a person practising any African system of therapeutics of any act which is dangerous to life.

[Ch3601s62]62. Exemptions from registration

(1) Notwithstanding anything to the contrary contained in this Act, if, with the consent of the Chairman of the Council—

(a) a registered medical practitioner or dentist calls in as consultant, a medical practitioner or dentist who is neither resident nor registered in Malawi, such consultant shall not be held to require registration in Malawi, in respect of his attendance upon the patient with respect to whom he has been called in consultation;

(b) a person registered in any country as a medical practitioner or dentist but who is neither resident nor registered in Malawi and who is called into Malawi on the bona fide request of a patient shall not be held to require registration in Malawi in respect of his attendance on such patient;

(c) a person practising a profession or calling in respect of which a register is kept who is neither resident nor registered in Malawi and who is appointed by the Council or other body approved by the Council to conduct an examination in Malawi shall not be held to require registration in Malawi in respect of his duties in connexion with the conduct of such examination;

(d) a person practising a profession or calling in respect of which a register is kept under this Act who is—

(i) a member of a naval, military, air or police force of a country other than Malawi and temporarily stationed on duty in Malawi; or

(ii) a delegate of the International Committee of the Red Cross and has entered Malawi with the consent, or at the invitation, of the Government,

shall not be held to require registration in Malawi in respect of his duties as a member of that force or as such delegate, as the case may be;

(e) the Council may exempt from the provisions of this Act regarding registration any person not permanently resident in Malawi who is engaged solely in teaching or research work affecting any or the professions or calling in respect of which a register is kept under this Act for a period not exceeding four months.

(2) Any prescription or order signed by a person exempted from registration in accordance with subsection (1) and given by him in the course of his practice under that subsection, but not otherwise, shall, for the purposes of any law relating to drugs, have same force and effect as a prescription or order signed by a registered person.

[Ch3601s63]63. Registered persons becoming unfit to practice

(1) Whenever there is brought to the notice of the Council an allegation that a registered person has—

(a) become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practice; or

(b) become unfit to purchase, acquire, keep, use, prescribe, order, supply or possess any drug; or

(c) been using a drug in contravention of any law relating to the use of drugs; or

(d) become addicted to or dependent upon the use of drugs, the Council shall have power to call for such information and to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) In consequence of an investigation under subsection (1), the Council may—

(a) direct that such person shall cease to practice and that his registration be cancelled; or

(b) suspend such person from practice for such period, and subject to such conditions, as the Council may determine; or

(c) impose such conditions respecting the practise of such person as it may deem necessary and in the event of failure by such person to comply with such conditions, the Council may direct that such person shall cease to practise and that his registration shall be cancelled.

[Ch3601s64]64. Restoration to register

Where the name of a person has been erased from the register, the Council may, if it thinks fit, authorize the restoration to the register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

[Ch3601s65]65. Burden of proof on unregistered persons

In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person alleged to be not registered, the person charged shall be deemed to be not registered unless he proved the contrary.

[Ch3601s66]66. Personation of registered person or misrepresentation

Any person who impersonates a registered person, shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

[Ch3601s67]67. Registered person using unregistered title or qualification

A registered person who takes, uses or publishes in any way whatsoever a name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a qualification which relates to a profession or calling in respect of which a register is kept and which is

not shown in the register in connexion with his name shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

[Ch3601s68]68. Notification of change of address or death

(1) A registered person who changes his address shall notify that fact to the Registrar within one month after such change.

(2) If the registrar of births and deaths receives notice of a death which shows that the deceased belonged to a profession or calling in respect of which a register is kept, he shall forthwith notify the Registrar of such death.

[Ch3601s68A]68A. Closure of premises and seizure of equipment, etc.

19 of 1995(1) Where the Council believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Council may, subject to subsection (2), order—

- (a) the closure of any premises; and
- (b) the seizure of any equipment, instrument or any other thing,

by means of or in relation to which the Council reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any equipment, instrument or any other thing seized shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Council, been complied with, unless before that time disciplinary or court proceedings, as the case may be, have been instituted in respect of the contravention, in which event the premises shall remain closed and the equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence or disciplinary misconduct under this Act or any regulations made thereunder, any equipment, instrument or other thing by means of or in relation to which the offence or misconduct was committed may, in addition to any other penalty imposed by the court or the Council, be forfeited to such person, and may be disposed of in such manner and at such time and place, as the court or the Council, as the case may be, may direct; but no equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or the Council or before the time within which the appeal may be taken has expired.

PART XIV

REGULATIONS AND SAVINGS

[Ch3601s69]69. Regulations

The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

- (a) prescribe the fees payable—
 - (i) upon registration or renewal of registration in a register; or
 - (ii) on transfer from one register to another register; or
 - (iii) for restoration to a register; or
 - (iv) for registration of an additional or specialist qualification; or
 - (v) for the issue of a duplicate certificate of registration or a certificate extract from a register or other certificate issued by the Registrar; or
 - (vi) in respect of private practice; or
 - (vii) for any other matter under this Act;
- (b) prescribe the forms required to be prescribed under this Act;
- (c) prescribe the acts considered to be or not to be acts specially pertaining to profession or calling in respect of which a register is kept under this Act;
- (d) make provision for the conduct, supervision of private practice and other matters relating thereto; and
- (e) make provision for the registration, control and regulation of persons who practice professions or callings allied to medicine and dentistry and whose work is concerned closely with the prevention or treatment of any physical or mental ailment in human beings.

[Ch3601s70]70. Repeal and savings

Repeal and savings.*

SUBSIDIARY LEGISLATION

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

ARRANGEMENT OF REGULATIONS

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MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

under s. 69

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Medical Practitioners and Dentists (Private Practice) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“approved institution” means an institution specified in the First Schedule; First Schedule

“institutional facility” means a clinic or dispensary operated by a company or other organization solely for providing services to its employees and any dependants living with the employees; G.N. 10/2009

“locum” means a medical practitioner or dentist substituting or providing service for another medical practitioner or dentist in the absence of that other;

“notifiable disease” means a disease specified in the Third Schedule; Third Schedule, G.N. 84/1989

“private practice” means the giving of medical, surgical or dental advice or treatment by a medical practitioner or a dentist for a fee, but does not include such activity if undertaken by a medical practitioner or dentist as part of his duties as an employee at an institution specified in the Sixth Schedule.

PART II

ELIGIBILITY FOR A PRIVATE PRACTICE LICENCE

3. Eligibility for a private practice licence under Part IX of the Act

(1) Subject to subregulation (2), no person shall be issued with a licence authorizing him to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part-time, as a private practitioner unless he has served as a medical practitioner or dentist in an approved institution for a continuous period of not less than two years. G.N. 40/1994

(2) Where the Council is satisfied that an applicant for a private practice licence has, from his practice undertaken wholly in another country or partly in Malawi and partly in another country, obtained sufficient experience appropriate to the conditions in Malawi in relation to the kind of private practice in which he intends to engage, the Council may, notwithstanding that the applicant has not served the minimum period specified under subregulation (1), issue to him a private practice licence subject to such conditions as the Council may impose; and the Council may require such conditions to be fulfilled either prior or subsequent to the grant of the licence.

3A. Specialists engaging in general practice

All specialists who want to engage in general practice work except for specialists in paediatrics, surgery, medicine and obstetrics and gynaecology shall be required to undergo an orientation for a minimum period of six (6) months at a hospital approved by the Council before being allowed to practice as such. G.N. 48/2007

4. Practitioners in public service eligible for a private practice licence

Save as otherwise provided in the contract of employment in the case of a contract or an expatriate officer, a medical practitioner or dentist employed in the public service or other organization owning or operating an establishment specified in the Sixth Schedule shall be eligible for a private practice licence under these Regulations if he satisfies the other requirements of these Regulations, but a licence issued to him shall be subject to such arrangements as may be approved by the Minister (in the case of those in the public service) or by or on behalf of the organization (in the case of those in such other organization) with regard to— G.N. 84/1989, Sixth Schedule

(a) the time when such medical practitioner or dentist may or may not engage in private practice;

(b) the use, by such medical practitioner or dentist for the purposes of his private practice, of any premises, equipment and facilities within, or forming part of, a hospital, clinic or other health establishment of the Government or of such other organization; and

(c) such other matters as deemed expedient in the interest of medical and dental service to the general public.

5. Absence from active clinical practice

(1) A medical practitioner or dentist who has been absent from clinical practice for a continuous period of more than three years shall not be eligible for a private practice licence unless immediately prior to the grant of the licence he has undergone full-time clinical orientation at an approved hospital for a period of not less than six months; and such person may be attached to such hospital as an employee or otherwise:

Provided that nothing in this subregulation shall be construed as imposing an obligation on the Government, the Council, a hospital or any person to employ or otherwise engage any medical practitioner or dentist.

(2) For the purposes of subregulation (1), a person shall not be considered to have been absent from clinical practice if he satisfies the Council that while substantively engaged on non-

clinical duties he was regularly performing clinical duties at an approved institution and the head of that institution certifies to that effect in writing to the Council.

PART III

PRIVATE PRACTICE LICENCE

6. Application for issue or renewal of licence

(1) An application for a private practice licence shall be in Form PP 1 set out in the Second Schedule. Second Schedule, Form PP 1

(2) Every application shall be accompanied with the appropriate application and licence fee specified in the Fifth Schedule; but the application fee so paid shall not be refundable. Fifth Schedule

(3) An application for renewal of a private practice licence shall be made in writing and submitted to the Registrar thirty days before the expiry of the current licence period; and the Council shall not be obliged to consider an application for renewal if submitted after the thirty days' period, or may consider such application subject to such conditions as the Council may impose in relation to the operation of the licence or otherwise.

7. Form, validity and renewal of licence

(1) Every private practice licence shall be in Form PP 2 set out in the Second Schedule. Second Schedule, Form PP 2, G.N. 84/1989

(2) A private practice licence shall be valid from the date of issue to 31st March next following the date of issue and may be renewed from time to time:

Provided that where the expired period of validity of the licence was twelve months, the licence shall not be renewed unless the Council is satisfied that during the expired period the licensee attended at least one approved conference of the medical profession in Malawi held when he was available to attend.

(3) The Registrar shall, soon after 31st March every year, publish in the Gazette a list of names, address, callings and other particulars of all persons licensed to operate a private practice for the ensuing period ending 31st March the following years. G.N. 84/1989

8. Licence fees

The fees specified in the Fifth Schedule shall be payable in respect of the matters relatively specified in that Schedule. Fifth Schedule

9. Replacement of licence

A licence or a premises registration certificate may be replaced upon proof to the satisfaction of the Registrar that the licence or certificate has been lost, destroyed or defaced and upon payment by the licensee of the replacement fee specified in the Fifth Schedule. Fifth Schedule, G.N. 18/1991

10. Number of clinics

(1) Save as provided in subregulation (2), a private practice licence shall authorize the medical practitioner or dentist to whom it is issued to operate his private practice at not more than one place, being the place located at the premises specified in the licence.

(2) Nothing in subregulation (1) shall be construed as prohibiting a private practitioner from—

(a) undertaking clinical visits away from his licensed premises to any hospital, clinic, health centre or other health establishment for the limited purpose of seeing his out-patients or in-patients or conducting any surgical, diagnostic or therapeutic procedures in relation to his patients; and

(b) being engaged in a supervisory, advisory, consultative or other appropriate capacity by or for any hospital, clinic or health centre or for the performance of his professional duties.

11. Types of clinics

(1) A private practice licence shall authorize the medical practitioner or dentist to whom it is issued to provide either out-patient services or in-patient services or both out-patient and in-patient services. G.N. 35/2004

(2) A private practice licence shall authorize the medical practitioner or dentist to whom it is issued to provide in-patient services provided he has a minimum of five years experience obtained in a hospital. G.N. 35/2004

12. Assistants

(1) A licensee may employ as an assistant any person who has undergone recognized training in medicine, dentistry, nursing or midwifery in an approved training institution and who is not registered as a medical practitioner or dentist, to undertake duties appropriate to his calling under the immediate supervision of the licensee or a medical practitioner or dentist employed by the licensee.

(2) In the case of in-patient services, an assistant shall include a medical practitioner or dentist who is registered with the Council after successful completion of internship. G.N. 35/2004

(3) Where, in circumstances other than those of an emergency, any assistant employed by a licensee undertakes or offers to undertake any form of medical or dental treatment independently without the immediate supervision of a medical practitioner or dentist, he shall be guilty of an offence. G.N. 35/2004

PART IV

LOCUM PRACTICE

13. Locums

(1) A medical practitioner or dentist who wishes to work as a locum for another medical practitioner or dentist holding a private practice licence shall first satisfy the requirements for his own eligibility for a private practice licence under these Regulations and shall make his application to the Council in writing:

Provided that in the case of an emergency a medical practitioner or dentist may act as a locum for a period not exceeding fourteen days during which time he shall inform the Council of his action in that behalf and make a formal application under this subregulation.

(2) Where the duration of a locum practice—

(a) is not to exceed sixty days, whether consecutive or cumulative, the Registrar may issue to the applicant a permit in Form PP 3 set out in the Second Schedule authorizing the applicant to practice as a locum, subject to payment of the relevant fee specified in the Third Schedule; Second Schedule, Form PP 3

(b) is to exceed sixty days, consecutive or cumulative, the applicant shall require to be issued with a private practice licence in accordance with these Regulations.

PART V

X-RAY FACILITIES AND CLINICAL LABORATORIES

14. X-ray facilities

(1) A private practice shall not include X-ray facilities, unless the medical practitioner or dentist who carries on the practice or is employed thereat—

(a) is himself qualified in the use of ionizing radiation; or

(b) employs a radiographer,

and in either case the person referred to in paragraph (a) or (b) personally undertakes the radiological examination of patients.

15. Clinical laboratories

A private practice shall not include a clinical laboratory, unless the examination in that laboratory of specimens obtained from patients is—

(a) undertaken personally by the licensee or a medical practitioner or a qualified medical laboratory assistant, technician or technologist employed thereat; and

(b) limited to the purposes of undertaking minimum investigations required for the diagnosis of his patients.

16. Use of X-ray facilities and clinical laboratories for referred cases

(1) The X-ray facilities or a clinical laboratory of a private practice operated by a medical practitioner or dentist may be used for referred cases of another medical practitioner or dentist only upon satisfactory proof that the patients concerned are patients of that other medical

practitioner or dentist and that the examination is to be limited to the purposes specified in regulation 15 (b).

17. Unlawful use of X-ray facilities or clinical laboratories

Any person who uses the X-ray facilities or a clinical laboratory of a private practice— G.N. 35/2004

(a) for the examination of any person, or specimens from any person, who is not a patient of the private practice concerned or who has not been referred thereto in accordance with subregulation (1); or

(b) otherwise than in accordance with the provisions of this Part,

shall be guilty of an offence and liable to a penalty of K20,000 and to one month imprisonment.

PART VI

GENERAL

18. The Council to approve premises

(1) No private practitioner shall operate a private practice unless the premises at which the private practice is to be or is being operated have been approved by the Council.

(2) For the purpose of the Council's approval under subregulation (1), a person applying for a private practice licence or for a renewal thereof shall, when making his application, separately apply in writing for the Council's approval of the premises used or to be used for his private practice; and the Council shall not be obliged to consider his application for a private practice licence before it approves the premises.

(3) The Council shall keep and maintain a register of all premises approved by the Council under this regulation and shall issue in respect of every such premises a registration certificate in Form PP 5A set out in the Second Schedule which shall be renewable annually upon payment, by the private practitioner concerned, of the application and premises registration fees specified in the Fifth Schedule but the application fee so paid shall not be refundable, and the Council shall once every year publish in the Gazette the list of all premises registered under this subregulation. G.N. 19/1991, Second Schedule, Fifth Schedule

19. Conditions of licence

Every private practice licence shall be issued subject to any special condition endorsed thereon by the Council and to the following general conditions, that is to say— G.N. 35/2004

(a) that the premises used for the private practice are—

(i) at all times kept in good order and good state of repair and are kept reasonably secure from unauthorized entry;

(ii) not to be used as residential premises except with the permission in writing of the Council;

(b) that the premises and the private practice shall be open at any reasonable time for inspection by any person duly authorized in that behalf by the Council; and any person who willfully obstructs or hinders any such duly authorized person from conducting the inspection shall be guilty of an offence and liable to a penalty of K40,000 and one year imprisonment;

(c) that the premises and the private practice conform to the minimum standards and facilities specified—

(i) in Part I of the Fourth Schedule in respect of a private practice providing out-patient services only; Fourth Schedule Part I

(ii) in Part II of the Fourth Schedule in respect of a private practice providing in-patient services, Fourth Schedule Part II

and further conform to any public health requirements prescribed by or under the Public Health Act or any other written law; and Cap. 34:01

(d) that by reason of proximity of his place of residence to the premises of his private practice, the licensee is able to be in regular attendance at his private practice during the hours it is open to the general public.

19A. Council to inspect and register health facilities

(1) In the exercise of its powers of inspection, the Council shall at least once every year undertake visits to every health facility in Malawi and the Council shall, unless Regulations made under the Act otherwise provide, prescribe in respect of every such facility the minimum requirements and standards of practice according to its class as determined by the Council. G.N. 30/2004

(2) The Council shall keep and maintain a register of all health facilities in Malawi and shall once every year publish in the Gazette the list of all registered health facilities.

(3) There shall be payable annually to the Council in respect of every health facility in Malawi the premises registration fees specified in the Fifth Schedule. Fifth Schedule

20. Notification of diseases, etc., and monthly returns

Every licensee shall—

(a) immediately upon treating any person for, or identifying any person as having, any notifiable disease specified in the Third Schedule at his private practice, notify the Secretary for Health, either directly or through such health officers as the Secretary for Health may designate, of such disease and the treatment, if any, given to such person; Third Schedule

(b) immediately upon the occurrence of the death of any patient at his private practice, notify the police of the event of such death and furnish to them all relevant information concerning the death;

(c) submit to the Secretary for Health monthly returns in Form PP 4 or Form PP 5, as the case may be, set out in the Second Schedule with particulars of diseases, ailments or injuries treated by him in his private practice. Second Schedule, Forms PP 4 and PP 5

21. Restriction on practice outside field of specialization

No licensee or locum, and no assistant employed at the private practice of the licensee, shall engage in practice outside his area of specialization or professional or technical competence except—

(a) in cases of emergency; or

(b) in cases where practitioners with requisite specialization are not reasonably available,

and it shall be the duty of the licensee to ensure strict observation of this regulation:

Provided that a person registered under the Specialist Register kept by the Council under section 18 of the Act and in accordance with the provisions of the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules, 1988, shall be deemed also to possess the professional competence of a general practitioner.

22. Personal conduct

Every licensee shall at all times whilst on duty be dressed and groomed and generally conduct himself in such a manner as to portray to the public a respectable image of himself and the profession he is practising and observe the standards of ethics of his profession.

23. Manner of indicating name, etc., of the licensee

A licensee shall indicate his name and qualifications on the outside of the premises of his private practice in an unostentatious manner and in accordance with item 4 of Part IA of the Fourth Schedule, modified as the case may be. Fourth Schedule

24. Change of premises and other particulars relating to a licence

On application by a licensee, the Council may in writing authorize change of premises or other particulars of the licensee and in such event, either—

(a) the written authority of the Council shall be attached to the licence; or

(b) the Council may as it sees fit direct that the licence be replaced to reflect the new premises or particulars, subject to payment by the licensee of the replacement fee specified in the Fifth Schedule. Fifth Schedule

25. Cancellation of licence

For the purpose of cancelling a private practice licence under section 38 (3) of the Act the expression “good cause” shall include—

- (a) failure by the licensee to comply with the provisions of the Act or of these Regulations or any other subsidiary legislation made under the Act;
- (b) contravention by the licensee of any condition imposed under the licence;
- (c) cancellation of the licensee's registration under the Act as a medical practitioner or dentist;
- (d) willful obstruction or hindrance by the licensee or his employee of a duly authorized person from inspecting the licensee's premises or private practice, whether or not proceedings for an offence arising therefrom are pending; and
- (e) conviction for an offence under the Act, these Regulations or any other subsidiary legislation made under the Act.

26. Penalty

Where a person is guilty of an offence under these Regulations for which no penalty is specifically provided, he shall be liable to a fine of K500.

PART VII

TRANSITIONAL PROVISIONS

27. Transitional provisions

(1) Notwithstanding regulation 3 (1) a person who at the commencement of these Regulations was operating, or was engaged in, a private practice in Malawi as a medical practitioner or dentist shall be deemed eligible for a private practice licence under these Regulations and may continue with his practice until 31st March, 1989, after which date he shall not so practice except under a licence issued under these Regulations.

(2) Notwithstanding regulation 8 (1), in the case of a medical practitioner or dentist who at the commencement of these Regulations was operating his private practice at more than one place he may continue with his private practice at each of those places until 31st March, 1989, after which date he may be licensed in respect only of one place specified in the licence.

(3) A person who contravenes subregulation (1) or (2) shall be guilty of an offence.

FIRST SCHEDULE reg. 2

APPROVED INSTITUTIONS G.N. 84/1989, 35/2004

Any hospital with the following Specialists—

- (a) Paediatrician;
- (b) Physician;
- (c) Obstetrician and Gynaecologist; and
- (d) Surgeon

SECOND SCHEDULE regs. 6, 7, 13 and 20

FORMS

Form of Application for a Private Practice Licence.

FORM PP 1

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

APPLICATION FOR A PRIVATE PRACTICE LICENCE

(Regulation 6)

1. Surname: and

(where applicable) maiden name:

2. Other names:

3. Address:

.....

4. Place and date of birth:

.....

5. Nationality:

6. Registration No. and Date

.....

7. Particulars of Experience (e.g. posts held and types of practice in which the applicant has been engaged and countries in which the applicant has practised):

Medicine

.....

Surgery

Paediatrics

Obstetrics and Gynaecology

.....

Others (please specify)

.....

Dentistry

8. Do you propose to practise on your own behalf or to be employed whole-time or part-time by a private practitioner (give details)

.....

.....

.....

.....

.....

9. What type of practice do you propose to engage in—

Specialist or General Practice?

If Specialist, specify the discipline:

.....

10. Place of practice (give details of District, Town, City or Municipality and plot number)

.....

.....

.....

.....

.....

.....

Signature of Applicant

Date

Form of a Private Practice Licence

FORM PP 2

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

PRIVATE PRACTICE LICENCE

(Regulation 7)

LICENCE No.:

..... (full name of Licensee with titles and qualifications held) is hereby licensed to engage in private practice on his/her own behalf or employed—

(a) as a (see note (1))

(b) of (see note (2))

(c) at (see note (3))

Date of issue

.....

Registrar

.....

Chairman

SPECIAL CONDITIONS

1.

2.

3.

4.

NOTES:

(1) State whether Medical Practitioner or Dentist.

(2) Specify the nature, i.e., whether General Practice or Specialist Practice. If Specialist Practice, specify speciality.

(3) Description of the premises relating to the Licence.

Form of permit relating to Locum Practice

(Regulation 13)

THE MEDICAL COUNCIL OF MALAWI

P.O. Box 30787

CAPITAL CITY

LILONGWE 3

MALAWI

Ref. No. Date

Dr. (Registration No.)

Address:

.....

.....

Sir,

RE: YOUR APPLICATION FOR LOCUM PRACTICE

I acknowledge your letter dated

Ref. No. applying for locum practice.

Permission is hereby granted for you to work as a locum in the place of Dr.
..... at his (hospital, clinic, surgery, etc.) during his absence from
to

Yours faithfully

Registrar

Forms of Medical Statistical Returns

FORM PP 4

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS PRIVATE) PRACTICE) REGULATIONS

MONTHLY RETURN OF OUT-PATIENTS

(under regulation 20)

Month of, 19

Name of Private Practice

Address

Instructions:—

1. Two copies of this return should be completed and sent to your District Health Officer (DHO) not later than 7th day of the following month. The DHO will forward one copy to the Secretary for Health.

2. Only new patients attending your practice should be entered and each patient should be entered only once. If a patient has more than one diagnosis, enter him under the one that caused him to come for treatment.

3. Subsequent attendances need not be reported any more.

4. Make as complete a diagnosis as possible. Wherever possible, a diagnosis should be entered under category 1–12. If the diagnosis does not fall into any of these categories, then enter it under any one of the categories.

Date

.....

Medical Practitioner / Dentist

Forwarded to Secretary for Health by:

Date

.....

District Health Officer

(Official stamp)

Name of Clinic, Private Practice month of, 19
.....

	Diagnosis abbreviations	Under 55 and over	Total
1.	Cholera		
2.	Diarrhoea		
3.	Whooping cough		
4.	Chickenpox		
5.	Measles		
6.	Malaria		
7.	Gonorrhoea		
8.	Syphilis		
9.	Other venereal diseases		
10.	Bilharzia		
11.	Malnutrition		
12.	Diseases of the eye		
13.	Diseases of the ear		
14.	Gynaecological		
15.	Hookworm and other helimithiasis		
16.	Dental diseases		
17.	Scabies		
18.	Other conditions of the skin		
19.	Meningitis		
20.	Hypertension		
21.	Upper respiratory infection		
22.	Lower respiratory infection		
23.	Tuberculosis		

- 24. Abdomen and Gastrointestinal
- 25. Genito-urinary tract
- 26. Muscles/Skeleton
- 27. Traumatic conditions
- 28. Other diagnosis
- 29. Ill defined
- 30. Referrals

TOTAL

Re-attendances

Number of Out-Patients

Attending Clinic/Hospital

This Year for the first time

Comments:
.....
.....

Compiled by: Signature:

Name of Officer:

Date of Report:

FORM PP 5

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

MONTHLY RETURN OF IN-PATIENTS

(under regulation 20)

Month of, 19

Name of Private Practice

Address

Signature of Medical Practitioner/Dentist

Instructions for completion:

(1) The morbidity return should show all patients who have left the hospital during the month (i.e. discharged, absconded or died).

(2) The diagnosis should be the final diagnosis. Therefore every patient should be entered only once. No multiple diagnosis is required.

(3) Part I of this form is compiled in accordance with the WHO list of 70 causes for the tabulation of morbidity in Volume I of the International Classification of Diseases (1965 Revision). The serial numbers C1, C2, etc., refer to this list. The small 3-figure numbers are the detailed list numbers and indicate which diseases fall in the categories of the C list.

(4) If in difficulty in deciding under which category a disease should be entered, look up the diagnosis in the Alphabetic Index of the International Classification of Diseases and find the "detailed list numbers".

(5) The number of patients admitted should be found in a wardbook.

(6) In-patient days is obtained by totalling the number of in-patients each day of the month. The figures should be obtained from the ward records.

(7) Patients who are admitted following road traffic accidents should be entered twice: first by nature of injury and second under road transport accidents.

(8) Submit two copies and return to your District Health Officer (DHO) not later than the 7th day of the following month. The DHO will forward one copy to the Secretary for Health.

I: MORBIDITY AND MORTALITY RETURN

Code Diseases IN-PATIENTS

	Under 1 year		1–4 years		5–14 years		15–44 years		45 years and over		Total
	All Patients Male	Died Female	All Patients Died	Patients	All Patients Died	Patients	Male Died	Female Died	Male Died	Female Died	
I	Infective and parasitic diseases										
C 1	Typhoid, paratyphoid fever and other salmonella infections 001–003										
C 2	Bacillary dysentery and amoebiasis 004,006										
C 3	Enteritis and other diarrhoeal diseases 008,009										
C 4	Tuberculosis of respiratory system 010–012										
C 5	Other tuberculosis including late effects 013–019										
C 7	Diphtheria 032										
C 8	Whooping cough 033										
C 9	0 Streptococcal sore throat and scarlet fever 034										
1	Tetanus 037										
C 10	Smallpox 050										
C 11	Measles 055										
C 13	Infectious hepatitis 070										
C 15	0 Cerebral malaria 084										
1	Other malaria 084										

C 16 Syphilis and late effects 090–097

C 17 Gonococcal infections 098

C 18 0 Schistosomiasis 120

1 Ancylostomiasis (hookworm) 126

2 Other helminthiases 121–125,127–129

C 19 All other infective and parasitic diseases, remainder of 000–136

II Neoplasms

C 20 Malignant neoplasms 140–209

C 21 Benign neoplasms and neoplasms of unspecified nature 210–239

III Endocrine, nutritional and metabolic diseases

C 22 Thyrotoxicosis with or without goitre 242

C 23 Diabetes mellitus 250

C 24 Avitaminosis and other nutritional deficiency 260–269

C 25 Other endocrine and metabolic diseases

240, 241, 243–246, 251–258, 270–299

IV Diseases of blood and forming organs

C 26 Anaemias 280–285

V Mental disorders

C 27 O Psychose and non-psychotic mental disorders 290–309

1 Epilepsy 345

VI Diseases of nervous system and sense organs

C 28 Inflammatory diseases of eye 360–369

C 29 Cataract 374

C 30 Otitis media and mastoiditis 381–383

C 31 Other diseases of nervous system and sense organs 320–344, 346–358, 370–373 375–380, 384–390

VII Disease of the circulatory system

C 32 Active rheumatic fever 390–392

C 33 Chronic rheumatic heart disease 393–398

C 34 Hypertensive disease 400–404

C 35 Ischaemic heart disease 410–414

C 36 Cerebrovascular disease 430–438

C 37 Venous thrombosis and embolism 430–453

C 38 Other diseases of circulatory system 420–429, 440–448, 464–458

VIII Diseases of the respiratory system

C 39 Acute upper respiratory infection 460–466, 470–474

C 41 Pneumonia 480–486

C 42 Bronchitis, emphysema and asthma 490–493

C 43 Hypertrophy of tonsils and adenoids 500

C 44 Pneumoconioses and related diseases 515–516

C 45 Other diseases of respiratory system 510–514, 517–519

IX Diseases of digestive system

C 46 Diseases of teeth and supporting structures 520–525

C 47 Peptic ulcer 531–533

C 48 Appendicitis 540–543

C 49 Intestinal obstruction and hernia 550–553,560

C 51 Other diseases of digestive system 526–530, 534–537, 561–577

X Diseases of genito-urinary system

C 52 Nephritis and nephrosis 580–584

C 53 0 Calculus of urinary system 592–594

1 Other diseases of urinary system 590, 591, 595–599

C 55 0 Cysts and other diseases of breast 610, 611

1 Infectious diseases of female organs (excl. V.D.) 612–614, 616, 620, 622, 629–631

2 Other diseases of female organs, remainder of 620–629

3 Diseases of male genital organs (excl. V.D.) 600–607

XI Delivery and complications of pregnancy, childbirth and the puerperium

C 56 Abortion 640–645

C 57 Other complications of pregnancy, child birth and pureperium 630–639, 651–678

C 58 Delivery without mention of complication 650

XII Diseases of the skin and subcutaneous tissue

C 59 Infections of skin and subcutaneous tissue 680–686

C 60 Other diseases of skin and subcutaneous tissue 690–709

XIII Diseases of musculo skeletal system and connective tissue

C 61 Arthritis and spondylitis 710–715

C 62 Other diseases of musculoskeletal system and connective tissue 716–738

XVI Other diseases

C 63 Congenital anomalies 740–759

C 64 Certain causes of perinatal morbidity 760–799

C 65 Other specified and ill-defined diseases 286–289, 310–315, 780–796

XV Accident, etc. (Nature of injury)

CN 66 Fractures N800–N829

CN 67 Intracranial and internal injuries N850–N869

CN 68 Burn N940–N949

CN 69 Adverse effects of chemicals substances N960–N989

CN 70 All other injuries N830–N848, N870–N939, N950–N959, N990–N999

CE 66 Road transport accidents

II: WORKLOAD

Patients admitted			In-patient days				
Full pay	Reduced fee	Free	Total	Full pay	Reduced fee	Free	Total

Surgical Ward Male

Female

Medical Ward Male

Female

Children's Ward

Maternity Ward

Other Wards

Number of major operations

Form of a Premises Registration Certificate.

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (PRIVATE PRACTICE) REGULATIONS

PREMISES REGISTRATION CERTIFICATE

(Regulation 18 (3))

CERTIFICATE No.

This is to certify that the Medical Council of Malawi has approved the use of the premises situated at in the District/City/Municipality/Township of by as

(Name of practitioner)

.....

(Nature of private practice)

LICENCE No.

Dated

.....

Registrar

THIRD SCHEDULE G.N. 35/2004

NOTIFIABLE DISEASES

1. Cholera
2. Typhoid fever
3. Meningitis
4. Tuberculosis
5. Acute poliomyelitis
6. Rabies
7. Trypanosomiasis
8. Measles
9. Acute placid paralysis
10. Viral haemorrhagic fever
11. Plague (Bubonic or Pneumonic)
12. Shigellosis.

FOURTH SCHEDULE G.N. 35/2004

MINIMUM REQUIREMENTS FOR A PRIVATE PRACTICE

PART I

FOR A PRIVATE PRACTICE PROVIDING OUT-PATIENT SERVICE ONLY

A. MEDICAL PRACTITIONERS

1. PREMISES—

(1) Premises should contain the following accommodation—

- (a) a waiting room;
- (b) a consulting room which should be reasonably soundproofed so that conversations taking place therein are not easily audible outside the consulting room;
- (c) an examination room which should be either a separate room or a curtained-off part of a consulting room;

(d) a treatment room in which such procedures as the giving of medications and the carrying out of minor surgical operations can be undertaken; and

(e) adequate toilet facilities.

(2) All rooms should be clean and adequately furnished, and—

(a) there should be sufficient sitting accommodation in the waiting room for the size of the practice;

(b) the consulting room should have a desk for the practitioner, a chair for the practitioner and at least two or three chairs for the patient and persons accompanying the patient; and further, a consulting room should have a facility for the practitioner to wash his hands. For example, where there is no running water there should be a wash-basin with a jug of water which is periodically drained, cleaned and topped up; and

(c) there should be an examination couch in the consulting or examination room and another couch in the treatment room and the couches ought to be so designed that it is easy for an infirm patient to get on to them, and further there should be adequate lighting, either daylight or artificial light, to enable the practitioner to see his patient fully.

2. EQUIPMENT—

The practitioner shall have the following equipment available at his private practice—

(a) diagnostic instruments such as stethoscope, sphygmomanometer, foetal stethoscope, torch, patella hammer, auroscope, ophthalmoscope, proctoscope, vaginal speculum, disposable tongue depressors;

(b) instruments for carrying out certain procedures, for example, draining abscesses and stitching wounds;

(c) sterilizers for surgical instruments and containers, etc.;

(d) a facility to examine urine on the premises, as for example, by the use of “labstix” or equivalent reagents;

(e) a cabinet for patients’ records;

(f) a refrigerator for the storage of drugs requiring refrigeration; G.N. 19/1991

(g) resuscitation equipment;

(h) appropriate and current reference books for the practice; and

(i) two bins for the disposal of waste, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material in either case using an incinerator of the ordinary type or of a 44-gallon drum with specifications approved by the Council.

3. STOCKING OF DRUGS

(1) Subject to the relevant provisions of the Pharmacy, Medicines and Poisons Act, the Practitioner should attempt to keep in his premises a stock of those essential drugs which he considers should be administered to his patients in his premises and especially if his practice is not in a location where there may be dispensing pharmacy. The range of drugs that he should have is wide, but he ought to have at least the following— Cap. 35:01

- (a) injections of analgesics (for example, pethidine, morphine, etc.); and
- (b) antibiotics, antihistamines, bronchodilators, antiemetics, anti-spasmodics, local anaesthetics and corticosteroids.

(2) For the purpose of administering injections, a practitioner should have sterile syringes and needles, or standard and surgical spirit or other appropriate skin antiseptic.

(3) The practitioner should provide himself with a bag which he can carry with him when visiting patients or when travelling or to be available for him to use whenever his services may be needed. The bag should contain, as a minimum, the following—

- (a) such drugs as injections of analgesics, antibiotics, bronchodilators, tranquilizers, local anaesthetics, antispasmodics, antiemetics and similar drugs; and
- (b) oral preparations such as antipyretics, analgesics, gastrointestinal sedatives, antihistamines, bronchodilators, antibiotics, muscle relaxants, and others.

(4) For the purpose of the doctor's bag, it should be the practice to carry disposable syringes and needles rather than steel and glass syringes which require sterilization. The bag will be adequately furnished if it carries a supply of 2 ml disposable syringes and 25 g (1 in.) and 21 g (1½ inches) disposable needles. Practitioners shall take steps to destroy all disposable equipment to avoid their possible re-use.

4. APPROVED DESCRIPTION OF NAME—

DR./MR M.B.B.S., B.D.S.* MEDICAL PRACTITIONER/DENTIST

or

DR./MR. M.B.B.S., D.C.H., M.R.C.P.; F.R.C.S., M.Med.;
F.R.C.P., etc.*

(Specify the Specialist: PHYSICIAN, PAEDIATRICIAN, OBSTETRICIAN/GYNAECOLOGIST, etc., as recognized under the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

B. DENTISTS

1. WAITING ROOM: With basic furniture, and other necessary facilities.

2. LABORATORY/WORKSHOP:

(1) Basic laboratory requirements, as follows—

- (a) investing flasks;

- (b) press and clamp;
- (c) polishing motor;
- (d) laboratory motor and hand piece;
- (e) bunsen burner;
- (f) pliers, wax, knife, etc.
- (g) denture materials;
- (h) plaster for models; and
- (i) polishing brushes, cone felt, etc.

(2) Basic requirements in filling materials—

- (a) Amalgams
- (b) Dental cements as follows—
 - (i) zinc oxide eugenol;
 - (ii) zinc and copper phosphates;
 - (iii) calcium hydroxides;
 - (iv) silicate and silicophosphate cements; and
 - (v) composites.

3. TOILET: This should have a wash basin and water-borne sanitation.

4. SURGERY: The dental surgery should consist of the following basic essentials, as a minimum—

- (a) dental unit with low and high speed drills which are water cooled;
- (b) wash-basin with running water;
- (c) sterilizer unit;
- (d) cabinet with basic dental instruments;
- (e) basic drugs and medicaments used in dentistry including antimicrobials, corticosteroids, analgesics, haemostatic and anaesthetic drugs, in addition to antiseptics disinfectants;
- (f) lockable cabinet, containing essential emergency drugs;
- (g) emergency oxygen cylinder; and
- (h) cabinet for patients records and card system.

5. INTRAORAL RADIOLOGICAL UNIT: This unit must be available at every dental surgery.

6. WET WASTE DISPOSAL EQUIPMENT: This should consist of two bins, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material, in either case using an incinerator of the ordinary type or of a 44-gallon drum with specifications approved by the Council. G.N. 19/1991, 35/2004

7. Appropriate and current reference books.

8. REFRIGERATOR: This should be available for the storage of drugs requiring refrigeration.

C. OPHTHALMOLOGISTS

The Ophthalmologist would need the following in the clinic—

1. a good light source;
2. ophthalmoscope;
3. schiotz tonometer;
4. magnifying loopes;
5. Bp machine;
6. snellen chart;
7. trial flame;
8. slit lamp;
9. epilation forceps;
10. artery forceps;
11. lid retractors;
12. blade holder;
13. gallipots; and
14. cannulas for syringing.

All conditions including refractive errors which do not require surgery can be treated in the out-patient set up. However, the following surgical procedures can be done in the clinic—

1. epilation;
2. I & D for styte and lid abscess;
3. removal of foreign body;
4. removal of sutures;

5. corneal scrapings; and
6. syringing of the punctum.

PART II

FOR A PRIVATE PRACTICE PROVIDING IN-PATIENT SERVICE G.N. 19/1991, G.N. 35/2004

(In this Part referred to as a “Private Hospital”.)

All the requirements specified in Part I of this Schedule and, in addition, the following requirements shall, subject to these Regulations, be observed for the relevant departments—

1. LABORATORY

Private hospitals should have clinical laboratories located within the premises to be staffed by suitably qualified personnel depending on the type of services offered.

(1) Premises—

- (a) permanent building material;
- (b) adequate size for tests to be carried out;
- (c) adequate lighting;
- (d) good ventilation;
- (e) each room must have a fire extinguisher;
- (f) supply of running water with wash basin;
- (g) bench tops must be made of cleanable and non-corrosive materials;
- (h) a specimen reception area for preparation and performance of tests;
- (i) toilet facilities for patients;
- (j) waiting room for patients; and
- (k) a place for handling dangerous specimens.

(2) Laboratory Tests and Equipment—

The range of tests to be performed includes—

- (a) Haematology—
 - Haemoglobin—colorimetric;
 - White cell count—manual;
 - Hematocrit—centrifugal;

White cell—differential count.

(b) Parasitology—

Routine urinalysis;

Examination of stool for cysts and parasites;

Blood films for malaria parasites;

(c) Bacteriology—

Gram stains;

Acid fast bacilli staining;

Culture and sensitivity;

(d) Bio-chemistry—

The laboratory may be able to do—

Blood and CSF proteins-colorimetric;

Bilirubin—colorimetric is recommended;

Urea—colorimetric is recommended;

The laboratory should be able to do blood and CSF glucose.

(e) Serology—

The laboratory may do—

VDRL tests for syphilis;

pregnancy test; and HIV tests.

(3) Blood Transfusion—

All private hospitals should have facilities for blood grouping and cross-matching.

(4) Laboratory equipment and other procedures—

(a) laboratory equipment should be appropriate for the range of tests to be performed;

(b) the equipment should be regularly serviced;

(c) every laboratory should be able to participate in the national laboratory quality assurance scheme (where any has been established with approval of the Council) to ensure that standards are maintained; and

(d) all tests done in the laboratory should be properly documented and monthly returns should be made to the Secretary for Health.

2. OPERATING THEATRE:

All categories of private hospitals may have a suitable operating theatre approved by the Council from time to time.

3. WARDS:

Minimum requirements are—

- (a) where there are open wards at least 2 rooms for isolation as necessary;
- (b) there should be 1 toilet to 10 patients with separation of male and female toilets;
- (c) a curtain or other partitions, etc., to separate beds;
- (d) an admissions/examination room;
- (e) a separate maternity room to be provided where such services are offered with a delivery room which shall consist of a delivery bed/couch, suction machine, nursery and a vacuum extractor;
- (f) at least one nurses station in every ward; and
- (g) there shall be a wash hand basin within the wards of the hospital.

4. KITCHEN:

- (a) where food is provided, necessary equipment for providing the food should be available depending on the size of the hospital and a balanced diet should be provided; and
- (b) the kitchen must always be kept clean and hygienic.

5. LAUNDRY:

Private hospitals should provide a suitable area for washing, hanging and ironing linen. Hospital linen supplies must be adequate to meet the needs in the wards.

6. PATIENTS' UNIFORM:

Every private hospital should provide uniform to be worn by patients in the hospital. The hospital should also provide separate space for storage of the patients' clothes.

7. IN-SERVICE TRAINING:

All professional and technical staff should be given the opportunity for in-service training in their fields at regular intervals.

8. PHARMACY:

- (1) it should be of adequate size for the practice;
- (2) the internal walls and the floors should be easily cleanable;

(3) it should be partitioned in such a way that there will be enough storage space and a dispensing area where prescription drugs can be collected;

(4) it should be constructed in such a manner that moisture is excluded;

(5) it should be adequately lit with approved fittings so as to facilitate easy identification of drugs;

(6) it should have a provision of wash basin;

(7) it should have cold storage facilities for storing heat sensitive drugs;

(8) it should be kept free of vermin;

(9) all areas in the pharmacy should be adequately and suitably shelved to enable proper and hygienic storage of drugs and any other items stored therein;

(10) all drug containers should be clearly labelled;

(11) the doors and windows or any other openings in the pharmacy should be properly and adequately secured;

(12) access to the pharmacy area shall be strictly limited to authorized personnel only;

(13) the pharmacy should be staffed by persons with adequate and approved pharmaceutical training as required by the Pharmacy, Medicines and Poisons Act; Cap. 3501

(14) proper inventory should be maintained of all drugs kept in the pharmacy;

(15) the pharmacy should at all times be kept clean and tidy;

(16) a prescription record should be maintained in the pharmacy;

(17) all drugs should be dispensed in clean and tidy containers which shall bear the name and strength of the drug, quantity dispensed, directions for use, name of hospital, name of patient and expiry date; and

(18) a lockable controlled drug cupboard and register for such drugs should be provided to avoid abuse.

9. MORTUARY:

Where a private hospital has a mortuary the mortuary shall be in a separate building, preferably with a cold room.

10. PREMISES:

(1) General cleanliness of the hospital—

(i) hospital grounds should always be kept clean;

(ii) dust bins should be emptied at least twice a week for appropriate final disposal of waste; and

(iii) an adequate number of ward attendants should be employed to keep the wards and floors always clean.

(2) Toilet Facilities:

The Toilet/patient ratio should be 1–10.

(3) Floor Area:

Minimum floor area should be 4 square metres for patient's bed to facilitate movement.

(4) Lighting and Ventilation—

(i) minimum of 1/10 floor area should be provided for ventilation and half of it shall be made openable for lighting; and

(ii) permanent ventilation should be made available by provision of air vents on opposite walls.

(5) Prevention of Fire and Fire Fighting Facilities—

(i) fire-extinguishers should be provided at appropriate points;

(ii) emergency exit doors should be provided; and

(iii) wherever possible alarm system should be provided.

(6) Water Supply:

(i) adequate running water supply;

(ii) provision of wash basins in the treatment, examination and consultation room; and

(iii) water drums could be used for storing water.

11. STAFFING LEVELS:

(1) All staff working in private hospitals should be registered with the appropriate authorities—

(a) doctor/clinical officer to patient ratio should be 1–50;

(b) general nurse to patient ratio should be 1–10;

(c) nurse/midwife working in maternity shall be 1–7; and

(d) minimum of two clinicians.

(2) Ward attendants, cleaners and labourers:

Private hospitals should engage an adequate number of such personnel to keep the hospital premises clean at all times.

(3) Watchmen:

An adequate number of watchmen should be engaged for the size of the hospital.

(4) Other Support Staff:

Other support staff should be engaged to suit the size of the hospital.

12. STERILIZATION:

(1) All private hospitals should provide adequate sterilization equipment having regard to the size of the hospital.

(2) Both hot water and cold water should be available in a running state.

13. MINIMUM STANDARD EQUIPMENT:

(1) wheel chair;

(2) emergency drug tray;

(3) resuscitation equipment;

(4) supply of oxygen;

(5) blood pressure machine;

(6) suction machines;

(7) patient's stretcher;

(8) a designated vehicle for transporting referred patients to other hospitals;

(9) diagnostic sets;

(10) lockable drug cabinet;

(11) ECG machine (optional); and

(12) weighing scales and thermometers.

FIFTH SCHEDULE regs. 6, 8 and 11

LICENCE AND PREMISES REGISTRATION FEES G.N. 19/1991, 120/1993, 27/1997, 30/2004, 8/2005, 48/2007, 10/2009

Matter Fee

K t

1. For an application for a private practice licence in the case of—
 - (a) doctors/dentists/opticians 15,000 00
 - (b) specialists (full time) 15,000 00
 - (c) specialists (part time) 15,000 00
 - (d) specialists (leave only) 15,000 00
 - (e) locum 5,000 00
 - (f) doctors/dentists/opticians (licence only) 15,000 00
2. For a private licence—
 - (a) in the case of doctors, dentists or opticians:
 - (i) upon issue 10,000 00
 - (ii) upon every renewal 15,000 00
 - (b) in the case of specialists (full time):
 - (i) upon issue 12,000 00
 - (ii) upon every renewal 20,000 00
 - (c) in the case of specialists (part-time):
 - (i) upon issue 12,000 00
 - (ii) upon every renewal 15,000 00
 - (d) in the case of locum permit 5,000 00
 - (e) specialists (licence only):
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 15,000 00
 - (f) doctors/dentists/opticians (licence only):
 - (i) upon issue 12,000 00
 - (ii) upon every renewal 15,000 00
3. For an application for registration of premises for private practice providing out-patient services only, in the case of—
 - (a) institutional facility (non-fee paying) 15,000 00
 - (b) institutional facility (fee paying) 20,000 00

- (c) doctors, dentists or opticians 15,000 00
 - (d) specialists 15,000 00
4. For registration of premises for private practice providing out-patient services only—
- (a) in the case of institutional facility (non-fee paying):
 - (i) upon issue 12,000 00
 - (ii) upon every renewal 15,000 00
 - (b) in the case of institutional facility (fee paying):
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 25,000 00
 - (c) in the case of doctors, dentists or opticians:
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 18,000 00
 - (d) in the case of specialists (full time):
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 20,000 00
 - (e) in case of specialists (part-time):
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 15,000 00
5. For an application for registration of premises for private practice providing in-patient and out-patient services 25,000 00
6. For registration of premises for private practice providing out-patient and in-patient services—
- (a) for those with not more than 10 beds:
 - (i) upon issue 30,000 00
 - (ii) upon every renewal 35,000 00
 - (b) for those with 11-25 beds:
 - (i) upon issue 35,000 00
 - (ii) upon every renewal 45,000 00

- (c) for those with 26-50 beds:
 - (i) upon issue 40,000 00
 - (ii) upon every renewal 60 000 00
- (d) for those with more than 50 beds:
 - (i) upon issue 45,000 00
 - (ii) upon every renewal 80,000 00
- 7. For replacement of private practice licence or premises registration certificate 10,000 00
- 8. For transfer of premises 20,000 00

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Paramedics and allied health professionals may engage in private practice
4. Absence from active practice
5. Type and number of clinics
6. Practice Licence
7. Applications
8. Licences
9. Conditions of licence
10. Range of drugs
11. Fees chargeable by licensee
12. Employment of assistants
13. Notifiable diseases and monthly returns
14. Locums

15. Offences and penalty

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Second Schedule—Forms

Third Schedule—Scope of services to be rendered

Fourth Schedule—Minimum requirements for Private Practice Clinics of
Paramedicals and Allied Health Professions

Fifth Schedule—Licence and Premises Fees

Sixth Schedule—Maximum Fees chargeable for services rendered

G.N. 128/1988

82/1989

18/1991

121/1993

122/1993

25/1997

29/2004

33/2004

9/2005

50/2007

12/2009

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

under s. 69

1. Citation

These Regulations may be cited as the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“approved institution” means a hospital or other health establishment recognized by the Council under subregulation (2) of regulation 3 as an approved institution for the purposes of subregulation (1) of that regulation.

3. Paramedicals and allied health professionals may engage in private practice

(1) Save as provided in subregulation (3), a person registered under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations as a paramedical or an allied health professional in a calling specified in the First Schedule hereto may be licensed by the Council to operate a private practice appropriate to his calling if he has served in an approved institution— G.N. 33/2004, 50/2007, First Schedule

- (a) in the case of Clinical Officers and Dental Therapists, six years experience;
- (b) in the case of Medical Assistants, eight years experience;
- (c) in the case of Dental Technicians, Laboratory Technicians, Physiotherapists, Opticians and other Allied Health Professionals, two years experience.

(2) For the purpose of subregulation (1) the Council may, under its working procedures, recognize as approved institutions particular hospitals or other health establishments in Malawi or outside Malawi:

Provided that in the case of an applicant whose service was wholly or for a greater part undertaken outside Malawi, the Council may require him to undergo either—

- (a) properly supervised orientation in his calling for such period and subject to such conditions as the Council may generally or specially deem appropriate;
- (b) an oral examination or a written examination or both; or
- (c) a combination of (a) and (b).

(3) Special medical assistants and clinical officers who want to engage in general clinical work shall be required to undergo an orientation for a minimum period of six (6) months at a hospital approved by the Council before being allowed to practice as such.

4. Absence from active practice

No person shall be eligible for a licence under regulation 3 if immediately prior to making his application he has been absent from the practice of his calling for a continuous period—

- (a) exceeding three years but not exceeding five years, unless immediately prior to the grant of the licence he has undergone full-time orientation; or
- (b) exceeding five years but not exceeding ten years, unless he has passed an oral examination or a written examination or both conducted for the purpose by or on behalf of the Council and subsequent thereto he has undergone full-time orientation, in either case for a period of not less than six months at an approved institution in Malawi under the supervision of a medical practitioner or dentist or other suitable person, as the case may be; and

(c) exceeding ten years.

5. Type and number of clinics

(1) No person shall be licensed under these Regulations to operate more than one private practice and such practice shall be operated solely at the premises named in the licence. G.N. 33/2004

(2) A licence issued under these Regulations shall authorize the licensee to operate only an out-patient private practice and to provide only the services of a kind appropriate to his calling and limited in scope to the extent, if any, specified in Part I of the Third Schedule except in the case of general Clinical Officers the Council may authorize the licensee to operate an in-patient private practice under conditions that the Council may determine from time to time. Third Schedule, Part I

6. Practice Licence

The Council may licence an applicant to operate his practice in such place subject to such special conditions as the Council may impose having regard, among other factors, to the need to foster and ensure wider distribution of medical and health services in Malawi or in any locality concerned. G.N. 33/2004

7. Applications

(1) Every application for a licence under these Regulations shall be in Form PP 6 set out in the Second Schedule and shall be accompanied with the application fee and the licence fee specified in the Fifth Schedule. Second Schedule, Form PP 6, Fifth Schedule

(2) The application fee payable under subregulation (1) shall not be refundable, whether or not the licence is granted.

(3) The Registrar shall, soon after 31st March every year, publish in the Gazette a list of names, addresses, callings and other particulars of all persons licensed to operate a private practice for the ensuing period ending 31st March the following year.

8. Licences

(1) Every licence issued under these Regulations—

(a) shall be in Form PP 7 set out in the Second Schedule; Second Schedule, Form PP 7

(b) shall be valid from the date of issue to 31st March next following the date of issue; and

(c) may, subject to subregulation (2), be renewed from time to time upon payment by the licensee of the appropriate annual licence fee specified in the Fifth Schedule. Fifth Schedule

(2) Where the expired period of validity of a licence was twelve months the licence shall not be renewed, unless the Council is satisfied that during the expired period the licensee attended at least one approved conference of the medical profession held in Malawi at a time when he was available to attend.

9. Conditions of licence

(1) Every licence issued under these Regulations shall be subject to any special condition endorsed thereon by the Council and to the following general conditions, that is to say—

(a) that the premises used for the private practice are—

(i) at all times kept in good order and good state of repair and are kept reasonably secure from unauthorized entry;

(ii) not to be used as residential premises except with the permission of the Council.

(iii) in conformity with the minimum requirements, if any, specified in the Fourth Schedule in relation to the particular calling; Fourth Schedule

(b) that the premises and the private practice shall be open at any reasonable time for inspection by any person duly authorized in that behalf by the Council;

(c) that by reason of proximity of his place of residence to the premises of his private practice, the licensee is able to be in regular attendance at his private practice during the hours it is open to the general public.

(2) A person who willfully obstructs any person duly authorized by the Council to inspect the premises of a licensed private practice shall be guilty of an offence.

(3) In relation to an application for a private practice licence, the Council may issue a letter in Form PP 9 set out in the Second Schedule. G.N. 82/1989, Second Schedule

(4) The Council shall keep and maintain a register of all premises approved by the Council for the private practice of paramedicals and allied health professionals and shall issue in respect of every such premises a registration certificate in Form PP 10 set out in the Second Schedule upon payment by the licensee of the premises application and registration fees specified in the Fifth Schedule, but the application fee so paid shall not be refundable, and the Council shall once every year publish in the Gazette the list of all premises registered under this subregulation. G.N. 18/1991, Fifth Schedule, Second Schedule

10. Range of drugs

The drugs to be administered by a person licensed under these Regulations shall be those specified in Part II of the Third Schedule in relation to a particular calling. Third Schedule, Part II

11. Replacement of licence or certificate

A licence or a premises registration certificate may be replaced upon proof to the satisfaction of the Registrar that the licence or certificate is lost, destroyed or defaced and upon payment by the licensee of the replacement fee specified in the Fifth Schedule. G.N. 18/1991, Fifth Schedule

12. Employment of assistants

A licensee may employ as assistants only such persons as are properly trained and qualified for the duties they are required to perform in relation to the practice operated by the licensee and where registration under any written law is required for the performance of such duties, no person shall be so employed unless duly registered under such written law.

13. Notifiable diseases and monthly returns

Regulation 20 (providing for notification of certain diseases and submission of monthly returns) regulation 22 (relating to the personal conduct of a licensee) and regulation 23 (providing for the manner of indicating name and other particulars of a licensee) of the Medical Practitioners and Dentists (Private Practice) Regulations, shall apply, mutatis mutandis, to a person licensed under these Regulations as if they were provisions made under these Regulations.

14. Locums

(1) A Paramedical or Allied Health Professional who wishes to work as a locum for another Paramedical or Allied Health Professional holding a private practice licence shall first satisfy the requirements for his own eligibility for a private practice licence under these Regulations and shall make his application to the Council in writing: G.N. 33/2004

Provided that in the case of an emergency, a Paramedical or Allied Health Professional may act as a locum for a period not exceeding fourteen days during which time he shall inform the Council of his action in that behalf and make a formal application under this subregulation.

(2) Where the duration of a locum practice is not to exceed ninety days, whether consecutive or cumulative, the Registrar may issue to the applicant a permit in Form PP 3 set out in the Second Schedule authorizing the applicant to practice as a locum, subject to payment of the relevant fee specified in the Fifth Schedule.

15. Offences and penalty

(1) A person who contravenes the provisions of these Regulations shall be guilty of an offence. G.N. 33/2004

(2) A person guilty of an offence under these Regulations for which no other penalty is provided shall be liable to a fine of K40,000 and to imprisonment for two years.

FIRST SCHEDULE reg. 3, G.N. 121/1993, G.N. 33/2004

PRESCRIBED CALLINGS FOR PRIVATE PRACTICE LICENCE

1. Medical Assistants
2. Clinical Officers
3. Dental Technicians
4. Physiotherapists
5. Opticians

6. Laboratory Technicians
7. Doctors of Osteopathy
8. Laboratory Assistants
9. Dental Therapists
10. Dental Assistants
11. Radiographers
12. Radiography Technicians
13. Sonographers
14. Laboratory Technologists

SECOND SCHEDULE regs. 6, 7 and 8, G.N. 82/1989, G.N. 33/2004

FORMS

Form of Application for a licence

FORM PP 6

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

APPLICATION FOR A LICENCE

(Regulation 7)

PARTICULARS OF THE APPLICANT

1. Name (in full): and

(Where applicable) maiden name:

2. Address:

.....

.....

3. Registered under the Register of

Registration No.

4. Former Employer(s):

.....

.....

5. Period of employment as paramedical or allied health professional:

.....

.....

6. Particulars of experience in the following domains—

(a) surgery:

(b) paediatrics:

(c) obstetrics and gynaecology:

(d) medicine:

7. Reasons for termination of employment:

.....

(If other than retirement give brief details):

PARTICULARS OF THE PRIVATE PRACTICE APPLIED FOR

8. To engage in private practice (specify the calling)

.....

9. Place (including plot number where applicable)

.....

10. *District/Municipality/City:

.....

11. Supporting documents attached, if any:

(1)

(2)

(3)

Dated:, 20

Signed

Applicant

FOR OFFICIAL USE

Application fee paid: K

Form of Licence

FORM PP 7

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS(PRIVATE PRACTICE) REGULATIONS

LICENCE

(under regulation 8)

LICENCE NO.

..... (full name of licensee) is hereby licensed to operate a private practice as at

..... in the *District/Municipality/City of

Date of issue:

.....

Registrar

.....

Chairman

SPECIAL CONDITIONS

(under regulation 9 (1))

1.

2.

3.

4.

Form of Statutory Declaration

FORM PP 8

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

STATUTORY DECLARATION

(under regulation 6)

I, (1), a registered (2) Reg. No., having applied to the Council for a private practice licence under the above cited Regulations, do solemnly and sincerely declare as follows—

THAT my normal place of residence in Malawi is at (3) Plot No. in the *Municipality/City of and that I hold the same in my name under a freehold*/leasehold title number and do live in it with my immediate family.

FORM PP 9 G.N. 82/1989

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

(Regulation 9 (3))

To WHOM IT MAY CONCERN

This is to certify that the Medical Council of Malawi intends to license

(name of applicant of

(address) to engage in private practice as a (nature of private practice) at

(place) in the *District/Municipality/City of

Date:

.....

Registrar

FORM PP 10 G.N. 18/1991

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (PRIVATE PRACTICE) REGULATIONS

PREMISES REGISTRATION CERTIFICATE

(Regulation 9 (4))

CERTIFICATE NO.

This is to certify that the Medical Council of Malawi has approved the use of the premises situated at
..... in the *District/City/Municipality/Township of

.....

by

(name of licensee)

as

(nature of practice)

under Licence No.

Date:

.....

Registrar

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of
the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Signed:

Applicant

Declared at this day of, 20

BEFORE me:

Commissioner for Oaths

NOTES:

- (1) Name of applicant.
- (2) Specify the calling in which registered (i.e. whether Medical Assistant, Clinical Officer or Dental Technician).
- (3) Specify the particular location in the City or Municipality where residing.

THIRD SCHEDULE reg. 5, G.N. 33/2004

PART I

SCOPE OF SERVICES TO BE RENDERED

A. MEDICAL ASSISTANTS AND CLINICAL OFFICERS

- (1) Medical Services:
Treatment of common and simple diseases and ailments.
- (2) Surgical Procedures—
 - (a) suturing of minor lacerations;
 - (b) removal of foreign body from the nose;
 - (c) incision drainage of carbuncle abscess;
 - (d) ear syringing;
 - (e) wound dressing;
 - (f) catheterization;
 - (g) nasogastric tube insertion; and
 - (h) other procedures related to first aid;

B. DENTAL TECHNICIANS

Fabrication of dental appliances as prescribed by a dentist and in no case shall a dental technician take impressions or insert appliances in a patient's mouth.

C. PHYSIOTHERAPISTS

Such services as are professionally limited to the calling of a physiotherapist.

D. OPTICIANS

Such services as are professionally limited to the calling of an optician.

E. DOCTORS OF OSTEOPATHY

Such services as are professionally limited to the calling of a doctor of osteopathy.

F. DENTAL THERAPISTS AND DENTAL ASSISTANTS

(a) tooth extractions;

(b) simple restoration of tooth cavities using amalgam, composite chemically cured, glass ionometer;

(c) X-ray—bite wings and periapicals;

(d) intra oral incision and drainage; and

(e) history, examination and diagnosis, dental health education and oral prophylaxis.

G. DENTAL TECHNICIANS

Fabrication of dental appliances in prosthetics, orthodontics, restorative dentistry and any other work as prescribed by a dentist.

H. RADIOGRAPHERS AND RADIOGRAPHY TECHNICIANS

(a) skeletal imaging;

(b) chest imaging;

(c) abdomen and pelvis imaging; and

(d) contrast studies in the company of attending Physician.

I. SONOGRAPHERS

(a) ultra sound of abdomen;

(b) ultra sound of pelvis;

(c) ultra sound of cardiac; and

(d) ultra sound—guided aspiration/biopsy in the company of attending Physician.

PART II

RANGE OF DRUGS

A. CLINICAL OFFICERS

A clinical officer licensed for private practice may administer only the following range of drugs—

Drug Dose Form

1. LOCAL ANAESTHETICS

- (a) Lignocaine hydrochloride injection 2% 25 ml
- (b) Lignocaine hydrochloride jelly 2% 30 g
- (c) Lignocaine hydrochloride + Adrenaline 2% + 1/80,000 dental cartridges

2. ANALGESICS ANTIPYRETICS AND RELATED AGENTS

- (a) Acid acetylsalicylic tablets 300 mg (Aspirin)
- (b) Acid acetylsalicylic tablets 75 mg (Aspirin)
- (c) Methyl salicylate liniment 24%
- (d) Paracetamol tablets 500 mg
- (e) Paracetamol syrup 120 mg/5 ml
- (f) Indomethacin tablet 25 mg
- (g) Diclofenac tablet 25 mg
- (h) Ibruprofen tablet 200 mg
- (i) Codeine tablet 30 mg

3. ANTIHISTAMINES

- (a) Chlorpheniramine malcate tables 4 mg
- (b) Promethazine hydrochloride tablets 25 mg
- (c) Promethazine hydrochloride syrup 5 mg/5 ml
- (d) Astemizole tablets 10 mg

4. ANTIEPILEPTICS

- (a) Paraldehyde injection 10 ml
- (b) Phenobarbitone sodium tablets 30 mg and 60 mg

(c) Phenytoin sodium tablets 25 mg and 100 mg

5. ANTI-INFECTIVE AGENTS

(1) Antihelmintic Agent—

(a) Albendazole tablets 200 mg

(b) Mebendazole tablet 100 mg

(c) Levamisole tablet 40 mg

(2) Antischistosomal Agents—

(a) Metrifonate tablets 100 mg

(b) Praziquantel tablets 600 mg

(3) Antibacterial Agents—

(a) Penicillins:

(i) Penicillin G potassium/sodium

(penicillin crystalline/Benzylpenicillin) injection 600 mg

(1 mega unit)

(ii) Penicillin G procaine

(Benzylpenicillin procaine/procaine penicillin) injection 300 mg/ml

(300,000 u/ml) 10 ml and 100 ml

(iii) Penicillin V

(Phenoxymethyl-penicillin) tablets 250 mg

(iv) Penicillin V

(Phenoxymethyl-penicillin) suspension 125 mg

5 ml

(v) Benzatine benzyl-penicilline injection, 1.44 g

vial PFR (2.4 MU)

(vi) Amoxicillin capsule 250 mg

(vii) Amoxicillin Elixir 125 mg/5 ml

(viii) Cloxacillin capsule 250 mg

(ix) Ampicillin capsule 250 mg/
elixir 125 mg/5 ml

(x) Chloramphenicol capsule 250 mg/
syrup 125 mg/5 ml

(b) Other Antibacterial Drugs:

(i) Co-trimoxazole tablets 480 mg
(sulphamethoxazole
400 mg + trimethoprim 80 mg)

(ii) Co-trimoxazole tablets 240 mg
(sulphamethoxazole 200 mg + trimethoprim 40 mg)

(iii) Erythromycin tablet, e/c 250 mg base

(iv) Gentamycin injection 40 mg (as sulphate)/ml, 2 ml vial

(v) Metronidazole tablet 200 mg

(vi) Doxycycline tablet/capsule 100 mg

(vii) Nalidixic tablet 500 mg

(viii) Sulphadimadine tablets 500 mg

(3) Antifungal Agents—

(a) Nystatin oral suspension 100,000 units/ml

(b) Nystatin pessaries 100,000 units (with applicator)

(c) Nysatin tablet 500,000 units

(d) Gentian violet 0.5% paint (aqueous)

(4) Amoebicide:

Metranidazole tablets 200 mg

(5) Antimalarials—

(a) Pyrimethamine + sulphadoxine tablets 25 mg pyrimethamin sulphadoxine
500 mg

(b) Halfantrine tablet 250 mg/ suspension 125/5 ml

(c) Quinine sulphate tablets 300 mg

(d) Quinine dihydrochloride injection 300 mg/ml,

2 ml amp.

6. ANTIANAEMIA AGENTS

- (a) Folic acid tablets 5 mg
- (b) Ferrous sulphate tablets 200 mg
- (c) Ferrous sulphate mixture, paediatric 60 mg/5 ml
- (d) Ferrous sulphate with folic tablet

7. ANTIHYPERTENSIVE AGENTS

- (a) Propranolol Hcl tablet, 40 mg
- (b) Methyldopa tablets 125 mg,

250mg, 500mg

- (c) Bendrofluziade tablet 5 mg
- (d) Hydrochlothiazide tablet 25 mg

8. CARDIAC GLYCOSIDES

- (a) Digoxin tablets 25 micrograms

elixir

- (b) Digoxin 50 micrograms/ml

9. AGENT USED IN ANAPHYLAXIS

Adrenaline injection 1/1,000 1 ml

10. DERMATOLOGICAL PREPARATIONS

- (1) Antifungal Agents—
 - (a) Acid benzoic 6%+Acid salicylic 3% ointment 50 g
 - (b) Sodium thiosulphate crystals 30 g
 - (c) Nystatin Cream
 - (d) Iconazole Cream
 - (e) Miconazole Cream
 - (f) Ketaconazole Cream/tablets

- (2) Anti-infective and Cleansing Agents—
- base)
- (a) Acid salicylic 5% + Sulphur 5% ointment 50 g (with emulsifying ointment base)
 - (b) Alcohol 70% (or surgical spirit) 500 ml
 - (c) Gentian violet 0.5% (crystal violet) paint 20 ml (aqueous)
 - (d) Iodine, weak solution 500 ml
 - (e) Potassium permanganate concentrate 3% solution for dilution 500 ml
 - (f) Zinc paste compound + precipitated sulphur 5% paste 100 mg
 - (g) Zinc ointment + precipitated sulphur 5% ointment 50 g
 - (h) Hydrocortisone 1 % cream 30 g
 - (i) Oral gel Gel
 - (j) Cotrimazole Cream
- (3) Anti-inflammatory and Antipruritic Agents—
- (a) Calamine lotion 100 ml
 - (b) Hydrocortisone 1% cream 30 g
- (4) Keratoplastics and Keratolytic—
- (a) Acid salicylic 5% in alcohol 70% lotion 100 ml
 - (b) Acid salicylic 2% + Sulphur 2% + Coal tar solution 15% in Soap spirit shampoo 100 ml
 - (c) Zinc paste compound + Crude coal tar 5% paste 100 g
- (5) Scabicides and Pediculocides—
- (a) Benzyl benzoate 25% application 100 ml
 - (b) Benzyl benzoate 12.5% application 50 ml
- (6) Other preparations—
- (a) Ethyl chloride spray unit
 - (b) Paraffin gauze dressing
 - (c) Silver nitrate stick toughened (pencil)

11. DISINFECTANTS

(a) Cetrimide + Chlorhexidine solution concentrate

15%+1.5%

(b) Disinfectant, black solution

(c) Hypochloride solution

12. DIAGNOSTIC SUBSTANCES

(a) Clinistix (glucose in urine) strips

(b) Dextrostix (glucose in blood) strips

(c) Haemastix (blood in urine) strips

(d) Ictotest (bilirubin in urine) tablets

(e) Keto-diaxix (ketone bodies/glucose in urine) strips

(f) Uristix (protein/glucose in urine) strips

(g) Pregnancy test strips

13. IMMUNOLOGICAL DIAGNOSTIC AGENT

Tuberculin PPD

14. DIURETIC

(a) Bendrofluazide tablets 5 mg

(b) Frusemide tablet 40 mg/i.m

(c) Hydrochlorothiazide tablet 25 mg

15. GASTROINTESTINAL AGENTS

(1) Antiacids and other Antiulcer Agents—

(a) Magnesium hydroxide mixture equivalent to Magnesium oxide 550 mg/10

ml

(b) Magnesium trisilicate co tablets (chewable)

(c) Cimetidine tablet 200/400 mg

(d) Ratiadin 150/300 mg

(2) Antispasmodic Agent—

(a) Propantheline bromide tablets 15 mg

(b) Hyoscine Butylbromide tablet 10 mg

(3) Cathartic Agents—

- (a) Cascara tablets 120 mg
- (b) Glycerine suppository, child (2 g)
- (c) Glycerol suppository, adult (4 g)
- (d) Magnesium sulphate mixture 4 g/10 ml
- (e) Bisacodyl tablet

(4) Replacement Fluids and Electrolytes—

- (a) Oral rehydration salts Powder in sachet for

1 litre (per litre):

Sodium chloride 3.5 g

Trisodium citrate 2.9 g

Potassium chloride 2.5 g

Glucose 20 g

- (b) Sodium lactate compound

(Ringer's solution) IV infusion 1 litre

- (c) 1 strength Darrow's solution in 5% dextrose IV infusion 1 litre

- (d) Thanzi ORS Powder in sachet

16. CONTRACEPTIVES

All oral contraceptives except permanent ones

17. SERA AND IMMUNOGLOBULINS

- (a) Antirabies hyperimmune serum injection 1,000 IU/5 ml
- (b) Antisnake bite (antivenom) serum injection
- (c) Antitetanus toxoid injection

18. OPHTHALMOLOGICAL PREPARATIONS

Anti-infectives—

- (a) Chloramphenical eye ointment 1.0% 3.5 g
- (b) Tetracycline eye ointment 1.0% 3.5 g

(c) Hydrocortisone Eye ointment 1%

(d) Gentamycin Eye ointment 1%

19. PSYCHOTHERAPEUTIC AGENT

(a) Chlorpromazine tablets 10 mg

(b) Chlorpromazine 25mg, 100 mg

20. RESPIRATORY AGENTS

(1) Antiasthmatic Agents—

(a) Aminophylline tablets 100 mg

(b) Aminophylline injection IV 25 mg/ml 10 ml

(c) Aminophylline elixir 50 mg/5 ml

(d) Salbutamol tablets 2 mg and 4 mg

(e) Salbutamol syrup 2 mg/5 ml

(f) Nebuliser Salbutamol Salbutamol Nebuliser

21. REPLACEMENT FLUIDS—ELECTROLYTES

(1) Oral Preparations—

(a) Oral rehydration salts (ORS) powder in sachet for 1 litre

(b) Potassium chloride tablets 450 mg (slow release)

(2) Parenteral Preparations—

(a) Dextrose IV infusion 5% litre

(b) Dextrose injection 50% 20 ml

(c) ½ strength Darrow's in 5% dextrose IV infusion 1 litre

(d) Sodium lactate compound (Ringer's solution) IV infusion 1 litre

(e) Water for injection IV 5 ml

(f) Water for injection IV 10 ml

22. VITAMINS AND MINERALS

(a) Vitamin A Capsule

(b) Vitamin B Compound tablet/injection

- (c) Vitamin multiple paediatric drops
- (d) Vitamin multiple paediatric syrup

23. PREPARATIONS FOR EAR NOSE AND OROPHARYNX

(1) Ear Preparations—

- (a) Aluminium acetate ear drops 13%
- (b) Chloramphenicol ear drops 1%
- (c) Neomycin + Corticosteroid ear drops
- (d) Sodium bicarbonate ear drops 5%
- (e) Spirit (alcohol) ear drops 5%
- (f) Gentian violet paint 0.5% (aqueous)
- (g) Wax softening drops ear drops

(2) Nasal Preparations—

- (a) Adrenaline solution 1/1,000
- (b) Silver nitrate caustic pencil
- (c) Nasal decongestants

(3) Oropharyngeal Preparations—

- (a) Gentian violet paint 0.5 (aqueous)
- (b) Nystatin oral suspension 100,000 units/ml
- (c) Thymol mouthwash solution tablet

B. MEDICAL ASSISTANTS

A medical assistant licensed for private practice may administer only the following range of drugs—

Drug Dose Form

1. LOCAL ANAESTHETICS

- (a) Lignocaine hydrochloride + Adrenaline 2% + 1/80,000 dental cartridges

- (b) Lignocaine hydrochloride jelly 2% 30 g
- (c) Lignocaine hydrochloride injection 2% 25 ml

2. ANALGESICS, ANTIPYRETICS AND RELATED AGENTS

- (a) Acid acetylsalicylic tablets 300 mg (Aspirin)
- (b) Acid acetylsalicylic tablets 75 mg (Aspirin)
- (c) Methyl salicylate liniment 25%
- (d) Paracetamol tablets 500 mg
- (e) Paracetamol syrup 120 mg/5 ml

3. ANTIHISTAMINES

- (a) Promethazine hydrochloride tablets 25 mg
- (b) Promethazine hydrochloride syrup 5 mg/ml
- (c) Mepyramine Meleate tablet 25 mg

4. ANTI-EPILEPTICS

- (a) Paraldehyde injection 10 ml
- (b) Phenobarbitone tablets 30 mg, and 60 mg

5. ANTI-INFECTIVE AGENTS

(1) Antihelmintic Agent—

- (a) Albendazole tablets 200 mg
- (b) Mebendazole tablets 200 mg
- (c) Levamisole (Ketrax) tablets 40 mg

(2) Antischistosomal Agents—

- (a) Metrifonate tablets 100 mg
- (b) Praziquantel tablets 600 mg

(3) Antibacterial Agents—

(a) Penicillins:

- (i) Penicillin G Potassium/sodium (penicillin) crystalline/Benzylpenicilli injection 600 mg (1 mega unit)

and—100 ml (ii) Penicillin G procaine (Benzyl penicillin) procaine/procaine penicillin injection 300 mg/ml (300,000 u/ml) 10 ml

(iii) Penicillin V (Phenoxymethylpenicillin) tablets 250 mg

(iv) Penicillin V (Phenoxymethylpenicillin) suspension 125 mg/5 ml

(v) Benzathine benzylpenicillin injection, 1.44 g vial PFR (2.4 MU)

(vi) Amoxicillin Capsule 250 mg

(vii) Amoxicillin Elixir 125 mg/5 ml

(viii) Ampicillin Capsule 250 mg/Elixir 125 mg/5 ml

(b) Other Antibacterial Drugs:

(i) Sulphadimidine tablets 500 mg

(ii) Co-trimoxazole tablets 480 mg (sulphamethoxazole 200 + trimethoprim 80 mg)

(iii) Co-trimoxazole tablets 240 mg (sulphamethaxazole 200 mg + trimethoprim 40 mg)

(iv) Doxycycline capsules or tablets 100 mg

(4) Antifungal Agents—

(a) Gentian violet 0.5% paint (aqueous)

(b) Nystatin suspension 100,000 u/ml

(5) Antimalarials—

(a) Pyrimethamine + sulphadoxine tablets 25 mg
pyrimethamine + sulphadoxine 500 mg

(b) Proguanil Hcl tablet 100 mg suspension 125/5ml

(c) Quinine sulphate tablets 300 mg

(d) Quinine dihydrochloride injection 300 mg/ml, 2 ml amp.

6. ANTIANAEMIA AGENTS

(a) Folic acid tablets 5 mg

(b) Ferrous sulphate tablets 200 mg

- (c) Ferrous sulphate mixture, paediatric 60 mg/ 5 ml
- (d) Ferrous sulphate with folic acid tablet

7. DERMATOLOGICAL PREPARATIONS

(1) Antifungal Agents—

- (a) benzoic 6% + Acid salicylic 3% ointment 50g
- (b) Sodium thiosulphate crystals

(2) Anti-infective and Cleansing Agents—

- (a) Alcohol 70% (or surgical spirit) 500 ml
- (b) Gentian violet 0.5% paint 200 ml (aqueous)
- (c) Potassium permanganate concentrate 3% solution for dilution 500 ml
- (d) Iodine, weak solution
- (e) Zinc paste compound + precipitate sulphur 5% paste
- (f) Zinc paste compound + precipitate sulphur 5% ointment
- (g) Hydrocortisone 1% cream 30 mg

(3) Anti-inflammatory and Antipruritic Agents—

- (a) Calamine lotion 100 ml
- (b) Hydrocortisone 1% cream 30 mg

(4) Keratoplastics and Keratolytics—

- (a) Acid salicylic 5% in alcohol lotion
- (b) Acid salicylic 2% + sulphur 2% + Coal tar solution 15% in soap spirit Shampoo 100 ml
- (c) Zinc paste compound + crude coal tar 5% paste

(5) Scabicides and Pediculocides—

- (a) Benzyl benzoate 25% application 100 ml
- (b) Benzyl benzoate 12.5% application 50 ml

(6) Other Preparations—

- (a) Ethyl chloride spray

- (b) Paraffin gauze dressing
- (c) Silver nitrate stick toughened

(pencil)

8. DISINFECTANTS

- (a) Centrimide + Chlorhexide solution concentrate 15% = 1.5%
- (b) Disinfectant black solution
- (c) Chlorine solution

9. GASTROINTESTINAL AGENTS

(1) Antacids and other Antiulcer Agents—

(a) Magnesium hydroxide mixture equivalent to Magnesium oxide 550 mg/10ml

- (b) Magnesium trisilicate co. tablets (chewable)

(2) Antispasmodic Agent—

- (a) Propantheline bromide tablet 15 mg
- (b) Hyoscine butylbromide tablet 10 mg

(3) Cathartic Agents

- (a) cascara tablet 120 mg
- (b) Glycerol suppository child 2 mg
- (c) Glycerol suppository adult 4 mg
- (d) Magnesium sulphate mixture 4 mg/10 ml
- (e) Biscodyl tablet 5 mg

(4) Diarrhoea Agents used in Replacement Solutions—

(a) Oral rehydration salts powder in sachet for 1 litre (per litre Sodium Chloride 3.5 g, Trisodium citrate 2.9 g, Potassium chloride 1.5 g, Glucose 20 g)

- (b) Sodium lactate compound IV infusion 1 litre

- (c) 1 strength Darrow's solution in 5% Dextrose IV infusion 1 litre

10. OPHTHALMOLOGICAL PREPARATIONS

Anti-infectives—

(a) Chloramphenicol eye ointment 1.0% 3.5 g

(b) Tetracycline eye ointment 1.0% 3.5 g

11. PSYCHOTHERAPEUTIC AGENTS

(a) Chlorpromazine tablets 10 mg, 25 mg

(b) Chlorpromazine injection 2.5% (25 mg/ml 2ml)

12. RESPIRATORY AGENTS

(1) Antilasthmatic Agents—

(a) Aminophylline tablets 100 mg

(b) Aminophylline injection IV 25 mg/10 ml

(c) Aminophylline Elixir 50 mg/5 ml

(d) Salbutamol tablet 2 mg and 4 mg

(e) Salbutamol syrup 2 mg/5 ml

(f) Theophylline syrup 125 mg/5 ml

(g) Adrenaline injection

(h) Salbutamol sulphate Aerosol inhalation 100 microgram/dose, 200 dose

unit

(2) Antitussive Agents—

(a) Simple linctus, adult linctus

(b) Simple linctus, paediatric linctus

13. REPLACEMENT FLUIDS—ELECTROLYTES

Parenteral Preparations—

(a) Dextrose IV 5% 1 litre

(b) Sodium lactate compound (Ringer's solution) IV infusion 1 litre

(c) 1 strength Darrow's solution IV solution 1 litre

14. VITAMINS AND MINERALS

(a) Vitamins, multivite tablets

(b) Vitamins, multivite syrup

(c) Vitamin B compound tablet

- (d) Vitamin A capsule 200,000 IU
- (e) Pyridoxine Hcl tablet 20 mg
- (f) Nicotinamide tablet 50 mg
- (g) Calcium gluconate tablet chewable 500 mg
- (h) Ascorbic acid tablet 50 mg

15. PREPARATIONS FOR EAR, NOSE AND OROPHARYNX

- (a) Chloramphenicol ear drops
- (b) Chloramphenicol ear drops 1%
- (c) Spirit (alcohol) ear drops 50%
- (d) Sodium bicarbonate ear drops 5%
- (e) Aluminium acetate ear drops
- (f) wax softening ear drops
- (g) Adrenaline solution
- (h) Nasal decongestants solution
- (i) Gentian Violet 0.5% 10 ml
- (j) Nystatin suspension, oral
- (k) Thymol mouthwash solution/tablet

16. CONTRACEPTIVES (IN LIAISON WITH FAMILY PLANNING UNIT AT DHO)

All oral contraceptives except for permanent methods.

C. DENTAL THERAPISTS AND DENTAL ASSISTANTS

Dental Therapists and Dental Assistants licensed for private practice may administer the following range of drugs—

Drug Dose Form

1. LOCAL ANAESTHETICS

- (a) Lignocaine Cartridge 2% with adrenaline 1:80,000
- (b) Lignocaine Gel

- (c) Prilocaine (Citanest) cartridge 3% with feypressin 0.03 unit/ml
- (d) Ethyl Chloride Spray
- (e) Benzocaine Lozenges

2. ANALGESICS

- (a) Acetylsalicylic acid tablet 300 mg
- (b) Paracetamol tablet. 500 mg; Elixir 120 mg/5 ml
- (c) Indomethacin capsule/tablet 25 mg
- (d) Ibuprofen tablet 200 mg; syrup 100 mg/5 ml

3. ANTIBIOTICS

- (a) Penicillin V tablet 250 mg; suspension 125 mg/5 ml
- (b) Amoxicillin capsule 250 mg; elixir 125 mg/5 ml
- (c) Cloxacillin capsule 250 mg
- (d) Ampicillin capsule 250 mg; elixir 125 mg/5 ml
- (e) Erythromycin tablet e/c 250 mg base
- (f) Metronidazole tablet 200 mg
- (g) Doxycycline tablet/capsule 100 mg

4. ANTIFUNGAL DRUGS

- (a) Nystatin oral drops 100,000 units/ml
- (b) Iconazole cream/gel
- (c) Miconazole cream/gel

5. STEROIDS

- (a) Triamsonolone oral base paste
- (b) Hydrocortisone lozenges
- (c) Hydrocortisone sodium succinate Vial 100 mg
- (d) Prednisolone tablet 5 mg

6. DISINFECTANTS

- (a) Alcohol 70% sol. Concentrate

(b) Cetrimide 15% sol. Concentrate +

7. MOUTHWASHES

(a) Hydrogen peroxide 6% sol. Concentrate

(b) Chlorhexidine 0.2% Concentrate

(c) Betadine 1 % sol. Concentrate

8. HAEMOSTATIC AGENTS

(a) Surgicel spongy/gauze

(b) Tannic acid powder/liquid

(c) Bone wax wax

9. ANTISEPTICS

(a) Alvogyl spongy/fibres

(b) Euginol with zinc oxide oil/powder

(c) Betadine 10% sol. Concentrate

(e) Chlorhexidine 1% sol. Concentrate

10. EMERGENCY DRUGS

(a) Adrenaline 1:1000

(b) Salbutamol inhaler

(c) Promethazine tablets 10 mg; 25 mg/ml

(d) Glucose 50mg/ml

(e) Glyceryl trinitrate tablets 300 micro-gram.

FOURTH SCHEDULE reg. 9, G.N. 18/1991, 121/1993, 33/2004

MINIMUM REQUIREMENTS FOR PRIVATE PRACTICE CLINICS OF PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS

PART I

PREMISES

A. (1) OUT-PATIENT CLINICS FOR MEDICAL ASSISTANTS, CLINICAL OFFICERS, DENTAL THERAPISTS

The clinic should—

- (a) be built with permanent materials;
- (b) have a plastered interior;
- (c) have adequate ventilation;
- (d) have at least four rooms of 4 × 3 metres divided as follows:
 - (i) an examination room;
 - (ii) a treatment room;
 - (iii) a patients' registration room; and
 - (iv) procedure room.
- (e) have toilet facilities consisting of either—
 - (i) a ventilated pit latrine; or
 - (ii) a sanitation platform latrine; or
 - (iii) a water closet.
- (f) have an adequate supply of clean and safe water nearby or running water within the building.
- (g) have a wash basin or sink and a large container for storing water.

(2) IN-PATIENT FACILITIES FOR GENERAL CLINICAL OFFICERS

As required for Medical Practitioners and Dentists under the Medical Practitioners and Dentists (Private Practice) Regulations.

B. DENTAL TECHNICIANS

As in A above in addition to the following—

- (a) Wax room;
- (b) Plaster room;
- (c) Fume cabinet/fume extractor;
- (d) Fire fighting equipment.

C. PHYSIOTHERAPISTS

- (a) be built with permanent materials;
- (b) have a plastered interior;

- (c) have adequate ventilation and lighting;
- (d) have a gymnastic area of at least 15 square metres;
- (e) have a treatment room of at least 10 square metres;
- (f) have a waiting and reception room;
- (g) have toilet facilities consisting of either—
 - (i) a ventilated pit latrine; or
 - (ii) a sanitation platform latrine; or
 - (iii) a water closet;
- (h) have an adequate supply of clean and safe water nearby or running water within the building; and
 - (i) have a wash basin or sink and a large container for storing water.

D. OPTICIANS

Premises should be of permanent building materials and should be of adequate size for the number and range of activities to be performed. There should be distinct area for—

- (a) waiting/reception of clients;
- (b) examination;
- (c) lense laboratory preparation;
- (d) store room;
- (e) toilet facilities for patients and staff; and
- (f) other rooms deemed necessary for the practice.

E. RADIOGRAPHERS AND RADIOGRAPHY TECHNICIANS

Premises should—

- (a) be built with permanent materials;
- (b) have waiting room of adequate size to hold 10 people, with adequate ventilation and toilet facilities;
- (c) have X-ray room of at least 30 square metres with length at least 4—6 m;
- (d) have wall thickness of 9 inches plastered brick wall all round or; 4.5 inches brick wall plastered with 1.25 mm barium plaster or; 150 mm concrete or; other equivalents of 22 mm Pb;

- (e) have doors lined with Lead of 2 mm Pb or Brick 9 inches with maze format all 3 m high;
- (f) have viewing window for control panel should be of 1.6 mm Pb glass or equivalent radiation protection window or surrounded in a maze format of equivalent brick or potable radiation protection shield;
- (g) have ventilation provided by window on the side of the room that is NOT used by persons or by air-conditioner;
- (h) have at least one change room for patients;
- (i) have dark room should be of adequate size for purposes automatic or manual film processing with a window painted black;
- (j) have workbenches in the darkroom must be made of cleanable and non-corrosive material;
- (k) have film storage of hopper or equivalent holder to avoid light fogging;
- (l) have supply of running water;
- (m) have washing hands facilities: sink or washing basin.

F. SONOGRAPHERS

The premises should have all the above in "E" in addition to the following:

Adequate ultrasound room to fit a patient's couch, scanner, stools, small table and three persons; well ventilated.

PART II

WATER SUPPLY

All clinics should have—

- (a) a source of safe drinking water nearby or running water within the building (especially dental practice);
- (b) a wash-basin or sink and a large container for storing water.

PART III

EQUIPMENT AND SUPPLIES

A. (1) MEDICAL ASSISTANTS AND CLINICAL OFFICERS OUT-PATIENT FACILITIES

The following should be available—

- (a) Lockable drug cupboard;
- (b) Examination couch/bed;

- (c) Good examination light;
- (d) Table in the registration room;
- (e) Seats for patients in the waiting room;
- (f) Stethoscope;
- (g) Autoscope;
- (h) Blood pressure machine;
- (i) Torch or other source of light for throat examination;
- (j) Weighing scale;
- (k) Adequate stocks of disinfectants, e.g. Jik;
- (l) At least two basins for disinfection;
- (m) At least two thermometers;
- (n) A minimum of 100 disposable syringes as follows—
 - (i) 40 × 2 ml syringes;
 - (ii) 40 × 5 ml syringes;
 - (iii) 20 × 10 ml syringes.
- (o) At least 100 needles for injection;
- (p) At least one sterilizer (e.g. fish kettle type);
- (q) At least one stove;
- (r) At least two needle holders;
- (s) At least one sterile syringes tray;
- (t) At least two pairs of dressing scissors;
- (u) At least two dissecting forceps;
- (v) Cheatle forceps × 2;
- (w) At least 25 metal spatulae or a box of disposable spatulae;
- (x) A microscope for examination of stool and urine (optional);
- (y) Refrigerator for the storage of drugs requiring refrigeration;
- (z) Resuscitation equipment;

- (aa) Appropriate and current reference books for the practice;
- (bb) Two bins for the disposal of waste, one of which shall be for the disposal of sharp instruments and the other for the disposal of waste material in either case using an incinerator of the ordinary type or of a 44 gallon drum with specifications approved by the Council;
- (cc) Registers of patients;
- (dd) Patient's prescription tickets;
- (ee) Case record cards to be carried by patients or to be kept by the clinic;
- (ff) Reporting forms for submission for clinic statistics to the Ministry of Health;
- (gg) Rubbish disposal pit or rubbish bin;
- (hh) At least fifty pairs of surgical and sterile gloves;
- (ii) Receipt book for the fees charged;
- (jj) Receipt of drugs purchased; and
- (kk) Record of drugs purchased.

(2) GENERAL CLINICAL OFFICERS IN-PATIENT FACILITIES

As required for Medical Practitioners under the Medical Practitioners and Dentists (Private Practice) Regulations.

B. DENTAL THERAPISTS AND DENTAL ASSISTANTS

The following should be available—

- (a) Dental unit with low and high speed drills which are water cooled;
- (b) Wash basin;
- (c) Autoclave;
- (d) Cabinet with basic dental instruments;
- (e) Basic drugs and medications used in dentistry;
- (f) Intra oral radiological unit and a developing unit;
- (g) Basic requirements in filling materials—
 - (i) amalgams;
 - (ii) dental cements;
 - (iii) composite chemically cured; and
 - (iv) glass ionomer.

C. DENTAL TECHNICIANS

The following should be available—

(1) Prosthetics—

- (a) Bunsen burner;
- (b) Articulator;
- (c) Suspension motor;
- (d) Model trimmer;
- (e) Polishing lathe;
- (f) Crylic curing appliance;
- (g) Mixing bowl;
- (h) 2 flasks with a clamp;
- (i) Casting machine;
- (j) Vibrator;
- (k) Duplicating flasks;
- (l) Surveyor;
- (m) Electro polishing bath;
- (n) Bench press;
- (o) Protective eye ware;
- (p) Dental Technician's kit which should include—
 - (i) Lecron;
 - (ii) Plaster knife;
 - (iii) Spatula;
 - (iv) Ash five; and
 - (v) wire cutters.

(2) Orthodontics—

- (a) 64 and 65 orthodontic pliers;
- (b) Technicians kit as in prosthodontics; and

- (c) Model trimmer.
- (3) Crown and Bridge—
 - (a) Ceramic kit;
 - (b) Ceramic firing furnace;
 - (c) Technician's kit;
 - (d) Centrifugal casting machine;
 - (e) Sand blasters;
 - (f) Model trimmer; and
 - (g) Burn out furnaces.

D. PHYSIOTHERAPISTS

The clinic should have at least—

- (a) One treatment couch;
- (b) Two sets of linen—blanket, sheets, towels;
- (c) Four pillows;
- (d) One wheelchair;
- (e) Two pairs of crutches—adjustable;
- (f) One adjustable walking frame;
- (g) One set of parallel bars;
- (h) One wall bar;
- (i) One full-length exercise mirror;
- (j) One exercise mat;
- (k) Toys;
- (l) Two gymnastic balls;
- (m) Weights, e.g. sandbags;
- (n) One foot/arm bath;
- (o) One measuring tape;
- (p) One Goniometer;

- (q) One Stethoscope;
- (r) One Sphygmomanometer;
- (s) One complete First Aid box; and
- (t) Disinfectants and other cleaning materials.

E. OPTICIANS

The practice should have—

- (a) snellen test chart types;
- (b) a slit lamp;
- (c) an ophthalmometer;
- (d) a photoptometer;
- (e) a set of trial lens;
- (f) a trial frame;
- (g) an edger machine;
- (h) a lens meter;
- (i) a refractometer;
- (j) fluorescein drops;
- (k) amethocaine;
- (l) artificial tears; and
- (m) a sink.

FIFTH SCHEDULE reg 9(4), G.N. 18/1991, 122/1993, 25/1997, 29/2004, 50/2007, 12/2009

LICENCE AND PREMISES FEES

Matter Fee

K t

1. For an application for a private licence in the case of—
 - (a) paramedicals (degree) 6,000 00
 - (b) other paramedicals 6,000 00

- (c) opticians 6,000 00
- 2. For a private practice licence—
 - (a) in the case of paramedicals (degree):
 - (i) upon issue 10,000 00
 - (ii) upon every renewal 15,000 00
 - (b) in the case of other paramedicals:
 - (i) upon issue 8,000 00
 - (ii) upon every renewal 10,000 00
 - (c) in the case of opticians:
 - (i) upon issue 12,000 00
 - (ii) upon every renewal 15,000 00
- 3. For an application for registration of premises for private practice in the case of—
 - (a) paramedicals (degree) 10,000 00
 - (b) other paramedicals 10,000 00
 - (c) opticians 10,000 00
 - (d) institutional facility (non-fee paying) 10,000 00
 - (e) institutional facility (fee paying) 15,000 00
- 4. For a premises registration certificate—
 - (a) in the case of paramedicals (degree):
 - (i) upon issue 10,000 00
 - (ii) upon every renewal 10,000 00
 - (b) in the case of other paramedicals:
 - (i) upon issue 8,000 00
 - (ii) upon every renewal 10,000 00
 - (c) in the case of opticians:
 - (i) upon issue 10,000 00
 - (ii) upon every renewal 15,000 00

- (d) in the case of institutional facility (non-fee paying):
 - (i) upon issue 10,000 00
 - (ii) upon every renewal 15,000 00
- (e) in the case of institutional facility (fee paying):
 - (i) upon issue 15,000 00
 - (ii) upon every renewal 20,000 00
- 5. For replacement of licence or premises registration certificate 10,000 00
- 6. For transfer of premises 20,000 00

SIXTH SCHEDULE reg. 2, G.N. 82/1989

MAXIMUM FEES CHARGEABLE FOR SERVICES RENDERED

1. Any Government hospital or other health establishment.
2. A hospital, clinic or other health establishment of a local authority.
3. A hospital having full membership with the Private Hospitals Association of Malawi.
4. A hospital, clinic or dispensary operated by a statutory body, a company or other organization solely for providing services to its employees and their immediate families living with them.

MEDICAL LABORATORIES (PRIVATE PRACTICE) REGULATIONS

under s. 69

G.N. 17/1991

34/2004

1. Citation

These Regulations may be cited as the Medical Laboratories (Private Practice) Regulations.

2. Classification of medical laboratories for private practice

Medical laboratories for private practice shall be classified as—

- (a) Category 'A' laboratories;
- (b) Category 'B (1)' laboratories; and
- (c) Category 'B (2)' laboratories.

3. Category 'A' laboratories

(1) A category 'A' laboratory shall be a laboratory operated by a registered Laboratory Assistant or Laboratory Technician as part of the private practice of— G.N. 34/2004

(a) a medical practitioner or dentist licensed under the Medical Practitioners and Dentists (Private Practice) Regulations; or sub. leg. p. 36

(b) a paramedical licensed under the Paramedicals and Allied Health Professionals (Private Practice) Regulations. sub. leg. p. 67

(2) Except as otherwise provided in the Regulations cited in subregulation (1) or in addition to such provision—

(a) the tests to be performed in a Category 'A' laboratory shall be such tests as are necessary for the immediate management of the practitioner's own patients and shall be limited to—

- (i) full blood count differential;
- (ii) urinalysis;
- (iii) blood smear for malaria parasites;
- (iv) blood sugar;
- (v) pregnancy tests;
- (vi) wet preparations for Candida, T. Vaginals and skin microfilaria;
- (vii) stool for microscopy;
- (viii) gram stain;
- (ix) VDRL; and
- (x) other tests as approved by the Council from time to time;

(b) there shall be maintained in respect of a Category 'A' laboratory the following minimum equipment—

- (i) a binocular microscope with at least three objective lenses, including a X40 and X100 oil immersion;
- (ii) a centrifuge; and
- (iii) a heamoglobinometer or a lovibond comparator.

4. Category 'B (1)' laboratories

(1) A Category 'B (1)' laboratory shall be a laboratory which may be operated as a private practice for service to the general public only by a person registered as a pathologist under the

Specialist Register kept and maintained by the Council in accordance with the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules. sub. leg. p. 118, G.N. 34/2004

(2) The range of tests to be performed in a Category 'B (1)' laboratory shall be all or any of the following types—

- (a) clinical chemistry;
- (b) haematology;
- (c) histopathology;
- (d) microbiology; and
- (e) parasitology,

as the Council may endorse on the licence of the practitioner having regard to his training and experience.

(3) The premises for use by a practitioner licensed to operate a Category 'B (1)' laboratory shall, as a minimum, comply with the requirements specified in Part I of the Schedule and there shall be kept and maintained for use at every such laboratory, as a minimum, the equipment specified in that Part.

(4) A licence to operate the private practice of a Category 'B (1)' laboratory shall—

(a) if the applicant is a medical practitioner, be issued under the Medical Practitioners and Dentists (Private Practice) Regulations; and sub. leg. p. 36

(b) if the applicant is not a medical practitioner, be issued under the Paramedical and Allied Health Professional (Private Practice) Regulations. sub. leg. p. 67

5. Category 'B (2)' laboratories

(1) A Category 'B (2)' laboratory shall be a laboratory which may be operated by a person registered as a laboratory technician under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations. sub. leg. p. 103

(2) The range of tests to be performed in a Category 'B (2)' laboratory shall be limited to any or all of the following types—

- (a) clinical chemistry;
- (b) haematology;
- (c) microbiology; and
- (d) parasitology,

as the Council may endorse on the licence of the practitioner having regard to his training and experience.

(3) The premises for use by a practitioner licensed to operate a Category 'B (2)' laboratory shall, as a minimum, comply with the requirements specified in Part II of the Schedule and there shall be kept and maintained for use at every such laboratory, as a minimum, the equipment specified in that Part.

(4) A licence to operate a private practice of a Category 'B (2)' laboratory shall be issued under the Paramedicals and Allied Professionals (Private Practice) Regulations. sub. leg. p. 67

6. Limitation as to the conduct of tests in a Category 'B (1)' or 'B (2)' laboratory

(1) All tests in a Category 'B (1)' or 'B (2)' laboratory shall be performed only at the request of the medical practitioner, dentist or paramedical treating the patient concerned and the result of any such test shall be sent to only such medical practitioner, dentist or paramedical. G.N. 34/2004

(2) A person who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment for one month.

7. Confidentiality of laboratory test results

(1) Every document relating to the care of a patient shall be treated as strictly confidential and the results of any laboratory test performed in relation to any patient shall be released only to the patient's clinical practitioner either directly or through the patient and no person shall allow any other person to have access to any such document or communicate to any other person the results of such tests except under the authority of law.

(2) A person who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K40,000 and imprisonment for three months.

8. Establishment of a quality assurance scheme regs. 4 (3) and 5 (3)

The Council may establish a scheme for the quality control of results of tests performed at any category of laboratories as classified in these Regulations or at any other laboratory.

SCHEDULE G.N. 34/2004

MINIMUM REQUIREMENTS AS RESPECTS PREMISES AND EQUIPMENT OF CATEGORIES 'B (1)' AND 'B (2)' LABORATORIES

PART I

CATEGORY 'B (1)' LABORATORIES

PREMISES

1. Premises should be of permanent building materials and should be of adequate size for the number and range of tests to be performed.

There should be distinct area for—

- (a) specimen reception, preparation of tests;

- (b) collection of specimens from patients, e.g. blood samples;
- (c) waiting room for patients to wait for urgent specimen results; and
- (d) toilet facilities for patients and staff.

2. Arrangements must be made for disposal of examined specimen. Some may require decontamination before final disposal, e.g. autoclaving, incineration, pit latrine or sewer disposal.

EQUIPMENT

1. Equipment will depend on tests allowed by the Council on the basis of applicant's training and experience. The following equipment is required as a minimum—

(a) binocular microscope with built-in light source and at least three objective lenses including a x40 and x100, oil immersion lens, and where there is no electricity a 6 volt or 12 volt car battery and AC/DC transformer should be used;

(b) centrifuge—electrical or manual;

(c) waterbath or heating block, preferably with a thermostat;

(d) spectrophotometer or calorimeter for biochemistry tests and or haemoglobin measurement;

(e) refrigerator for reagents and specimens requiring to be stored at refrigeration temperature;

(f) hot boiler for sterilization;

(g) bunsen burner or spirit lamp;

(h) waste disposal bucket with appropriate liners or waste bin bags; and

(i) assorted glassware, pipettes, etc.

2. Other essential equipment would depend on the type of work done in the laboratory, as follows—

(a) for microbiology:

(i) incubator with thermostat;

(ii) autoclave or steam sterilizer;

(iii) hot air oven for drying glassware;

(iv) media sterilizer;

(v) anaerobic jar; and

(vi) safety cabinet with UV-sterilization for mycobacterial work.

- (b) for serology—shaker (VDRL type);
- (c) for histology cytology:
 - (i) microtome with appropriate microtome knives;
 - (ii) floating bath;
 - (iii) hot plate;
 - (iv) wax dispenser;
 - (v) tissue processor;
 - (vi) knife sharpener wither leather strap or automatic machine;
 - (vii) cytology centrifuge;
 - (viii) slide filing cabinet; and
 - (ix) assorted items, e.g. scalp blade with handle, pair of scissors, forceps, weighing scales, dissecting board, etc.
- (d) for haematology—
 - (i) haemogotinometer;
 - (ii) haematocrite centrifuge and reader;
 - (iii) differential counter;
 - (iv) haemocytometer; and
 - (v) ESR apparatus.

3. A number of small items, though not essential, improve the safety working conditions in the laboratory. These include—

- (a) reagent dispensers;
- (b) variable volume pipettes;
- (c) pipette fillers;
- (d) slide filing cabinets;
- (e) fire-extinguisher; and
- (f) laboratory safety posters.

4. Appropriate and current reference books.

CATEGORY 'B (2)' LABORATORIES

PREMISES

As for Category 'B (1)' laboratories.

EQUIPMENT

As for Category 'B (2)' laboratories.

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

under s. 69

G.N. 19/1988

125/1988

16/1991

123/1993

114/1995

26/1997

31/2004

7/2005

31/2005

49/2007

11/2009

1. Citation

These Regulations may be cited as the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

2. Application

These Regulations shall apply in respect of the Registration of medical practitioners, dentists, paramedicals, allied health professionals, and students who are undergoing training in Malawi for a qualification that requires registering with the Council.

3. Interpretation

In these Regulations— G.N. 11/2009

“allied health professional” means a person qualified to practise in a class of health personnel specified in Part II of the First Schedule;

“paramedical” means a person qualified to practise in a class of medical personnel specified in Part I of the First Schedule;

“professional officer grade” means the grade of paramedical or allied health professional with a degree;

“technical assistant grade” means the grade of medical assistants, medical laboratory assistants, physiotherapy or occupational therapy assistants, radiography assistants, health assistants and leprosy control assistants;

“technical officer grade” means the grade of clinical officers, radiographers, medical laboratory technicians, physiotherapists, occupational therapists, environmental health officers, chiropodists, clinical nutritionists, clinical psychologists, dieticians, speech therapists and operating theatre technicians without degrees and dental technologists. G.N. 11/2009

4. Prohibition respecting paramedicals and allied health professionals

(1) No person shall be employed, whether as a self-employed person or as an employee, or in the services, of any other person or body of persons corporate or unincorporate or any organization whatsoever, as a paramedical or an allied health professional, unless he is registered as such under these Regulations and holds a currently valid registration certificate in respect of such registration.

(2) A person who, being an employee, self-employed person or an employer, contravenes subregulation (1) shall be guilty of an offence and liable—

(a) if he is an employee, to a fine of K300 and to imprisonment for two months;

(b) if he is self-employed person or an employer, to a fine of K500 and to imprisonment for three months.

5. Application for registration

(1) An application for registration on any register shall be made in Form I set out in the Second Schedule and shall be signed by the applicant.

(2) There shall be submitted in support of any application for registration—

(a) a statutory declaration made by the applicant in Form 2 set out in the Second Schedule;

(b) any degrees, diplomas or certificates in which the applicant relies as qualifications for registration;

(c) where the degrees, diplomas or certificates on which the applicant relies as qualifications for registration were granted in a country, state or territory in which English is not an official language, a certificate issued by the authority before whom the statutory declaration

referred to in paragraph (a) was made, stating whether the applicant's knowledge of the English language is excellent, good, fair or poor;

(d) in the case of an applicant for full registration, either—

(i) a certificate issued by a competent authority in the country, state or territory in which his primary qualification was granted, stating that the applicant has, after passing a qualifying examination, completed such course of training or had such experience as is required by law in that country, state or territory to entitle him to full registration in that country, state or territory, or

(ii) a certificate issued by the superintendent of a hospital or other institution in Malawi approved by the Council, stating the period or periods during which the applicant has been engaged in employment at that hospital or other institution in a resident capacity; and

(e) in the case of an applicant for registration whose name has changed since the grant of his qualification, the marriage certificate or other document which provides evidence of such change of name.

(3) Where any document referred to in paragraphs (b), (d) or (e) of subregulation (2) is in a language other than English, there shall be submitted with that document a translation of the document into the English language properly certified as a true translation by a person competent to do so.

(4) Unless the Registrar otherwise requires in any particular case, a duplicate or properly certified copy of an original document referred to in paragraphs (b), (d) or (e) of subregulation (2) may be submitted in lieu of the original document.

(5) Every person deemed by section 24 of the Act to be registered under the Act shall submit to the Registrar particulars of his registration in the form of an application made in Form 1 set out in the Second Schedule and, upon payment of the prescribed fee, shall be entitled to be issued with a certificate of registration.

(6) Nothing in this regulation shall preclude the Council or the Registrar from requiring an applicant for registration or a person deemed to be registered to produce such further documents or such further or other evidence as the Council or the Registrar may deem necessary for the purpose of being satisfied as to any matter related to the application.

6. Form of registers

The Registrar shall keep and maintain in Form 3 set out in the Second Schedule—

(a) each of the registers required under Part VII of the Act;

(b) a separate register for each class of paramedicals;

(c) a separate register for each class of allied health professionals,

and subject thereto, every register shall be in the form of a looseleaf volume, one page of which shall be set aside for entries relating to each registered person and any alteration in particulars relating to that person shall be endorsed on the page so set aside.

7. Manner of effecting erasures

Every erasure from a register of the name or particulars of a registered person shall be effected in the manner provided by section 35 of the Act, and when effecting erasure the Registrar shall endorse on the page containing the entries relating to that person the circumstances in which and the date on which the erasure was made.

8. Certificate of registration

(1) Every certificate of registration in any register shall be in Form 4 set out in the Second Schedule.

(2) A certificate of registration may be replaced upon written application of the registered person and upon payment by him of the prescribed fee if the Registrar is satisfied that the certificate is lost, destroyed or damaged; and in order to satisfy himself, the Registrar may require such further or other evidence on oath or otherwise as he deems necessary.

9. Registration fees

(1) The fees set out in the Third Schedule shall be payable in respect of the matters respectively specified in that Schedule. G.N. 83/1989

(2) In the case of application fees, once payment of a fee has been receipted, the fee shall not be refundable whether the applicant withdraws his application or the application has been refused by the Council or has for any reason whatsoever not been granted.

(3) In the case of registration fees—

(a) the fee shall be payable annually not later than 31st March of each year;

(b) where the fee or any part thereof remains unpaid for more than thirty days after the due date, a penalty of fifty per cent of the amount due shall be imposed and shall become part of the due amount payable; and

(c) there shall be no reduction, proportionate or otherwise, in the amount of the fee payable even if the remaining period to the next 31st March from the date of registration or from the date of payment of the amount due is less than twelve months.

(4) In the case of registered persons in employment, every employer shall, unless he is reasonably satisfied that the fees have already been paid, deduct the annual renewal fees payable by such persons from their salaries or other emoluments and shall remit the amounts so deducted to the Council not later than one month before the date of next renewal. G.N. 83/1989

10. Disciplinary provisions for paramedicals and allied health professionals

(1) Every paramedical and allied health professional shall observe the professional ethics, conduct and discipline of his calling. G.N. 83/1989

(2) Where the Council is, after inquiry, satisfied that a paramedical or an allied health professional is guilty of improper or disgraceful conduct in a professional respect relative to his calling, the Council may, having regard to the gravity of the conduct—

- (a) cancel his registration either indefinitely or for a specified period; or
- (b) warn or reprimand him, and may impose on him such Conditions as the Council may determine.

(3) The person whose conduct is being inquired into shall be given a reasonable opportunity of being heard by the Council either by written representation or by appearing before the Council in person or by his legal practitioner.

(4) For the purposes of an inquiry under this regulation the Council may administer an oath and may enforce the attendance of persons as witnesses and the production of books, documents and other articles of evidence.

(5) The Council shall have the power to regulate its own procedure in any disciplinary proceedings under this regulation.

(6) A person aggrieved by the decision of the Council under this regulation may appeal to the High Court within thirty days of the date of notification of the decision and the High Court may confirm, vary or annul the decision of the Council.

(7) A person who, when summoned, fails to appear before the Council as witness or to produce any book, document or other article of evidence in disciplinary proceedings under this regulation shall be guilty of an offence and liable to a fine of K200 and to imprisonment for one month.

(8) The Council may, upon the application of person concerned showing cause why he should be considered for reinstatement to the appropriate register and if the Council is satisfied with the cause shown, reinstate the registration of a person cancelled under this regulation.

11. List of current registered paramedicals, etc., to be published in the Gazette

(1) The Registrar shall, soon after 31st March every year, publish in the Gazette lists containing names, addresses, callings, qualifications and other particulars of all persons registered under these Regulations as paramedicals or allied health professionals. G.N. 83/1989

(2) The Registrar shall give notice in the Gazette of any cancellation or reinstatement of registration effected pursuant to regulation 10.

12. Council to inspect all health facilities in Malawi

(1) In the exercise of its powers of inspection under section 55A the Council shall at least once every year undertake visits to every health facility in Malawi and the Council shall, unless Regulations made under the Act otherwise prescribe, in respect of every such facility the minimum

requirements and standards of practice according to its class as determined by the Council. G.N. 16/1991

(2) The Council shall keep and maintain a register of all health facilities in Malawi and shall once every year publish in the Gazette the list of all registered health facilities.

(3) There shall be payable annually to the Council in respect of every health facility in Malawi, except a health facility operated by the Government, a local authority and the Private Hospital Association of Malawi, the premises registration fee specified in the Third Schedule. Third Schedule

FIRST SCHEDULE reg. 3, G.N. 125/1988, 16/1991, 114/1995

CLASSES OF PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS

PART I

PARAMEDICALS

A. General Paramedicals

1. Medical Assistants
2. Clinical Officers
3. Dental Hygienists
4. Dental Assistants
5. Dental Technicians
6. Leprosy Control Assistants (to be registered only while employed as such in an organization) G.N. 125/1988, 16/1991

B. Specialized Paramedicals (being persons who, subsequent to general qualifications have obtained specialized qualifications the relevant training for which is of a duration of at least one academic year at an institution recognized by the Council)

1. Medical Assistants (Anaesthetic)
2. Medical Assistants (Ophthalmic)
3. Medical Assistants (Psychiatric)
4. Clinical Officers (Anaesthetic)
5. Clinical Officers (Ophthalmic)
6. Clinical Officers (Orthopaedic)
7. Clinical Officers (Psychiatric)
8. Clinical Officers (Paediatric)

9. Clinical Officers (Tuberculosis and Leprosy)
- 9A. Clinical Officers (Dermatologist)
10. Dental Technicians (Maxillo-facial)
11. Dental Technicians (Prosthodontic)
12. Dental Technicians (Orthodontic)
13. Dental Technicians (Crown and Bridge)
14. Operating Theatre Technicians G.N. 83/1989

PART II

ALLIED HEALTH PROFESSIONALS

1. Physiotherapists
2. Physiotherapy Assistants
3. Radiographers
4. Radiography Assistants
5. Medical Laboratory Assistants
6. Medical Laboratory Technicians
7. Opticians
8. Orderlies, being persons who have received in-service training at a hospital approved by the Council for a minimum period of six months and have passed the Council certifying examination and have qualified under following classes— G.N. 114/1995
 - (i) Medical Orderlies
 - (ii) Dental Orderlies
 - (iii) Laboratory Aides.
9. Orthopaedic Technicians G.N. 125/1988, 83/1989
10. Occupational Therapists
11. Health Assistants
12. Environmental Health Officers
13. Speech Therapists
14. Chiropodists

- 15. Dieticians
- 16. Clinical Nutritionists
- 17. Clinical Psychologists

SECOND SCHEDULE reg. 6

PRESCRIBED FORMS

Form of Application for Registration

FORM 1

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

APPLICATION FOR REGISTRATION

To: The Registrar,

Medical Council of Malawi, P.O. Box 30787, Capital City, Lilongwe 3

1. Full names of the applicant: Dr./Mr./Mrs./Miss

.....

2. Date of Birth:

3. Marital status: single [], married [], widowed [] divorced [], other []

.....

4. Address of the applicant:

.....

.....

.....

5. Nationality of the applicant:

6. Profession in respect of which the application for registration is made

.....

.....

7. Application for registration on the

.....

I, the above-named applicant, hereby apply for registration on the afore-mentioned register and submit herewith—

*(a) the prescribed application fee of K

*(b) the prescribed registration fee of K; and the following documents in support of my application:

.....

.....

.....

Dated:

.....

Signature of Applicant

FORM 2

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

STATUTORY DECLARATION

I, do solemnly and sincerely declare as follows:

1. THAT I am the holder of the following degrees, diplomas or certificates granted to me after examination by a university, college, medical or dental school, or other examining authority, and that the courses of study in the professional subjects with respect to which the degrees, diplomas or certificates which I hold were granted covered the following periods—

University, college, medical or dental school or other institution	Period	Degree Diploma or Certificate	Examining Authority
--	--------	-------------------------------	---------------------

From to

1.
2.
3.
4.

2. THAT I have completed the following additional courses of training and had the following experience in the practice of my profession, namely—

Description of Training or Experience Period

From To

.....

.....

.....

.....

3. THAT I would, so far as professional qualifications are concerned, be entitled to practise my profession in the country, state or territory in which my professional qualifications were granted.

4. THAT—

(a) I have never been debarred from practising my profession on the grounds of professional misconduct; and

(b) my name has never been removed from any register of members of my profession kept in accordance with the laws of any country or state in which I have practised my profession; and

(c) no inquiry is pending which may result in an action being taken which is referred to in subparagraph (a) or (b).

AND I make this solemn declaration conscientiously believing the same to be true.

.....

Signature

DECLARED at this day of, 20.....

Before me

.....

Signature of Attesting Authority

.....

Capacity of Attesting Authority

(e.g. Notary Public, Commissioner for Oaths, etc.)

NOTE: This declaration, if made—

(a) in Malawi, must be made under the Oaths, Affirmations and Declarations Act (Cap. 4:07);

(b) in any other country of the Commonwealth, must be made before a Notary Public, Commissioner for Oaths or other person having authority in that country under any law for the time being in force to take or receive an oath, an affirmation or a declaration; and

(c) in any other place, must be made before a British consul or vice-consul or before any person having authority under any Act of Parliament of the United Kingdom for the time being in force to take or receive an oath, an affirmation or a declaration.

FORM 3

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS (REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

FORM OF REGISTERS

Name of Registered person	Date of Registration	Registration Number	Address	Nationality
Date of Birth	Qualifications	University College, School or other institution	Date of cancellation of registration, if any	Remarks if any

Upon registration

Subsequent to registration

1.

2.

3.

1.

2.....

3.

FORM 4

MEDICAL PRACTITIONERS AND DENTISTS ACT

(CAP. 36:01)

MEDICAL PRACTITIONERS AND DENTISTS(REGISTRATION AND MISCELLANEOUS FEES) REGULATIONS

CERTIFICATE OF REGISTRATION

REGISTRATION No.

.....

CERTIFICATE No.

.....

This is to certify that is this day of
....., 20 registered on the kept by the Medical
Council of Malawi in accordance with the provisions of the Medical Practitioners and Dentists Act,
1987, and the Regulations made thereunder.

.....

Registrar Medical Council of Malawi

COMMON SEAL OF THE COUNCIL

THIRD SCHEDULE reg. 9, G.N. 16/1991, 123/1993, 26/1997, 31/2004, 7/2005, 31/2005, 49/2007,
11/2009

REGISTRATION AND MISCELLANEOUS FEES

Matter Fees

K t

1. For an application for registration—

(a) for applicants who are nationals of Malawi:

(i) in the Technical Assistant grade 1,500 00

(ii) in the Technical Officer grade 2,000 00

(iii) in the Professional Officer grade 2,500 00

(iv) as an optician 4,000 00

(v) as an intern (Technical Officer grade) 2,000 00

(vi) as an intern (Professional Officer grade) 2,500 00

(vii) on provisional registration 4,000 00

(viii) as a medical practitioner or dentist on a register specified in section 17 of the Act 4,000 00

(ix) on the Specialists Register under section 17 of the Act 4,500 00

(x) as an intern medical practitioner 2,500 00

(b) for applicants who are not nationals of Malawi:

(i) in the Technical Assistant grade US\$80 00

(ii) in the Technical Officer grade US\$80 00

(iii) in the Professional Officer grade US\$90 00

(iv) as an optician US\$100 00

(v) as an intern (Technical Officer grade) US\$80 00

(vi) as an intern (Professional Officer grade) US\$90 00

(vii) on a temporary appointment US\$100 00

(viii) on provisional registration US\$100 00

(ix) as a medical practitioner or dentist on any register specified in section 17 of the Act US\$100 00

- (x) on the Specialists Register under section 17 of the Act US\$150 00
- (xi) as an intern medical practitioner US\$90 00

Fee per Annum

Upon registration Upon renewal Malawians

K t K t

2. For registration—

(a) for nationals of Malawi:

- (i) in any class of Technical Assistant grade 2,000 00 2,000 00
- (ii) in any class of Technical Officer grade 2,500 00 2,500 00
- (iii) in a Professional Officer grade 3,000 00 3,500 00
- (iv) as an optician 4,500 00 6,000 00
- (v) as a medical practitioner or dentist on the:
 - (A) Main Register under section 26 of the Act 4,500 00
6,000 00
 - (B) Register of Interns under section 30 of the Act 3,000 00
3,500 00
 - (C) Register of Vocational Trainees under section 31 of the Act
4,500 00 6,000 00
 - (D) Provisional Register under section 33 of the Act 4,500 00
6,000 00
 - (E) Temporary Register under section 33 of the Act 4,500 00
6,000 00
 - (F) Specialists Register under section 18 of the Act in addition to the fee
in respect of the Main Register 5,500 00 6,000 00

Fee per Annum

Upon registration		Upon renewal of registration			
US\$	US\$				
(b) for persons working in the Public Service (non-Malawians):					
	(i)	in any class of Technical Assistant grade	100 00	100 00	
	(ii)	in any class of Technical Officer grade	100 00	110 00	
	(iii)	in a Professional Officer grade	120 00	120 00	
	(iv)	as an optician	150 00	130 00	
	(v)	as a medical practitioner or dentist on the:			
00	(A)	Main Register under section 26 of the Act	150 00	130 00	
	(B)	Register of Interns under section 30 of the Act	120 00	—	
	(C)	Provisional Register under section 33 of the Act	150 00	—	
00	(D)	Temporary Register under section 33 of the Act	150 00	130 00	
	(E)	Specialists Register under section 18 of the Act in addition to the fee in respect of the Main Register	100 00	130 00	

Fee per Annum

Upon application		Upon registration		Private practice		Private sector	
US\$	US\$	US\$	US\$	US\$	US\$	US\$	US\$

3. For persons who are not nationals of Malawi working in private practice and in the private sector—

(a)	in any class of Technical Assistant grade	120 00	150 00	150 00	00
150 00					
(b)	in any class of Technical Officer grade	120 00	150 00	150 00	00
150 00					

(c)	in a Professional Officer grade	120	00	170	00	170	00	170	00
(d)	as an optician	200	00	300	00	400	00	400	00
(e)	as a medical practitioner or dentist on the—								
	(i) Main Register under section 26 of the Act	200	00	300	00				
400	00	400	00						
	(ii) Temporary Register under section 33 of the Act	200	00	300	00				
—	300	00							
	(iii) Specialist Register under section 18 of the Act in addition to the fee in respect of the Main Register	200	00	200	00	300	00	300	00

4. On indexing in a register by students whose training leads to—

(a)	Technical Assistant grade	250	00
(b)	Technical Officer grade	300	00
(c)	Professional Officer grade	350	00
(d)	a Medical Doctor	450	00
(e)	Foreign students	US\$100	00

Non-Malawian Malawian

US\$ K t

5.	For Certificate of Good Standing	100	00	10,000	00
6.	For replacement of certificate	—	10,000	00	
7.	For making an application for registration of premises for public service facility providing out-patient and in-patient services	—	8,000	00	
8.	For registration of public service facilities providing out-patient services only—				

- | | | | |
|-----|--------------------|---|-----------|
| (a) | upon issue | — | 10,000 00 |
| (b) | upon every renewal | — | 8,000 00 |
9. For registration of public service facilities providing out-patient and in-patient services—
- | | | | |
|------|-------------------------|---|-----------|
| (a) | for rural hospitals: | | |
| (i) | upon issue | — | 10,000 00 |
| (ii) | upon every renewal | — | 13,000 00 |
| (b) | for district hospitals: | | |
| (i) | upon issue | — | 25,000 00 |
| (ii) | upon every renewal | — | 25,000 00 |
| (c) | for urban hospitals: | | |
| (i) | upon issue | — | 40,000 00 |
| (ii) | upon every renewal | — | 40,000 00 |
10. For replacement of premises registration certificate — 10,000 00

MEDICAL PRACTITIONERS AND DENTISTS (SPECIALIST REGISTER) (QUALIFICATIONS) RULES

under s. 18 (2)

G.N. 20/1988

15/1991

1. Citation

These Rules may be cited as the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

2. Recognized specialist qualifications

Specialist qualifications recognized by the Council as entitling a person to be registered under the Specialist Register shall be as specified in the Schedule:

Provided that no such qualification shall be so recognized unless—

- | | |
|-----|---|
| (a) | the training therefor was of at least three years duration; |
| (b) | it entitles the holder thereof to specialist registration in the country, state or territory where it was obtained. |

SCHEDULE reg. 2

RECOGNIZED SPECIALIST QUALIFICATIONS

PART I

MEDICAL

Speciality	Designation of the Specialist	Qualifications
Medicine	Physician	M.R.C.P. (U.K.), M.R.A.C.P., Dip. Am. Board of Int. Medicine, M.Med. (Medicine), F.R.C.P.C. or equivalent
Paediatrics	Paediatrician	M.R.C.P. (U.K.), M.R.A.C.P., F.R.C.P.C., Dip. Am. Board of Paediatrics, M.Med. (Paediatrics) or equivalent
Obstetrics and Gynaecology	Obstetrician/ Gynaecologist	M.R.C.O.G., F.R.C.S.C., M.R.A.C.O.G., Dip. Am. Board of Obstet./Gyn. M.Med (Obstet./Gyn.) or equivalent
Surgery	Surgeon	F.R.C.S., F.R.A.C.S., F.R.C.S.C., Dip. Am. Board of Surgeons, M.Med. (Surgery) or equivalent)
Pathology	Pathologist	M.R.C. (Path.), F.R.C.P.C., Dip. Am. Board of Pathology or equivalent
Psychiatry	Psychiatrist	M.R.C. (Psych.) F.R.C.P.C., Dip. Am. Board of Psychiatry, M.Med. (Psychiatry) or equivalent
Anaesthesia	Anaesthetist	F.F.A.R.C.A., F.F.A.A.R.C.S., Dip. Am. Board of (Anaesthesiology, M.Med. (Anaesthesia), F.R.C.P.C. or equivalent
Radiology	Radiologist	F.R.C.P.C., Dip. Am. Board of Radiology, M.Med. (Radiology) or equivalent
Ophthalmology	Ophthalmologist	F.R.C.S., F.R.A.C.S., F.R.C.S.C, Dip. Am. Board of Surgeons, M.Med. Ophthalmology or equivalent
Community Medicine	Specialist in Community Medicine	M.F.C.M., (U.K.) or equivalent
Family Medicine	Specialist in Family Medicine	M.R.C.G.P. (U.K.) F.A.A.F.P. or equivalent G.N. 15/1991

PART II

DENTAL

Speciality	Designation of the Specialist	Qualifications
Oral and Maxillo Facial Surgery	Oral and Maxillo Facial Surgeon	F.D.S.R.C.S., F.F.D.R.C.S., Dip Am. Board of Oral and Maxillo Facial Surgery or equivalent
Orthodontics	Orthodontist	F.D.S.R.C.S. or equivalent
Prosthodontics	Prosthodontist	F.D.S.R.C.S. or equivalent
Paedodontics	Paedodontist	F.D.S.R.C.S. or equivalent
Community Dentistry	Specialist in Community Dentistry	F.F.D or equivalent

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (TRAINING) RULES

ARRANGEMENT OF RULES

RULE

PART I

1. Citation
2. Interpretation

PART II

DIPLOMA AND CERTIFICATE COURSES OF TRAINING

3. Courses for which the Council shall institute diplomas and certificates
4. Titles and forms of diplomas and certificates

PART III

APPROVED TRAINING INSTITUTIONS

5. Training institutions
6. Admission to approved training institutions
7. Period of training at an approved training institution
8. Instructions to students

PART IV

EXAMINATIONS

9. Entry into examinations
10. Pass mark
11. Approval of examiners and panels of examiners
12. Appointment of the Board of Examiners [Deleted by G.N. 31/2006]
13. Approval of external examiners
14. Dates for sitting examinations [Deleted by G.N. 31/2006]
15. Appointment of invigilators [Deleted by G.N. 31/2006]
16. Examination centres
17. Balance between theory and practicals and continuous assessment
18. Approval of markers
19. Publication of examination results [Deleted by G.N. 31/2006]
20. Supplementary examinations, repetition and withdrawal [Deleted by G.N. 31/2006]

PART V

INSPECTION OF TRAINING INSTITUTIONS

21. Inspection

PART VI

INTERNSHIP FOR THE DIPLOMA COURSES IN CLINICAL MEDICINE, DENTISTRY, OPHTHALMOLOGY AND DENTAL TECHNOLOGY

22. Internship for Diploma Courses in Clinical Medicine, Dental Therapy and Ophthalmology

First Schedule

Second Schedule

Third Schedule

Fourth Schedule

Fifth Schedule

[Revoked by G.N. 31/2006]

Sixth Schedule

G.N. 80/1993

34/1994

31/2006

PARAMEDICALS AND ALLIED HEALTH PROFESSIONALS (TRAINING) RULES

under s. 45

PART I

1. Citation

These Rules may be cited as the Paramedics and Allied Health Professionals (Training) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“approved training institution” means an institution approved by the Council under subrule (1) of rule 5 or recognized as such under subrule (3) of rule 5;

“student” means a person pursuing a course of training at an approved training institution;

“training period” means the period of training in respect of a course of training as prescribed in the Third Schedule; and Third Schedule

“course of training” means a course of training specified in rule 3.

PART II

DIPLOMA AND CERTIFICATE COURSES OF TRAINING

3. Courses for which the Council shall institute diplomas and certificates

Pursuant to section 44 of the Act, the following courses are prescribed as the courses for which the Council shall be the body to authorize the institutions to award diplomas and certificates subject to, and in accordance with these Rules, that is to say, diploma and certificate courses in—

G.N. 31/2006

(a) Clinical Medicine;

- (b) Ophthalmology;
- (c) Dental Therapy;
- (d) Radiography;
- (e) Laboratory Technology;
- (f) Environmental Health;
- (g) Anaesthesiology;
- (h) Clinical Orthopaedics;
- (i) Rehabilitation;
- (j) Optometry; and
- (k) Dental Technology.

4. Titles and forms of diplomas and certificates

Diplomas and certificates to be recognized by the Council under these Rules shall be specified in the First Schedule. G.N. 31/2006

PART III

APPROVED TRAINING INSTITUTIONS

5. Training institutions

(1) A course shall not be recognized by the Council for awards of diplomas and certificates by the institutions under these Rules unless the basic training in that course is conducted at an institution approved by the Council (in these Rules referred to as an “approved training institution”). G.N. 31/2006

(2) The Council shall not approve an institution for the purpose of subrule (1) unless the institution meets, as a minimum, the requirements specified in Part I of the Second Schedule. Second Schedule, Part I

(3) The institutions specified in Part II of the Second Schedule shall be recognized as approved training institutions for the purposes of subrule (1). Second Schedule, Part II

6. Admission to approved training institutions

(1) Save as provided in subrules (1) and (2), no person shall qualify to be admitted to an approved training institution unless he has obtained the Malawi Certificate of Education, or its equivalent, with credits in English, Mathematics, Biology and any two science subjects. G.N. 31/2006

(2) A person who holds a Medical Assistant Certificate or a Nurses Certificate obtained from a recognized institution may be admitted for training in Ophthalmology at an approved training institution notwithstanding that he does not otherwise qualify in accordance with subrule (1).

(3) A person may be admitted to an approved training institution to embark on training at any stage of the course of training if the Council is satisfied that his previous training or experience is such that it may justify his exemption from the requirements of subrule (1).

(4) Any person who holds a certificate from an approved training institution shall be eligible for upgrading courses.

7. Period of training at an approved training institution

(1) The period of training at an approved training institution for a course for which a diploma or certificate may be awarded under these Rules shall be the period stated in the Third Schedule in relation to such course, inclusive of—

(a) periods of vacation leave as may normally occur from year to year; and

(b) periods of sick leave granted to a student not amounting to a period long enough to substantially adversely affect the training of such student as determined by the teaching staff of the relevant approved training institution.

(2) If the course of training is interrupted for reasons other than those mentioned in paragraphs (a) and (b) of subrule (1) the Principal of the relevant approved training institution shall determine whether to recognize the whole or part of the period of training undergone by the student before such interruption as forming part of the period of training stipulated under subrule (1).

(3) Except for the periods of vacation or sick leave stated in subrule (1) or any period approved by the Council under subrule (2), a student shall be required to undergo continuous training throughout the whole period of the course of training to be eligible for the award of a certificate or diploma in accordance with these Rules.

8. Instructions to students

(1) A student shall, during his course of training, be given theoretical and practical instruction in every subject prescribed for any course of training in which he is a student. G.N. 31/2006

(2) All instructions shall be given to students in accordance with the syllabus approved by the Council from time to time.

(3) The teaching staff of an approved training institution shall be appointed by the body responsible for the administration of the institution and the appointments shall be made in accordance with the requirements prescribed by the Council with regard to qualifications for such appointments.

(4) All instructions given to students shall, save as otherwise approved by the Council, be supervised by a medical practitioner, dentist, paramedical or allied health professional, as the case may be, registered as such under the Act.

PART IV

EXAMINATIONS

9. Entry into examinations

(1) In order to qualify for entry into an examination to be held under these Rules for any class of persons the following conditions shall apply— G.N. 31/2006

(a) in the case of internal candidates, such candidates must have—

(i) attended an approved training institution;

(ii) fulfilled all the requirements for any particular course of training as certified by the Principal of the institution on the candidates application for sitting the examination.

(b) in the case of external candidates, being those candidates who receive their training in a country other than Malawi and wish to sit for the Council's examinations under these Rules, they must submit to the Council the relevant curricula and transcripts from their training institutions in order to establish their eligibility for such examinations and the Council may contact such institution so as to establish whether the training institution is recognized by the governing body of that country.

10. Pass mark

(1) The pass mark for every examination shall be fifty per cent.

(2) No candidate shall be credited with passing a final examination unless he has satisfied the examiners in all the papers and tests of the examinations or has passed the requisite number of supplementary tests, as provided for in these Rules.

11. Approval of examiners and panels of examiners

(1) The Council shall approve the appointment of a panel of examiners for each course of training and shall appoint from amongst members of such panel one examiner for each subject in that course. G.N. 31/2006

(2) The function of a panel of examiners shall be to assess the standard of examinations set by examiners for the course of training concerned and to evaluate the performance of candidates in all the examinations conducted in respect of such course.

(3) The function of an examiner shall be to set examination papers and marking guides for examinations to be taken by candidates under these Rules and every examiner shall ensure that the examination paper is ready three months before the date of sitting the examination.

(4) An examiner shall be appointed for a period of three years at a time and shall be eligible for reappointment, but the training institution may sooner terminate his appointment.

(5) An examiner shall be paid a fee as prescribed by the training institution.

12.

[Deleted by G.N. 31/2006]

13. Approval of external examiners

(1) The Council shall approve an external examiner for each subject whose function shall be to provide independent assessment and evaluation of examination papers for such subject and the performance of candidates in the examinations in such subject. G.N. 31/2006

(2) One person may be appointed as external examiner for more than one subject.

(3) An external examiner shall be appointed for a period of three years at a time and shall be eligible for reappointment, but the training institution may sooner terminate his appointment.

(4) An external examiner shall be paid a fee as prescribed by the training institution.

14.—15.

[Deleted by G.N. 31/2006]

16. Examination centres

All approved training institutions shall qualify as examination centres and the Council may establish additional centres throughout Malawi as it considers are required for any particular examination. G.N. 31/2006

17. Balance between theory and practicals and continuous assessment

(1) The Council shall give due recognition to the importance of practicals in the training of health professionals and shall ensure that more weight is given to practical examinations than to written examinations but may vary such proportions from one examination to another as it sees fit. G.N. 31/2006

(2) Continuous assessment of a student's performance throughout the training period shall form forty per cent of the final grade.

18. Approval of markers

(1) All examiners shall participate in the marking. G.N. 31/2006

(2) The examiners shall ensure that a marking scheme is available before the commencement of the marking.

(3) A marker shall be paid a fee as prescribed by the training institution.

19.—20

[Deleted by G.N. 31/2006]

PART V

INSPECTION OF TRAINING INSTITUTIONS

21. Inspection

(1) For the purposes of subsections of the Act, an inspectorate team appointed by the Council shall, at least once every year, inspect every approved training institution, including any hospital or other health centre connected with training at that institution, and all such inspectorate teams shall consist of suitably qualified persons to conduct such inspection, but in no case shall a person be part of an inspectorate team inspecting the institution at which such person is a member of the teaching staff.

(2) A member of an inspectorate team shall be paid such allowances as are payable to the staff of the Council when on duty away from duty station.

PART VI

INTERNSHIP FOR THE DIPLOMA COURSES IN CLINICAL MEDICINE, DENTISTRY, OPHTHALMOLOGY AND DENTAL TECHNOLOGY G.N. 31/2006

22. Internship for Diploma courses in Clinical Medicine, Dental Therapy and Ophthalmology

(1) Internship for Diploma in Clinical Medicine and Dental Therapy shall be undertaken for period of twelve months and six months for internship in Ophthalmology and Dental Technology, at hospitals recognized for this purpose by the Council and during the period, an intern shall be regarded as duly employed and shall be entitled to receive a full salary.

(2) A person undergoing a period of internship pursuant to this rule shall be registered in a register of interns which the Council shall separately establish and maintain in respect of such interns.

FIRST SCHEDULE reg. 4, G.N. 34/1994, 31/2006

PART I

TITLES OF DIPLOMAS AND CERTIFICATES TO BE RECOGNIZED BY THE COUNCIL

Class of Personnel	Title of Award
1. Medical Assistants	Certificate in Clinical Medicine
2. Clinical Officers	Diploma in Clinical Medicine
3. Radiography Technicians	Diploma in Radiography
4. Medical Laboratory Assistants	Certificate in Medical Laboratory Technology
5. Medical Laboratory Technicians	Diploma in Medical Laboratory Technology
6. Health Assistants	Certificate in Environmental Health
7. Assistant Environmental Health Officer	Diploma in Environmental Health
8. Dental Assistants	Certificate in Dental Therapy

- 9. Dental Therapists Diploma in Dental Therapy
- 10. Ophthalmic Clinicians Diploma in Ophthalmology
- 11. Orthopaedic Clinical Therapists Diploma in Clinical Orthopaedics
- 12. Anaesthetic Clinical Officers Diploma in Anaesthesiology
- 13. Optometry Diploma in Optometry
- 14. Rehabilitation Technicians Diploma in Rehabilitation
- 15. Dental Technicians Diploma in Dental Technology

PART II

FORM OF DIPLOMAS AND CERTIFICATES

COUNCIL SEAL

CERTIFICATE No.

MEDICAL COUNCIL OF MALAWI

This is to certify that

..... has successfully completed a course of training at
 from to and, having satisfied the
 Council's requirements, has passed the prescribed examination and is hereby awarded a

CERTIFICATE/DIPLOMA

in

.....

in accordance with the provisions of the Medical Practitioners and Dentists Act (Cap. 36:01)

.....

Chairman

.....

Registrar

Date:

SECOND SCHEDULE reg. 5 (2) and (3), G.N. 31/2006

PART I

MINIMUM REQUIREMENTS FOR RECOGNITION OF A TRAINING INSTITUTION

1. General

The training institution must provide the facilities necessary for the training of any specified class of paramedicals and allied health professionals in the courses of training carried on at the institution.

2. Personnel

(a) The administrative head of the training institution shall have appropriate qualification and experience;

(b) There must be a sufficient number of teaching staff as shall satisfy the Council that in the prevailing circumstances the ratio of teachers to students is one to ten; and

(c) The teaching staff shall have knowledge in teaching methodology.

3. Physical Facilities

The training institution must have—

(a) offices for members of the teaching staff to enable them to carry out their duties efficiently;

(b) an adequate number of, and spacious, classrooms so as to permit reasonable comfort to teachers and students;

(c) what, in the opinion of the Council, is a minimum supply of appropriate teaching aids and equipment;

(d) a library with current or updated reference books, periodicals and other literature necessary for the teaching of subjects relevant to various curricula;

(e) a well equipped laboratory; and

(f) a hospital suitable for practical experience.

PART II

APPROVED TRAINING INSTITUTIONS

The following institutions are recognized by the Council as approved training institutions in Malawi—

(a) the Malawi School of Health Sciences;

(b) the Malamulo School of Medical Sciences;

- (c) the Rehabilitation (Assistants) Training School; and
- (d) any other Training School approved by the Council.

THIRD SCHEDULE reg. 7, G.N. 31/2006

PRESCRIBED PERIOD OF TRAINING

Course of training	Period of training
Certificate in Clinical Medicine	2 years plus 12 months of internship
Diploma in Ophthalmology	1 year plus 6 months of internship
Diploma in Clinical Medicine	3 years plus 12 months of internship
Diploma in Radiography	3 years
Diploma in Dental Therapy	3 years plus 12 months of internship
Diploma in Dental Technology	3 years plus 6 months of internship
Certificate in Medical Laboratory Technology	2 years
Diploma in Medical Laboratory Technology	3 years
Diploma in Medical Laboratory Technology upgrading	1 year
Diploma in Clinical Medicine upgrading	1½ years plus 12 months of internship
Diploma in Orthopaedic Clinical Therapy	1½ years
Diploma in Anaesthesiology	1 year
Certificate in Rehabilitation	2 years
Diploma in Rehabilitation	3 years

FOURTH SCHEDULE

[Revoked by G.N. 31/2006]

FIFTH SCHEDULE

[Revoked by G.N. 31/2006]

SIXTH SCHEDULE

[Revoked by G.N. 31/2006]

MEDICAL IMAGING (PRIVATE PRACTICE) REGULATIONS

under s. 69

G.N. 32/2004

1. Citation

These Regulations may be cited as the Medical Imaging (Private Practice) Regulations.

2. Classification of medical imaging for private practice

Medical imaging for private practice shall be classified as—

- (a) Category A—Radiography;
- (b) Category B—Sonography; and
- (c) Category C—Radiology.

3. Category 'A' Radiography

(1) A Category 'A' Radiography practice shall be a private practice which may be operated as a private practice for service to the general public only by a person registered as a Radiography Technician or Radiographer under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

(2) A Licence to operate a Category 'A' Radiography private practice shall be issued under the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(3) The tests to be performed in a Category 'A' Radiography private practice shall be as listed in the Third Schedule, Part I, G of the Paramedicals and Allied Health Professionals Regulations.

(4) The premises for use by a practitioner licensed to operate a Category 'A' Radiography private practice shall, as a minimum, comply with the requirements specified in Part II, E of the Fourth Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations and shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

4. Category 'B' Sonography

(1) A Category 'B' Sonography private practice shall be a private practice by a person registered as a Sonographer under the Medical Practitioners and Dentists (Registration and Miscellaneous Fees) Regulations.

(2) A licence to operate a Category 'B' Sonography private practice shall be issued under the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(3) The tests to be performed in a Category 'B' Sonography private practice shall be as listed in Part I, H of the Third Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations.

(4) The premises for use by a practitioner licensed to operate a Category 'B' Sonography private practice shall, as a minimum, comply with the requirements specified in Part II, F of the Fourth Schedule to the Paramedicals and Allied Health Professionals (Private Practice) Regulations and shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

5. Category 'C' Radiology

(1) A Category 'C' Radiology private practice shall be a private practice which may be operated for the service of the general public by a person registered as a Radiologist under the Specialist Register kept and maintained by the Council in accordance with the Medical Practitioners and Dentists (Specialist Register) (Qualifications) Rules.

(2) A licence to operate Category 'C' Radiology private practice shall be issued under the Medical Practitioners and Dentists (Private Practice) Regulations.

(3) The range of tests to be performed in a Category 'C' Radiology private practice shall include all or any of those applicable in Categories 'A' and 'B' and as the Council may endorse on the licence of the practitioner having regard to his training, experience and equipment.

(4) The premises for use by a practitioner licensed to operate a Category 'C' Radiology private practice shall, as a minimum, comply with the requirements specified in Part I of these Schedule Regulations and there shall be kept and maintained for use at every such practice, as a minimum, the equipment specified in that Schedule.

SCHEDULE

MINIMUM PREMISES REQUIREMENTS FOR A RADIOLOGY PRIVATE PRACTICE

PART I

PREMISES

The premises shall have—

- (a) permanent building materials;
- (b) waiting room of adequate size to hold ten people with adequate ventilation and toilet facilities;
- (c) X-ray room of at least thirty square metres with length of at least four by six metres;
- (d) wall thickness of nine inches plastered brick wall all round or four and a half inches wall plastered with 1.25 mm barium plaster or 150 mm concrete or other equivalents of 22 mm pb;
- (e) doors lined with lead of 2 mm pb or brick 9 inches with a maze format all 3 m high;

- (f) viewing window for control panel should be of 1.6 mm pb glass or equivalent radiation protection window or, surrounded in a maze format of equivalent brick or, potable radiation protection shield;
- (g) ventilation provided by window on the side of the room that is used by persons or by air-conditioner;
- (h) at least one change room for patients;
- (i) dark room should be of adequate size for purposes of automatic or manual film processing with a window painted black;
- (j) workbenches in the darkroom must be made of cleanable and non-corrosive material;
- (k) film storage of hopper or equivalent holder to avoid light fogging;
- (l) supply of running water;
- (m) washing hands facilities: sink or washing basin; and
- (n) adequate ultrasound room.

PART II

EQUIPMENT AND SUPPLIES

The following X-ray equipment shall be available—

- (a) stationery or mobile X-ray unit in good working order, one per room;
- (b) patient couch;
- (c) erect chest stand, gotional;
- (d) pb gown;
- (e) various sizes of cassettes;
- (f) grids, optional;
- (g) automatic processor in good working order;
- (h) manual processing facility;
- (i) at least one viewing box;
- (j) sonar scanner in good working order;
- (k) printer, optional;
- (l) CT Scan, optional;

- (m) MRI Scanner, optional; and
- (n) Coupling, medium.

[Chap3602]CHAPTER 36:02

NURSES AND MIDWIVES

ARRANGEMENT OF SECTIONS

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16 of 1995

G.N. 23/1996

An Act to provide for the establishment of the Nurses and Midwives Council of Malawi, the registration and disciplining of nurses and nursing technicians, the licensing of private practice, the regulation of education and training of nurses and nursing technicians and generally for the control and regulation of the nursing profession and practice in Malawi and for matters incidental thereto or connected therewith

[1ST APRIL 1996]

PART I

PRELIMINARY

[Ch3602s1]1. Short title

This Act may be cited as the Nurses and Midwives Act.

[Ch3602s2]2. Interpretation

In this Act, unless the context otherwise requires—

“certificate” means a certificate of registration issued by the Council to a person entitled to be registered in accordance with this Act;

“Council” means the Nurses and Midwives Council of Malawi established by section 3;

“Executive Committee” means the committee established by section 13;

“medical practitioner” means a person registered as such under section 17 of the Medical Practitioners and Dentists Act; Cap. 36:01

“nurse” means a person registered as such under section 26 and includes a midwife;

“nursing agency” means practice registered as such under section 42;

“nursing technician” means a person registered as such under section 26 and includes a midwife;

“pharmacist” means a person registered as such under section 4 of the Pharmacy, Medicines and Poisons Act; Cap. 35:01

“register” means any of the registers required to be kept under sections 18 and 19;

“Registrar” means the Registrar of the Council appointed under section 15.

PART II

THE NURSES AND MIDWIVES COUNCIL OF MALAWI

[Ch3602s3]3. Establishment of the Council

There is hereby established a Council to be known as the Nurses and Midwives Council of Malawi, which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

[Ch3602s4]4. Composition of the Council

(1) The Council shall consist of the following members all of whom shall, save in the case of an ex officio member, be citizens of Malawi—

- (a) the Secretary for Health and Population who shall be a member ex officio;
- (b) the Controller of Nursing Services in the Ministry of Health and Population who shall be a member ex officio;
- (c) the Principal of Kamuzu College of Nursing who shall be a member ex officio;
- (d) the Chairperson of the National Association of Nurses of Malawi who shall be a member ex officio;
- (e) one medical practitioner nominated by the Medical Council of Malawi and appointed by the Minister;
- (f) one member appointed by the Minister from the general public who shall be a person—
 - (i) of good character and good standing in the community;
 - (ii) knowledgeable in consumer health concerns; and
 - (iii) with no direct or indirect financial interest in health care services;
- (g) five nurses and one nurse technician elected by the National Association of Nurses of Malawi;
- (h) the Registrar of the Pharmacy, Medicines and Poisons Board or his duly designated alternate who shall be a member ex officio;
- (i) the Executive Secretary of the Christian Hospitals Association of Malawi or his duly designated alternate who shall be a member ex officio;
- (j) the Solicitor General or his duly designated alternate who shall be a member ex officio.

(2) Subject to section 5, a member, of the Council, not being a member ex officio, shall hold office for three years but shall be eligible for re-nomination, re-appointment or re-election, as the case may be, for only one term of office;

(3) At least three months prior to the date of expiry of the term of office of the members of the Council, the Medical Council of Malawi in subsection (1) (d), and the National Association of Nurses of Malawi in subsection (1) (f) shall inform the Registrar in writing of the names of persons nominated or elected by them in terms of the provisions referred to.

(4) Where the Medical Council of Malawi or the National Association of Nurses of Malawi, as the case may be, is for any reason whatsoever unable to nominate or elect any number of members of the Council it is required to nominate or elect under subsection (1), the Minister may appoint to the Council an equal number of members from amongst persons eligible for nomination or election, as the case may be, under that subsection, and the members so appointed shall hold office until substituted by nominated or elected members or for such period, not exceeding three years, as the Minister may, either at the time of making the appointment or at any time thereafter, direct in writing.

(5) Before appointing a person to be a member of the Council the Minister shall satisfy himself that that person shall have no such financial or other interest as is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council, and the Minister shall also satisfy himself from time to time with respect to every member of the Council that he has no such interest; and a person who is, or whom the Minister proposes to appoint to be a member of the Council shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this subsection.

(6) If the Minister is not satisfied as to the suitability of a person nominated for appointment he may inform the appointing body, by notice in writing, that he rejects the nomination and may include in that notice a further request for a nomination.

(7) After consultation with the Council, the Minister may vary its composition by order published in the Gazette.

(8) Upon the appointment or election to the Council of any member, the Minister shall cause notice of such appointment or election to be published in the Gazette and shall in such notice specify the current membership of the Council resultant upon such appointment or election.

[Ch3602s5]5. Vacation, etc., of members from office

(1) The Minister may require a member of the Council to vacate his office if the Minister is satisfied that the member—

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors;

(b) has been absent from three consecutive meetings of the Council, of which he has had notice, without the leave of the Council;

- (c) has been disqualified under this Act from carrying on his profession or calling;
- (d) has been convicted under this Act or the repealed Act or any law relating to poisons or drugs;
- (e) has been convicted—
 - (i) within Malawi of a criminal offence; or
 - (ii) outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon;
- (f) is mentally or physically incapable of efficiently performing his duties as a member of the Council;
- (g) has had a penalty imposed upon him under this Act by the Council; or
- (h) has financial or other interest that is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council.

(2) The Minister may suspend from office a member of the Council against whom—

- (a) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or
- (b) disciplinary proceedings under this Act are instituted by the Disciplinary Committee, and while that member is so suspended he shall not carry out any duties as a member.

(3) A member of the Council may resign his office by notice in writing—

- (a) in the case of an elected member, to the Chairperson of the Council;
- (b) in the case of an appointed member, to the Minister.

[Ch3602s6]6. Filling of vacancies on the council

On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed or elected in accordance with the relevant provisions of section 4 (1) under which the former member was appointed or elected:

Provided that if the remaining period is less than six months, then—

- (a) in the case of an appointed member, the Minister may decide not to have the vacancy filled until the expiry of the period; and

(b) in the case of an elected member, it shall not be necessary to hold an election and the Council may, if it sees fit, either decide not to have the vacancy filled or to co-opt a person to fill the vacancy until the expiry of the remaining period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch3602s7]7. Co-opted persons

The Council may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

[Ch3602s8]8. Chairperson and Vice-Chairperson

(1) The Minister shall, by writing and under his hand, designate one member of the Council to be the Chairperson thereof.

(2) The Council shall elect a Vice-Chairperson from amongst its members. The Vice-Chairperson shall, subject to subsection (3), hold office for the duration of his membership on the Council.

(3) The office of the Vice-Chairperson shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Council;
- (b) if the holder of the office ceases to be a member of the Council; or
- (c) if the Council so directs.

(4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairperson shall discharge the functions of the Chairperson.

(5) If the office of Chairperson or Vice-Chairperson becomes vacant, the members of the Council shall at the first meeting after such vacancy has occurred, elect from among themselves a new Chairperson or Vice-Chairperson, as the case may be, and the member so elected shall, subject to section 5, hold office for the unexpired portion of the period for which his predecessor was elected.

(6) A Chairperson or Vice-Chairperson may vacate office as such without such vacation by itself terminating his membership of the Council.

PART III

MEETINGS OF THE COUNCIL

[Ch3602s9]9. Meetings of the Council

(1) Subject to the provisions of this Act, the Council shall hold ordinary meetings for the dispatch of business at least three times in each year.

(2) An extraordinary meeting of the Council—

(a) may be convened by the Chairperson at any time; and

(b) shall be convened by the Chairperson within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(a) the Chairperson or, in his absence the Vice-Chairperson, shall preside;

(b) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by seven members.

(4) At any meeting the decision of the Council on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

(6) The record of any meeting of the Council shall be made available to any person registered under this Act at all reasonable times at the offices of the Council:

Provided that the provision of this subsection shall not be construed as entitling a registered person to peruse the records of—

(a) a meeting of the Disciplinary Committee or any other committee of the Council; or

(b) the Council where the Council has resolved that it shall sit as a committee.

(7) Subject to subsection (8) all proceedings before the Council shall be held in public.

(8) If the Council is satisfied, either by reason of the confidential nature of the matter or otherwise, that it is appropriate to do so, the Council may direct that a matter, or part of a matter, shall be held in private.

[Ch3602s10]10. Disclosure of interest of member

(1) A member of the Council who is in any way directly or indirectly interested in any matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) The disclosure shall be recorded in the minutes of the meeting.

(3) A member shall not take part in the deliberations on or decision about the matter if the Council decides that the member's interest might prejudicially affect—

- (a) his consideration of the matter; or
- (b) the Council's consideration of the matter.

(4) For the purpose of the making of a determination by the Council under subsection (3) in relation to a member who has made a disclosure under subsection (1), the member shall not—

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination:

Provided that the absence of the member in accordance with this subsection shall not invalidate a meeting otherwise validly convened.

PART IV

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch3602s11]11. Functions of the Council

The Council shall be the sole registering authority of all persons required to be registered or licensed under this Act and shall have the following further functions—

- (a) to assist in the promotion and improvement of the health of the population in Malawi;
- (b) to control and to exercise authority affecting the education, training and practice of persons in, and the performance of, the practices pursued by nurses and nurse technicians.
- (c) to exercise disciplinary control over the professional conduct of all persons registered under this Act and practising in Malawi;
- (d) to promote liaison of the education and training, and the manner of the exercise of the practices, referred to in paragraph (b) both in Malawi and elsewhere, and to promote the standards of such education and training and the manner of the exercise of such practices in Malawi;
- (e) to advise the Minister on any matter falling within the scope of this Act; and
- (f) to communicate to the Minister any information acquired by the Council relating to matters of public health.

[Ch3602s12]12. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power to—

- (a) where authorized by this Act, remove from or restore to a register any name;
- (b) appoint examiners and moderators, set and conduct examinations and grant certificates;
- (c) approve nursing schools in accordance with the prescribed conditions, inspect such schools, or withdraw or suspend approval of any such school if the education or training thereat is not, in the opinion of the Council, satisfactorily carried out, or if any condition imposed has not been complied with:

Provided that the Council shall not refuse to approve, or shall not withdraw or suspend the approval of, any such school without the consent of the Minister;

- (d) carry out any inspection it may deem necessary to enable it to consider an application for the approval of a nursing school or any variation of a condition imposed in respect of an approved nursing school;

- (e) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept any donation or accept and administer any trust;

- (f) subject to the prescribed conditions, issue or renew a licence to carry on the business of a nursing agency, inspect the records and accounts, and investigate the activities, of a nursing agency, require any person licensed to carry on the business of a nursing agency to submit to the Council such information as it may deem necessary, and, in the prescribed circumstances, suspend or cancel a licence to carry on the business of a nursing agency;

- (g) consider any matter affecting the nursing or midwifery profession, and make representations or take such action in connexion therewith as the Council may deem advisable;

- (h) upon application of any person, recognize a qualification held by him (whether such qualification has been obtained in Malawi or elsewhere), as being equal, either wholly or in part, to any prescribed qualification, whereupon such person shall, to the extent to which the qualification has so been recognized, be deemed to hold such prescribed qualification;

- (i) require approved nursing schools to submit annual returns of students registered under section 33 and pupils registered under section 34 and such other information as may become necessary at any time;

- (j) cause copies of the registers and supplementary lists, and copies thereof, showing all alterations to the registers, to be printed and published;

- (k) make extracts from the registers;

- (l) perform such other functions as may be prescribed or assigned to the Council by the Minister; and

- (m) generally, do all such things as it may deem necessary or expedient to achieve the objects of this Act.

(1) There shall be an Executive Committee of the Council consisting of the Chairperson and the Vice-Chairperson of the Council, the Chairperson of Committees established under this Act, and such other members of the Council as the Council may designate.

(2) The Executive Committee may, subject to the directions of the Council, exercise all the powers, other than the powers referred to in section 61 (2) and perform all the functions of the Council, but shall not have the power, save in so far as the Council otherwise directs, to set aside or amend any decision of the Council, and any act performed or decision taken by the Executive Committee shall be of force and effect unless it is set aside or amended by the Council at its next ensuing meeting.

(3) At any meeting of the Executive Committee—

(a) the Chairperson or, in his absence the Vice-Chairperson, shall preside;

(b) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by any four members.

(4) At any meeting the decision of the Executive Committee on any matter shall be that of the majority of the members present and voting at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of the proceedings and business of the Executive Committee and may vary, suspend or revoke any such standing orders.

[Ch3602s14]14. Committees of the Council

(1) In addition to the Executive Committee, the Education and Examination Committee, the Investigating Committee, the Disciplinary Committee, the Appointment and Finance Committee, the Professional Practice Committee and save as otherwise provided in relation to those six committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

(2) The Chairperson of the Council shall by reason of his office be a member of every committee established under subsection (1).

(3) The Chairperson of each committee shall be appointed by the Council from amongst the members of the Council.

(4) Each committee may co-opt as members of such committee persons who are not members of the Council and any of such members so co-opted may or may not be officers in the public service.

(5) The Chairperson of a committee may, at any time and place, convene a meeting of the committee of which he is Chairperson.

(6) The Council may, at any time, direct the Chairperson of any committee to convene a meeting of such committee and such Chairperson shall, as soon as is practicable, comply with such direction.

(7) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(8) Any member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowance as the Council may determine.

PART V

MANAGEMENT

[Ch3602s15]15. Appointment of Registrar and other staff

(1) Subject to the provisions of this section, the Council—

(a) shall appoint a Registrar upon terms and conditions approved by the Minister; and

(b) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) Before appointing a person to be a Registrar, the Council shall satisfy itself that the person has at least a degree in nursing and five years experience in nursing practice, education or administration.

(3) The Registrar, after consultation with the Chairperson of the Council, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.

(4) The Registrar shall be the Secretary to the Council and to every committee thereof and shall, on the instructions of the Chairperson of the Council or the Chairperson of any committee, convene a meeting of the Council or the committee, as the case may be.

(5) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any other officer of the Council shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairperson of the Council may designate.

PART VI

FINANCIAL PROVISIONS

[Ch3602s16]16. Funds, accounts, audit

(1) The funds of the Council shall consist of—

(a) such sums as may be appropriated by Parliament for the purposes of the Council;

(b) all fees payable under this Act;

(c) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise, including any penalty or costs payable to the Council under this Act; and

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

[Ch3602s17]17. Remuneration and expenses of members of the Council

Members of the Council shall be paid from the funds of the Council such allowance as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee of the Council in connexion with the business of the Council or the committee.

PART VII

REGISTERS

[Ch3602s18]18. Registers

(1) Subject to the provisions of this Act, the Council shall continue to keep and maintain the registers which were established before the commencement of this Act and may establish or continue to keep and maintain—

(a) a register of nurse midwives;

(b) a register of nursing midwife technicians;

(c) a register of persons temporarily employed in Malawi, being persons referred to in section 36.

(2) The Council may establish a register of students who are undergoing training in Malawi or a qualification required for admission as a nurse or nurse technician.

(3) There shall be entered in a register under this section in relation to a registered person, address, qualification and date of first registration, date of first licence, date of renewal of licence and such other particulars as the Council may from time to time determine.

(4) The Council may alter the title of any register and every person registered in a register bearing the former title shall for all purposes be considered as registered in the register bearing the new title.

(5) Where the Council intends to establish a register or to alter the name of a register, the Council shall cause to be published in the Gazette and in one issue of a newspaper in general

circulation in Malawi notice of such intention and the date with effect from which it is intended that the register shall be established or the name of the register shall be altered.

[Ch3602s19]19. Specialist Register

(1) The Council may establish and keep a register of nurses or nursing technicians who have acquired special knowledge and experience in a particular branch of nursing.

(2) If the Council establishes a register under subsection (1), it may, by rule or otherwise, determine—

(a) the requirements to be satisfied, including the experience to be acquired, the nature and duration of the training to be undertaken and the degree, diploma or certificate to be held by a nurse or nursing technician before he can be registered on that register;

(b) the conditions which shall exempt any person from the requirement, experience or training referred to in paragraph (a);

(c) the conditions governing the practice of nurses or nursing technicians who have been registered on a register kept under subsection (1), including conditions restricting the practice of any such nurse or nursing technician to a particular branch of nursing;

(d) the circumstances in which the Council may remove the name of a person from a register kept in terms of subsection (1).

(3) There shall be entered in a register kept under subsection (1) in relation to a registered person such particulars as the Council may from time to time determine.

[Ch3602s20]20. Duties of Registrar

(1) All registers shall be kept under the custody of the Registrar at the offices of the Council.

(2) It shall be the duty of the Registrar, under the direction of the Council, to—

(a) enter in any register the particulars required under this Act of every person whom he registers in that register;

(b) make in a register any necessary alterations in the name, address, qualifications and other particulars of a registered person;

(c) erase from a register the name of a registered person who dies; and

(d) when required to do so by or under this Act or in pursuance of an order of a court—

(i) to mark in a register the registration of an applicant or, as the case may be, the suspension from practice of a registered person; and

(ii) to erase from a register the name of a registered person;

(e) generally to comply with the requirements imposed on him by this Act.

(3) Where the Registrar erases from a register the name of a registered person he shall enter in that register a record of the reasons therefor.

[Ch3602s21]21. Certificate and licence

(1) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—

(a) registers or licenses any person, he shall issue to him a certificate of registration or a licence, as the case may be;

(b) erases from a register the name of a registered person or a licensee; or marks in a register the suspension from practice of a registered person he shall, wherever possible, notify him in writing accordingly.

(2) On application by a registered person the Registrar may issue to that person a duplicate certificate of registration or licence—

(a) if he is satisfied as to the identity of the applicant; and

(b) on production by the applicant of an affidavit certifying that the certificate of registration or licence has been lost or destroyed; and

(c) on payment by the applicant of the appropriate prescribed fee, if any.

[Ch3602s22]22. Publication of registers

(1) The Registrar shall, from time to time, under the authority of the Council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and erasures made since the last publication of the complete registers to be published in the Gazette.

(2) Copies of the registers shall be published in such form as the Council may direct and may contain, in lists separate from the main registers, such particulars as the Council may require to be published.

[Ch3602s23]23. Registers to be evidence

(1) Subject to the provisions of subsection (2), the last published copy of a register, as read with any supplementary list, purporting to be published under the authority of the Council under section 22, shall be prima facie evidence in any legal proceedings of the facts therein recorded and the omission of the name of any person from such copy shall be prima facie evidence, that such person is not registered.

(2) In the case of a person—

(a) whose name does not appear in a published copy of a register and whose name has been added to a register after the date of the last published copy thereof, a certificate under the hand of the Registrar of the entry of the name of that person in that register shall be prima facie evidence that that person is so registered on that register; or

(b) whose name has been erased from a register since the date of the last published copy thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of that person has been erased from the register shall be prima facie evidence that that person is not registered on that register; or

(c) who has been suspended from practice in accordance with this Act, a certificate under the hand of the Registrar that that person has been so suspended from practice for a period specified in that certificate shall be prima facie evidence that that person has been suspended from practice for that period.

PART VIII

REGISTRATION

[Ch3602s24]24. Persons registered under the repealed Act

Every person who, immediately before the commencement of this Act, was registered in any register under the repealed Act and is resident in Malawi, shall be deemed to have been registered under this Act in the appropriate register.

[Ch3602s25]25. Residence of registered persons

(1) Subject to subsection (2), an applicant for registration shall not be registered unless at the time of his application—

(a) he resides in Malawi; or

(b) he intends, if he is registered, to take up residence in Malawi within six months of the date of his registration.

(2) Any person who resides in and is lawfully practising his profession or calling in such country as the Council may from time to time specify for the purposes of this subsection by notice in the Gazette may be registered if, but for residing outside Malawi, he is otherwise qualified for registration.

[Ch3602s26]26. Registration and licensing prerequisites for practising

No person shall be entitled to practise within Malawi the profession of a nurse or nursing technician, or to practise within Malawi as a student nurse or as a pupil nursing technician, unless he is in terms of this Act registered and licensed as a nurse, a nursing technician, a student nurse or a pupil nursing technician, as the case may be.

[Ch3602s27]27. Persons entitled to be registered

Except as otherwise provided by or under this Act, every person shall be entitled to be registered in the appropriate register if he—

(a) has undergone the prescribed courses of instruction, education and training in Malawi and has passed the prescribed final examination conducted by the Council in respect of that register; or

(b) has undergone a course of instruction, education and training and passed examination elsewhere than in Malawi which the Council recognizes as equivalent to the instruction, education and training and examination required under paragraph (a).

[Ch3602s28]28. Use of titles

Any person registered under this Act may take and use the title appropriate to the register on which his name appears.

[Ch3602s29]29. Registered persons entitled to practice

Every person registered under this Act shall be entitled to practice nursing of the category in respect of which he is registered.

[Ch3602s30]30. Licensing of registered persons

(1) Except as otherwise provided by this Act, every person registered under this Act shall, immediately at the expiration of the year in which he is registered, apply for a licence to practise.

(2) An applicant for a licence to practise shall—

- (a) complete the prescribed application form for licence to practise;
- (b) pay the prescribed fee; and
- (c) submit evidence that he has complied with section 31, where it is applicable.

[Ch3602s31]31. Refresher courses and inservice education

Except as otherwise provided by this Act, every person registered under this Act shall—

- (a) within two years of his being registered, attend an in service education, in any field of nursing, lasting not less than one day; and
- (b) within five years of his being registered, attend a refresher course in any field of nursing.

[Ch3602s32]32. Registration of additional qualification

(1) Every person registered under this Act who has obtained any post basic qualification that is higher than the qualification that constituted the basic qualification in respect of which he has been registered shall be entitled subject to subsection (2), to register such a qualification.

(2) Only such qualifications as may be prescribed may be registered under this section.

[Ch3602s33]33. Registration of student nurses

(1) The Council shall register as a student nurse a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall on commencing or resuming education and training as a student nurse at an approved nursing school apply for registration with the Council.

(3) The person in charge of an approved nursing school shall forthwith notify the Council of the termination of the education and training of a student nurse, whether by reason of abandonment or completion of education and training or a transfer or for any other reason.

(4) A person registered under subsection (1) shall be deemed to be registered on the register of nurse midwives in so far as is necessary—

(a) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a student nurse shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a nurse;

(b) for the purpose of any other enactment or such other purposes as the Council may specify.

[Ch3602s34]34. Registration of pupil nursing technicians

(1) The Council shall register as a pupil nursing technician a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall, on commencing or resuming education and training as a pupil nursing technician at an approved nursing school, apply for registration with the Council.

(3) The person in charge of an approved nursing school shall notify the Council of the termination of the education and training of a student nursing technician, whether by reason of abandonment or completion of education and training or a transfer or for any other reason.

(4) A person registered under subsection (1) shall be deemed to be registered on the register of nursing midwife technicians in so far as is necessary—

(a) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a pupil nursing technician shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a qualified nurse;

(b) for the purpose of any other enactment or such other purposes as the Council may specify.

[Ch3602s35]35. Limited registration

(1) The Council may accept any qualification which has not been recognized under section 27 as entitling the holder to be registered if, in all other respects, he satisfies the conditions and requirements of this part for registration on a register kept under this Act:

Provided that the acceptance of a particular qualification for limited registration of one person shall not confer any right to any form of registration on any other person holding the same qualification.

(2) The Council may require an applicant for limited registration as a condition of such registration—

- (a) to undertake a specified period of practice on the staff of a hospital or other institution specified by the Council or with an employer approved by the Council; and
- (b) to pass, during the period of his limited registration, such examination as the Council may specify.

(3) An application for limited registration under subsection (1) shall be made in writing to the Registrar and shall be accompanied with the prescribed fee.

[Ch3602s36]36. Registration of persons temporarily employed

Any person qualified to practise the profession or calling of a nurse or nurse technician, who intends to practice that profession or calling in Malawi but does not intend to reside for a period exceeding twelve months in Malawi may, if he satisfies the Registrar that he is so qualified, be registered on a register of persons temporarily employed:

Provided that in circumstances considered by the Registrar to be exceptional, the Registrar may extend the period of registration for twelve months.

[Ch3602s37]37. Procedure for registration

(1) Every person who wishes to be registered or licensed in terms of this Act, shall apply to the Council and shall submit the qualifications which, in his submission, entitle him to registration or licensing, together with such proof of identity and of the authenticity and validity of the qualification submitted as may be required by the Council.

(2) If the Council is satisfied that the qualifications and the other documents submitted in support of the applications under this Act, it shall upon payment of the prescribed fee, register or license the applicant in the appropriate register, and issue a registration certificate or licence, authorizing the applicant, subject to the provisions of this Act and to any other legal provisions, to practise within Malawi the profession in respect of which he has applied for registration or licence.

(3) The Council may refuse to register or license an applicant if in its opinion the applicant, notwithstanding that he is otherwise qualified, is not a fit and proper person to be registered or licensed by reasons of—

- (a) his physical or mental health;
- (b) the fact that he is not of good character and reputation;
- (c) the fact that he does not have adequate knowledge of the English language; and

(d) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct or conduct which, when regard is had to the profession for which that person has applied to be registered, is improper or disgraceful:

Provided that, before refusing registration or licensing under paragraph (d), the Council shall refer the matter to the Disciplinary Committee and the provisions of Part XII shall, mutatis mutandis, apply as if the applicant were registered or licensed on the register on which he had applied to be registered.

[Ch3602s38]38. Erasures from register

(1) The Council may direct the Registrar to erase from a register of nurse midwives or register of nursing midwife technicians—

(a) the name and all particulars of a person whose registration or licence has been cancelled in accordance with this Act, or who—

(i) has requested that his name be removed from the register, in which case such person may be required by the Registrar to lodge with the Registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him;

(ii) not being a citizen of Malawi; has been absent from Malawi for a continuous period of three years preceding such erasure;

(iii) fails to pay the prescribed fee payable under this Act within three months after the date on which that fee became payable;

(iv) has failed within a period of three months after the date of an inquiry sent by the Registrar by registered letter to the address as shown in the register to notify the Registrar of his present address:

Provided that if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason the Council may forthwith direct that the name of the person be erased from the register; or

(v) is resident or practising in Malawi and whose name has been removed from the roll, register or record of any university, hospital, college, training school or institution, society or other body from which that person received the qualification on the basis of which he was registered; or

(b) any entry which is proved to the satisfaction of the Council to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.

(2) The name and all particulars of a person shall be erased—

(a) from the register of nurse student, register of pupil nursing technician, limited register or temporary register—

(i) when the person is registered on the register of nurse midwives or nursing midwife technicians; or

(ii) on the expiration of the period of registration on such register;

(b) in case of limited register, on the cancellation of the registration of that person.

(3) If a person referred to in section 25 (1) fails to take up residence in Malawi within the period referred to in that paragraph, his name and particulars shall be erased from the register on the expiration of that period.

(4) The Registrar shall erase from the register of nurse student or register of pupil nursing technician, as the case may be, the name of a person who is registered on that register—

(a) who advises the Registrar that he is leaving Malawi after completion of his training as nurse student or pupil nursing technician or otherwise; or

(b) on the expiration of thirty-six months from the date of his registration unless he satisfies the Registrar that due to illness or other cause the period of his training has been extended; or

(c) on the termination of the period of training which has been extended in the circumstances referred to in paragraph (b); or

(d) if the Council instructs the Registrar to erase the name of that person from the register.

(5) Before the Council directs an erasure to be made under subsection (1) (a) (v) or subsection (4) (d) the Council shall afford the person concerned an opportunity of showing cause before the Council as to why the erasure should not be made.

[Ch3602s39]39. Method of erasure

In order to effect the erasure of the name and particulars of a person from a register, a line of red ink shall be drawn through such name and particulars but so as to leave them remain legible.

[Ch3602s40]40. Consequence of erasure

Any certificate of registration or licence issued to a person whose name has been erased shall be deemed to have been cancelled on the date of erasure and the person concerned shall be deemed not to be registered or licensed with effect from that date.

[Ch3602s41]41. Appeals against refusal to register or erasure from register

(1) A person aggrieved by—

(a) the refusal of the Council to register him or any qualification or particular which he wishes to be registered under this Act; or

(b) the erasure from a register of his name or of any qualification or particular which he considers he is entitled under this Act to have entered against his name in a register, may after

notice to the Council and within three months after the date of erasure, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court against such erasure.

(2) On an appeal under subsection (1) the High Court may—

(a) dismiss the appeal; or

(b) if it is of the opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or the qualification or particular, as the case may be, be entered in the appropriate register; or

(c) refer the matter back to the Council for further consideration, and may, make such other order as to costs or otherwise as it may deem just.

PART IX

PRIVATE PRACTICE

[Ch3602s42]42. Licence for private practice

(1) The Council may authorize the Registrar to issue to a person registered under this Act, who has applied in the prescribed manner and whom the Council considers has had suitable experience in nursing or midwifery, as the case may be, a licence to engage in carrying out the practice of a nursing agency or midwifery on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) A licence under subsection (1) shall—

(a) be subject to such conditions as the Council may generally or specially determine;

(b) be issued upon payment of the prescribed fee;

(c) be in such form as may be prescribed;

(d) be valid from the date of issue to 31st March next following the date of issue; and

(e) state whether the person so licenced may practice as a private practitioner on his own behalf or may be employed by a private practitioner.

(3) The Council may, for good cause, refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Council have been fulfilled.

(4) For private nursing or midwifery, no premises shall be used for the purpose of private practice, unless they are authorized for such use by the Council.

(5) Any person aggrieved by any decision of the Council under this section may appeal to the High Court, and in such appeal the High Court, may annul or vary the decision of the Council as it thinks fit.

(6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made thereunder shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

[Ch3602s43]43. Issue, etc., of licences to be published in the Gazette

The issue, cancellation and withdrawal of any licence under section 42 shall be notified in the Gazette.

[Ch3602s44]44. No fees recoverable unless nurse licensed for private practice

No person in private practice shall be entitled to recover any charges for any nursing or midwifery advice or other service which he has rendered in the performance of an act as a nurse unless he is at the time appropriately licensed under section 41 for private practice.

PART X

EDUCATION AND EXAMINATION

[Ch3602s45]45. Education and Examination Committee

(1) There shall be an Education and Examination Committee which shall consist of—

(a) one member of the Council appointed by the Council and designated by the Council as Chairman of the Committee; and

(b) six other persons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Education and Examination Committee shall be—

(a) to advise the Council on all matters relating to the education and training requirements of nursing and related personnel in Malawi;

(b) to satisfy itself and the Council that the curricula in every teaching institution in Malawi in the nursing field are such that graduates will have a sufficient basic knowledge, skills and attitudes for the practice of their profession or calling; and

(c) to satisfy itself and the Council in such other matters as may be vested in it by the Council in relation to the supervision of other aspects of nursing education and training.

(3) For the purpose of carrying out its functions the Education and Examination Committee may, subject to the general direction and guidance of the Council—

(a) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where examinations are conducted for students who intend to apply for registration under this Act and to evaluate such instructions or examinations;

(b) to submit reports to the Council on the courses and curricula followed at, and examinations conducted by, any institution referred to in paragraph (a); and

(c) perform all such inspectorate functions for the purpose of setting and maintaining the standards of health care in relation to—

- (i) premises, equipment and supplies;
- (ii) qualifications and credentials of personnel employed at nursing and midwifery establishments;
- (iii) courses and curricula followed at any of the institutions referred to in paragraph (a) including the student-teacher ratio;
- (iv) human and material resources at any of the institutions referred to in paragraph (a);
- (v) such other matters as the Council may deem expedient, and to report its findings to the Council.

(4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (c) of subsection (3) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

[Ch3602s46]46. Reports on training qualifications and practice of persons who are registrable

The Council may, and if so required by the Minister, consider and report to the Minister and advise him upon any matter relating to professional or technical training or other qualifications required for admission to a profession or calling in respect of which a register is kept and the conditions of practice after registration.

[Ch3602s47]47. Approval of institutions, curricula and qualifications

(1) While the Council may not institute diplomas or certificates of competence to nurses and nursing technicians, the Council shall have powers to approve of—

- (a) teaching hospitals;
 - (b) nursing schools;
 - (c) a basic nursing education curriculum;
 - (d) post basic nursing education curriculum;
 - (e) the basic qualification of persons to be registered as nurses or nursing technician;
- and

(f) such other matter of training as may be within its competence under this Act or as may be expedient for the purposes and objects of this Act.

[Ch3602s48]48. Certificate of attendance of courses

(1) The Council may issue certificates of attendance to any class of nursing personnel that attends a course instituted by the Council.

(2) The Registrar shall keep lists of all persons to whom a certificate under this section has been issued.

[Ch3602s49]49. Rules for training

(1) The Council may, be notice in the Gazette, make rules as to—

- (a) the form of certificates issued by the Council;
- (b) the issue of duplicates and certified copies of certificates issued by the Council and the fees payable to the Council therefore;
- (c) the requirements to be fulfilled by persons as a condition of the issue of a certificate to them;
- (d) the institutions and other places at which the courses shall be undergone, the standards of education and character required to qualify persons to undergo such courses and the supervision of persons undergoing such courses.

PART XI

INVESTIGATION PROVISIONS

[Ch3602s50]50. Investigation Committee

(1) There shall be an Investigation Committee of the Council which shall consist of five persons who shall be appointed by the Council from amongst members of the Council.

(2) The Committee shall elect its own Chairperson and Vice-Chairperson.

(3) At any meeting of the Committee three members shall form a quorum.

(4) For the purposes of any investigation the Chairperson of the Council may appoint to the Investigation Committee any other person he considers reasonably qualified to assist the Committee in the conduct of the investigation.

(5) All acts, matters or things authorized or required to be done by the Investigation Committee shall be decided by a majority vote at a meeting of the Investigation Committee at which a quorum is present.

(6) At all meetings of the Investigation Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Investigation Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(7) The Investigation Committee shall have power to regulate its own procedure.

[Ch3602s51]51. Functions of Investigation Committee

(1) The Investigation Committee shall have jurisdiction to consider and investigate any matter delegated to it by the Council.

(2) Without prejudice to the generality of subsection (1), the Investigation Committee shall consider and investigate any matter in which a person registered under the Act—

- (a) is alleged—
 - (i) to have procured registration or licence by misrepresentation or fraud;
 - (ii) to have been guilty of malpractice or negligence in respect of his practice;
 - (iii) to have been convicted of an offence for practice or conduct that is, in public interest, at variance with his continuity to practice under this Act;
 - (iv) to be incapable of properly discharging his practice by reason of his—
 - (A) mental or physical illness; or
 - (B) consumption of intoxicants;
 - (v) to have contravened this Act or any regulation made thereunder; or
- (b) applies for the lifting of suspension against him.

[Ch3602s52]52. Reporting of complaint

(1) A patient, client, professional colleague or any other person who has a substantial interest in the practice and conduct of a person registered under this Act may lodge a complaint with the Investigation Committee.

(2) The complaint shall be in writing and shall state in clear terms the specific acts or omissions complained of.

[Ch3602s53]53. Duty to investigate complaint

Where a complaint is lodged with the Investigation Committee, the Investigation Committee shall cause a preliminary investigation into the complaint unless the Investigation Committee is of the opinion that the complaint—

- (a) is trivial;
- (b) is frivolous or vexatious;
- (c) mischievous, malicious or not made in good faith; or
- (d) has been too long delayed to justify present examination of its merit.

[Ch3602s54]54. Powers of the Council and Investigation Committee during investigative stage

(1) The Council shall refuse to register or to renew the registration of an accused until the complaint against him before the Investigation Committee is determined.

(2) The Investigation Committee may interdict an accused from exercising the powers and functions of his practice pending the determination of the complaint against him by the Investigation Committee.

[Ch3602s55]55. Action after preliminary investigation

(1) Where in the opinion of the Investigation Committee such preliminary investigation discloses that the exercise of disciplinary control by the Council is not warranted, the Investigation Committee shall take no further action except reporting to the Council.

(2) If the Investigation Committee, after the preliminary investigation, is of the opinion that the exercise of disciplinary control is necessary it shall refer the matter to the Disciplinary Committee.

PART XII

DISCIPLINARY PROVISIONS

[Ch3602s56]56. Disciplinary powers of the Council

The Council shall have the power to warn, suspend, revoke, or refuse to renew any registration or licence, or to place on probation or discipline in any manner specified under this Part a person registered under this Act, or to deny an application for registration or licence upon proof that such person has—

(a) committed fraud or deceit in securing or attempting to secure such registration or licence;

(b) been convicted of a crime of moral turpitude;

(c) negligently or wilfully acted in a manner inconsistent with the health or safety of a person under the nurse's care;

(d) has a licence to practice as a nurse or nursing technician suspended or revoked in any jurisdiction;

(e) violated any provisions of this Act;

(f) negligently or wilfully practised nursing in a manner that fails to meet generally accepted standards of such nursing practice;

(g) negligently or wilfully violated any order, rule or regulation of the Council pertaining to nursing practice;

(h) knowingly allowed the continuation of unsafe practice of anyone who assists in the practice of nursing;

(i) falsified or, in a repeatedly negligent or wilful manner, made incorrect entries or failed to make essential entries on essential patient records;

(j) a physical or mental disability or is addicted to or dependant on alcohol or other drugs which render the registered person or licensee unable to perform nursing services with reasonable skill and safety to the patient, and which endanger the health or safety of a person under the nurse's care;

(k) engaged in unprofessional conduct of a nature likely to deceive, defraud, or harm the public; or

(l) engaged in any other improper or disgraceful conduct as identified by the Council in regulations.

[Ch3602s57]57. Disciplinary Committee

(1) There shall be a Disciplinary Committee of the Council which shall consist of—

(a) the Chairperson of the Council who shall be the Chairperson of that Committee; and

(b) four other members appointed by the Council from amongst members of the Council.

(2) In any disciplinary inquiry the Council may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.

(3) At any meeting of the Disciplinary Committee the Chairperson and two other members shall form a quorum.

(4) For the purposes of any inquiry the Chairperson of the Council may appoint to the Disciplinary Committee any other person he considers reasonably qualified to assist the committee in the conduct of the inquiry.

(5) A member who is absent at any stage of a disciplinary inquiry shall cease to be a member of the Disciplinary Committee for that inquiry.

(6) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.

(7) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(8) The Disciplinary Committee shall have power to regulate its own procedure.

[Ch3602s58]58. Function of Disciplinary Committee

(1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under section 55 (2) or in a case where it is alleged that a registered person—

(a) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or

(b) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.

(2) Before exercising its function with respect to any person, the Disciplinary Committee shall—

(a) cause to be served upon him a notice setting out the allegations against him; and

(b) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

[Ch3602s59]59. Taking of evidence by Disciplinary Committee

(1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—

(a) under the hand of the Chairperson of the Council or the Registrar summon witnesses and require the production of any book, record, document or thing;

(b) administer an oath or affirmation to any person; and

(c) examine any book, record, document or thing which a witness has been required to produce.

(2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—

(a) in the form prescribed; and

(b) signed by the Chairperson or the Registrar.

(3) Any person who—

(a) has been summoned under subsection (2) and who—

(i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to be sworn or to affirm; or

(iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or

(b) attends as a witness before the Disciplinary Committee and refuses to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him, commits an offence and is liable to a fine of K200 and to imprisonment for three months.

(4) Any person who gives false evidence on oath at an inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K400 and to imprisonment for six months.

(5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

[Ch3602s60]60. Exercise of disciplinary powers on conviction for offence

(1) A registered person who has been convicted of an offence by a court of law within or outside Malawi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance with the provisions of this Part if the Disciplinary Committee is of the opinion that such offence constitutes—

- (a) improper or disgraceful conduct; or
- (b) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.

(2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct.

(3) If, after the termination of proceedings before a court in Malawi—

- (a) it appears to the court that there is prima facie evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Council; or
- (b) the Council requests that a record of the proceedings before a court in Malawi or part of such record be supplied to it on the ground that it is of direct interest to the Council in the exercise of its functions under this Act, the court shall transmit to the Council a copy of the record of the proceedings as is material.

[Ch3602s61]61. Council to refer cases to Disciplinary Committee

(1) Whenever there is brought to the notice of the Council an allegation which might be the subject of inquiry by the Disciplinary Committee, the Council shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) After any investigation pursuant to subsection (1), the Council—

(a) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;

(b) if it considers that—

(i) the conduct complained of would not constitute improper or disgraceful conduct; or

(ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee, may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairperson of the Council to admonish that person and the Chairperson shall report the fact thereof to the Council;

(c) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

[Ch3602s62]62. Exercise of disciplinary powers

(1) After due inquiry, the Disciplinary Committee shall report its findings to the Council with such recommendations as the Disciplinary Committee considers appropriate.

(2) After considering the findings and recommendations of the Disciplinary Committee the Council—

(a) if it is satisfied that the registered person—

(i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful and that such conduct warrants the cancellation of his registration; or

(ii) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner,

the Council shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Council any costs or expenses incidental to the inquiry;

(b) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

(i) order his suspension for a specified period from practising or performing acts specially pertaining to his profession or calling;

(ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;

- (iii) order him to pay to the Council a penalty not exceeding K1,000;
 - (iv) order him to pay any costs or expenses of and incidental to the inquiry;
 - (v) censure him; and
 - (vi) caution him and postpone, for a specified period not exceeding three years, any further action against him on such conditions as the Council may determine as to his future conduct, including conduct or nature of his practice during that period;
- (c) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Council may, if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.

(3) If at any time the Council is satisfied that during the period of any postponement under subsection (2) (b) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Council after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

[Ch3602s63]63. Appeal to High Court

(1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Council under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.

(2) On an appeal under subsection (1), the High Court may—

- (a) confirm, vary or set aside any finding, decision or penalty appealed against; or
- (b) refer the matter back to the Council, for further consideration,

and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Council or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

[Ch3602s64]64. Publication of result of disciplinary proceedings

(1) The Registrar shall by notice in the Gazette publish the name of any person—

- (a) whose registration has been cancelled; or

(b) who has been suspended from practice and shall, in such notice, specify the period of suspension.

[Ch3602s65]65. Council or Disciplinary Committee or Investigation Committee not to be liable

(1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Council or the Disciplinary Committee or the Investigation Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part or Part XI.

(2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under this Part or Part XI, whether by the Council, or the Disciplinary Committee, or the Investigation Committee and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

[Ch3602s66]66. Improper or disgraceful conduct

(1) The Council may in regulations made under this Act—

(a) define what, in the case of any class of registered persons, shall constitute improper or disgraceful conduct;

(b) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.

(2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under Part XIV the conduct of such registered person shall, for the purpose of this Part, constitute improper or disgraceful conduct.

(3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Investigation Committee, the Disciplinary Committee or on the Council to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

PART XIII

PROFESSIONAL PRACTICE

[Ch3602s67]67. Professional Practice Committee

(1) There shall be a Professional Practice Committee which shall consist of—

(a) one member of the Council appointed by the Council and designated by the Council as Chairperson of the Committee; and

(b) four other persons appointed by the Council and who may or may not be members of the Council.

(2) Subject to the general direction of the Council, the functions of the Professional Practice Committee shall be—

- (a) to advise the Council on all matters relating to the professional practice of nursing and related personnel in Malawi;
- (b) to develop minimum nursing practice standards for nursing and related personnel in Malawi; and
- (c) to monitor nursing practice standards.

(3) For the purpose of carrying out its functions the Professional Practice Committee may, subject to the general direction and guidance of the Council—

- (a) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where persons registered under this Act conduct their practice and evaluate the standard of practice of nursing and related personnel thereat; and
- (b) perform all such inspectorate functions for the purpose of setting and maintaining professional nursing standards in relation to behaviour and conduct of nursing and related personnel towards patients, clients and guardians, and to report its findings to the Council.

(4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (b) of subsection (3) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

[Ch3602s68]68. Prescription of drugs and other medicines

Subject to the provisions of the Pharmacy, Medicines and Poisons Act, a person registered under this Act shall be entitled to prescribe drugs and other medicines. Cap. 35:01

PART XIV

OFFENCES AND PENALTIES

[Ch3602s69]69. Unregistered persons practising as nurses or nursing technicians

(1) Subject to any exemption granted under this Act any person who, not being registered as a nurse or nursing technician—

- (a) for gain, practises or carries on business as a nurse or nursing technician, whether or not purporting to be registered or performs or undertakes to perform any act specially pertaining to the practice of a nurse or nursing technician; or
- (b) pretends or, by any means whatsoever, holds himself out to be a nurse or nursing technician whether or not purporting to be registered; or
- (c) uses the title “nurse”, “nursing technician” or any name, title, description, symbol, dress or device indicating or calculated to lead any person to infer that he possesses a degree,

diploma or other qualification as a nurse, nursing technician or that he is registered as a nurse or nursing technician under this Act,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(2) Subsection (1) (a) shall apply to a nurse and nursing technician, registered under this Act, whose right to practise is suspended or whose licence to practise has expired:

Provided that nothing in this subsection shall apply to a nurse or nursing technician rendering assistance in an emergency.

[Ch3602s70]70. Falsification of registers, etc.

A person who—

(a) makes or causes to be made an unauthorized entry or alteration or deletion in a register or a certified copy thereof or an extract thereof or on a certificate of registration or on a licence;

(b) procures or attempts to procure for himself or another person registration or a certificate of registration or a licence by means of fraud or false representation or by the concealment of a material fact;

(c) makes or causes to be made in connexion with an application for registration or a licence a false declaration in a document used for the purpose of establishing his identity;

(d) wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in a register;

(e) without the permission of the holder, wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible a certificate of registration or a licence; or

(f) forges or utters or, knowing the same to be forged, possesses or holds a document purporting to be a certificate or registration or a licence,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for six months.

[Ch3602s71]71. Persons conducting education, training, etc., without authority

(1) Any person who, being in charge of a hospital, nursing home or institution which is not approved by the Council as an institution for the education and training of persons seeking registration under this Act—

(a) admits to the institution under his charge persons for education and training in any of the categories of the nursing professions in respect of which provision is made for registration in this Act;

(b) purports to be conducting courses of education and training or examination under this Act;

(c) issues any certificate, badge, seal or uniform implying that the institution under his charge is approved by the Council as an institution for the education and training of persons seeking registration under this Act; or

(d) issues any certificate, badge, seal or uniform implying that the holder thereof has undergone a course of instruction or passed an examination prescribed by the Council,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(2) Any person purporting to be conducting examinations on behalf of the Council and not being authorized by the Council so to do shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

[Ch3602s72]72. Employment of unregistered or unlicensed persons.

Any employer who engages a nurse or nursing technician who is not registered or licensed under this Act shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

[Ch3602s73]73. Unregistered substitutes

Any person who is registered under this Act who employs as his substitute a person who is not appropriately registered shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

[Ch3602s74]74. Personation of registered person or misrepresentation

Any person who impersonates a registered person shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for two years.

[Ch3602s75]75. Registered person using unregistered title or qualification

A registered person who takes, uses or publishes in any way whatsoever a name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a qualification which relates to a profession or calling in respect of which a register is kept and which is not shown in the register in connexion with his name shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

[Ch3602s76]76. Remuneration not recoverable by unregistered persons

No remuneration shall be recoverable in respect of any act pertaining to a profession or calling in respect of which a register is kept under this Act when performed by a person who is not registered on the appropriate register.

[Ch3602s77]77. Certain certificates invalid if signed by unregistered person

No certificate required by law from any member of a profession or calling in respect of which a register is kept under this Act shall be valid unless the person signing such certificate is registered on the appropriate register.

[Ch3602s78]78. Proof required for issue of licence

No licence required under any law to be obtained by a registered person shall be issued to such person unless the person applying for such licence produces proof that he is registered on the appropriate register.

PART XV

MISCELLANEOUS PROVISIONS

[Ch3602s79]79. African systems of nursing and midwifery allowed

Nothing contained in this Act shall be construed to prohibit or prevent the practice of any African system of nursing or midwifery by any person in Malawi:

Provided that nothing in this section shall be construed to authorize the performance by a person practising any African system of nursing or midwifery of any act which is dangerous to life.

[Ch3602s80]80. Exemptions from registration

(1) Notwithstanding anything to the contrary contained in this Act, if, with the consent of the Chairperson of the Council—

(a) an establishment or a registered nurse calls in as a consultant, a medical practitioner, whether resident in Malawi or otherwise, such consultant shall not be held to require registration in Malawi, in respect of his attendance upon the patient with respect to whom he has been called;

(b) a nurse who is neither resident nor registered in Malawi who is called into Malawi on the bona fide request of a patient shall not be held to require to register in Malawi in respect of his attendance on such patient;

(c) a person practising a profession or calling in respect of which a register is kept who is neither resident nor registered in Malawi and who is appointed by the Council or other body approved by the Council to conduct an examination in Malawi shall not be required to register in Malawi in respect of his duties in connexion with the conduct of such examination;

(d) a person practising a profession or calling in respect of which a register is kept under this Act who is—

(i) a member of a naval, military, air or Police force of a country other than Malawi and temporarily stationed on duty in Malawi; or

(ii) a delegate of the International Committee of the Red Cross, International Council of Nurses or International Confederations of Midwives and has entered Malawi with the consent, or at the invitation, of the Government shall not be required to register in Malawi in respect of his duties as a member of that force or as such delegate, as the case may be;

(e) the Council may exempt for a period not exceeding four months from the provisions of this Act regarding registration any person not permanently resident in Malawi who is engaged

solely in teaching or research work affecting any of the profession or calling in respect of which a register is kept under this Act.

(2) Any prescription or order signed by a person exempted from registration in accordance with subsection (1) and given by him in the course of his practice under that subsection, but not otherwise, shall, for the purposes of any law relating to drugs, have same force and effect as a prescription or order signed by a registered person.

[Ch3602s81]81. Registered persons becoming unfit to practise

(1) Whenever there is brought to the notice of the Council an allegation that a registered person has

(a) become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practise; or

(b) become unfit to purchase, acquire, keep, use, prescribe, order, supply or possess any drug; or

(c) been using a drug in contravention of any law relating to the use of drugs; or

(d) become addicted to or dependent upon the use of drugs, the Council shall have power to call for such information and to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.

(2) In consequence of an investigation under subsection (1), the Council may—

(a) direct that such person shall cease to practise and that his registration be cancelled;
or

(b) suspend such person from practice for such period, and subject to such conditions, as the Council may determine; or

(c) impose such conditions respecting the practice of such person as it may deem necessary and in the event of failure by such person to comply with such conditions, the Council may direct that such person shall cease to practise and that his registration shall be cancelled.

[Ch3602s82]82. Restoration to register

Where the name of a person has been erased from the register, the Council may, if it thinks fit, authorize the restoration to the register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

[Ch3602s83]83. Burden of proof on unregistered persons

In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person alleged to be not registered, the person charged shall be deemed to be not registered unless he proved the contrary.

[Ch3602s84]84. Notification of death or change of address

(1) A registered person who changes his address shall notify that fact to the Registrar within one month after such change.

(2) If the Registrar of births and deaths receives notice of a death which shows that the deceased belonged to a profession or calling in respect of which a register is kept, he shall forthwith notify the Registrar of such death.

[Ch3602s85]85. Regulations

The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

- (a) prescribe the fees payable—
 - (i) upon registration or renewal of registration in a register;
 - (ii) on transfer from one register to another register; or
 - (iii) for restoration to a register;
 - (iv) for registration of an additional or specialist qualification;
 - (v) for issue of a duplicate certificate of registration or a certificate extract from a register or other certificate issued by the Registrar;
 - (vi) in respect of private practice;
 - (vii) in respect of licences; or
 - (viii) for any other matter under this Act;
- (b) prescribe the forms required to be prescribed under this Act;
- (c) subject to the proviso of section 27 the qualifications required for entitlement to registration;
- (d) the conditions under which training schools for persons desirous of obtaining registration under this Act shall be approved and the courses of education and training and instruction to be undergone by persons seeking such registration;
- (e) the subject matter of examinations to be conducted by Council;
- (f) the conditions of admission or entry to education and training courses and examinations to be conducted by the Council;
- (g) badges, insignia and uniforms which may be worn by persons registered under this Act;

(h) the standard and conditions of professional practice of persons registered under this Act.

[Ch3602s86]86. Repeal and savings

(1) The Nurses and Midwives Act is repealed.

(2) Any subsidiary legislation made under the Nurses and Midwives Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

SUBSIDIARY LEGISLATION

NURSES AND MIDWIVES (FEES) REGULATIONS

under s. 85

GN. 33/1998

4/2005

1. Citation

These Regulations may be cited as the Nurses and Midwives (Fees) Regulations.

2. Fees

The fees set out in the Schedule shall be payable in respect of the matters to which they relate—

SCHEDULE reg. 2

Item Matter Amount

K t

1. On indexing in a register by—

(a) registered nursing/midwifery student 600 00

(b) nursing/midwifery technician student 600 00

(c) non-national US\$100 00

2. On registration for professional examinations for—

- (a) registered nurse/midwife Part I 4,000 00
 - (b) registered nurse/midwife Part II 4,500 00
 - (c) registered nurse/midwife (upgrading) 4,000 00
 - (d) nursing/midwifery technician certificate 2,500 00
 - (e) community health nursing certificate 5,000 00
 - (f) psychiatric nursing certificate 5,000 00
 - (g) nursing technician (without practicals) 2,500 00
 - (h) midwifery technician (without practicals) 2,500 00
3. Annual registration and practice fees—
- (a) registered nurse/midwife 800 00
 - (b) nursing/midwifery technician 650 00
 - (c) additional qualification 400 00
4. Penalty for delayed payment of registration and professional practice fees 2,000 00
5. On replacement of registration certificate 2,000 00
6. On registration for a private nursing/midwifery practice and for operating a nursing agency by a registered nurse/midwife and nursing midwifery technician—
- (a) initial registration 6,000 00
 - (b) annual registration and licence 10,000 00
 - (c) inspection fees 1,000 00
7. For verification of the authenticity and validity of qualifications of a nurse/midwife trained outside Malawi—
- (a) national 5,000 00
 - (b) non-national US\$200 00
 - (c) non-national (volunteer) US\$150 00
8. For verification of the authenticity and validation of qualifications and registration of a nurse/midwife intending to practice outside Malawi—
- (a) national 15,000 00
 - (b) non-national US\$200 00

NURSES AND MIDWIVES (SCOPE OF NURSING PRACTICE) REGULATIONS

under s. 85

GN. 12/2002

1. Citation

These Regulations may be cited as Nurses and Midwives (Scope of Nursing Practice) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise require—

“assessment” means collection of data about a person relating to the person’s status;

“dependent functions” means those activities performed by a nurse based on the physician’s prescription;

“decision-making” means a deliberative cognitive process consisting of sequential steps that can be analyzed, refined and integrated to yield greater precision and accuracy in solving problems and initiating action;

“evaluation” means the process of determining to what extent the goals of nursing care have been attained;

“implementation” means the initiation of the nursing care plan to achieve specific client or patient outcomes;

“independent functions” means those activities considered to be within nursing or midwifery scope of practice and not requiring a physician’s prescription or instructions;

“interdependent function” means those activities carried out in conjunction with other health team members;

“intervention” means an action or series of actions which include the independent, dependent and interdependent functions of nursing; expected to effect change in client or patient outcomes;

“nursing care plan” means the written blue print which lists nursing diagnoses in order of priority and desired patient outcomes, describes the nursing interventions directed at addressing the client’s or patient’s health needs and indicates the criteria by which nursing care will be evaluated;

“nursing diagnosis” means actual or potential problems related to the client’s or patient’s health status or needs;

“nursing functions” means the roles of the nurse or midwife in practice which are independent, dependent and interdependent; and

“nursing management process” means a deliberative problem solving approach which consists of assessing, planning, implementing and evaluating care in order to meet the needs of the client or patient.

3. Nursing Management process

(1) Any nurse registered under the Act shall use the nursing management process in giving care to individuals, families, groups of people and communities.

(2) The nursing management process referred to in sub-regulation (1) shall involve assessment, planning, implementation, evaluation and professional responsibility.

4. Assessment

A nurse registered under the Act shall, in carrying out assessment related aspects of the nursing management process—

- (a) assess the biophysical, psychological, socio-economical and spiritual status of clients and patients;
- (b) make nursing diagnosis based on—
 - (i) analysis of data collected;
 - (ii) knowledge of normal findings and deviations from normal; and
 - (iii) risk factors.

5. Planning

A nurse registered under the Act shall in carrying out planning related aspects of the nursing management process—

- (a) prioritize nursing diagnoses or problems;
- (b) establish goals and objectives in respect of identified problems;
- (c) plan care with individuals, families, groups of people and communities according to priorities and health needs; and
- (d) make plans for—
 - (i) appropriate use of available material and human resources;
 - (ii) teaching;
 - (iii) counselling;
 - (iv) safe and therapeutic environment;
 - (v) potential emergencies;
 - (vi) prevention and control of infection and communicable diseases;

- (vii) discharging clients and patients; and
- (viii) referral, where appropriate.

6. Implementation

A nurse registered under the Act shall, in carrying out implementation related aspects of the nursing management process—

- (a) provide care to—
 - (i) maintain respiratory function or patient airway;
 - (ii) maintain or restore nutrition;
 - (iii) maintain or restore fluids and electrolyte balance;
 - (iv) monitor or assess elimination function;
 - (v) maintain and promote a balance of exercise, rest and sleep;
 - (vi) maintain and promote comfort and relief from pain;
 - (vii) maintain and promote all aspects of hygiene;
 - (viii) maintain and promote physical and psychological safety; and
 - (x) promote appropriate expression of sexuality. (b) participate in disease control;
- (c) manage human and material resources efficiently and effectively;
- (d) implement appropriate teaching plans for individuals, families, groups of people and communities;
- (e) participate in implementing plans based on community's identified needs;
- (f) participate in research activities;
- (g) collaborate with other health care team members in meeting client or patient needs;
- (h) develop nursing care plans that provide for continuity of nursing care;
- (i) counsel individuals, families, groups of people and communities;
- (j) intervene in emergency situations;
- (k) prescribe medication as stipulated in the Act;
- (l) administer prescribe medication safety to adults and children;
- (m) assist patients and families to cope with death and grieving; and

(n) provide care for dying patient and perform last offices to the deceased.

7. Evaluation

A nurse registered under the Act shall, in carrying out evaluation related aspects of the nursing management process, determine the extent to which nursing interventions have achieved the objectives of care.

8. Professional responsibility

A nurse registered under the Act shall in pursuance of professional responsibility related aspects of the nursing management process—

- (a) accept responsibility and accountability for professional practice;
- (b) know the relevant legislation for nursing practice;
- (c) adhere to ethical standards in the nursing practice;
- (d) respect the rights of a client, patient, workmate or any other person, as appropriate;
- (e) collaborate with colleagues and other stakeholders in improving nursing practice;
- (f) practice nursing in a non-discriminatory and non-judgmental manner;
- (g) document relevant data related to client or patient care;
- (h) act as role model for other health care personnel, clients, patients and families;
- (i) be responsible for self-development;
- (j) assume responsibility and accountability for carrying out independent, dependent and interdependent nursing functions;
- (k) be an active member of nursing professional bodies;
- (l) maintain confidential information relating to clients or patients unless, in the particular circumstances, breach of confidentiality is required; and
- (m) report to an appropriate person where it appears that the health or safety of colleagues is at risk.

NURSES AND MIDWIVES (PROFESSIONAL PRACTICE STANDARDS) REGULATIONS

under s. 85

G.N. 13/2002

1. Citation

These Regulations may be cited as Nurses and Midwives (Professional Practice Standards) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise require—

“distinguishing device” includes badge and any other device as may be determined by the Nurses and Midwives Council.

3. Collegiality

Every nurse registered under the Act shall contribute to the professional development of his or her peers and colleagues.

4. Grooming

(1) Every nurse registered under the Act shall be groomed in such a manner as to reflect his or her professionalism.

(2) Every nurse registered under the Act shall—

- (a) keep his or her uniform clean and well pressed at all material times;
- (b) have his or her hair well kept;
- (c) not use hair accessories unless the accessories are in black or white colour; and
- (d) wear distinguished device at all material times.

5. Colours of uniform

(1) Every nurse, midwife shall wear a white uniform when working in a clinical setting.

(2) A community nurse shall wear—

- (a) a green uniform when working in a community setting; and
- (b) a white uniform when working in a clinical setting.

(3) Matrons and tutors shall wear blue uniform.

6. Quality of care

Every nurse registered under the Act shall contribute to ongoing quality improvement and cost effectiveness in nursing practice.

7. Code of ethics

(1) Every nurse registered under the Act shall, in taking action or making decisions on behalf of a patient or client, act or decide in an ethical manner.

(2) Every nurse registered under the Act shall demonstrate courteous behaviour, based on culture, tradition and respect to a patient, client or any senior person.

8. Performance appraisal

Every nurse registered under the Act shall evaluate his or her practice in relation to relevant regulations.

9. Research

Every nurse registered under the Act shall conduct research to enhance nursing knowledge.

10. Continuing education

Every nurse registered under the Act shall acquire current knowledge, skills and attitudes in his or her nursing practice.

NURSES AND MIDWIVES (DISCIPLINARY INQUIRY) RULES

G.N. 11/2003

1. Citation

These Rules may be cited as the Nurses and Midwives (Disciplinary Inquiry) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“respondent” means a person registered under the Act against whom a complaint is made;

“complaint” includes an allegation or a charge.

3. Summons for respondent

(1) A respondent shall be summoned to attend the hearing of an inquiry by a summons.

(2) The summons referred to in subrule (1) shall be in the form set out in Form I in the Schedule.

4. Summons for witness

(1) A party to an inquiry may request the Disciplinary Committee to assist him to summon a witness.

(2) A summons to a witness shall be in the form set out in Form 2 in the Schedule.

(3) A summons to a witness shall—

- (a) identify the person required to attend the inquiry;
- (b) show the necessary details of the matter to be inquired into;
- (c) identify a book, record, document or state the thing required to be produced; and
- (d) state the date, time and place of the inquiry.

(4) In deciding whether to issue a summons under this rule, the Disciplinary Committee shall take into account the nature, gravity and urgency of the matter.

5. Reasonable time to be given to attend inquiry

Parties and witnesses shall be given a reasonable time to enable them to attend the hearing of the inquiry:

Provided that the notice period shall not be less than seven days from the date of service of the notice.

6. Mode of service of summons

(1) A summons may be served on a person in any one of the following ways—

(a) by handing a copy of the summons to the person;

(b) by leaving a copy of the summons at the person's reputed place of residence or business with any person who is apparently at least 16 years old and apparently in-charge of the premises at the time;

(c) by leaving a copy of the summons at the person's reputed place of employment with any person who is apparently at least 16 years old and apparently in authority;

(d) by faxing a copy of summons to the person, if the person has a facsimile number or using other electronically printed transmission;

(e) by handing a copy of the summons to any representative authorized in writing to accept service on behalf of the person; and

(f) if the person has chosen an address or facsimile number for service, by leaving a copy of the summons at that address or by faxing it to that facsimile number.

(2) Officers on whom service shall be effected where the person to be served is a company, trade union, partnership, firm, association, municipality, statutory body or government shall be as follows—

(a) if the person is a company or other body corporate, by serving a copy of the summons on a responsible employee of the company or body corporate at its registered office or its principal place of business or, if there is no employee willing to accept service, by affixing a copy of the summons to the main door of the office or place of business;

(b) if the person is a trade union or employers' organization, by serving a copy of the summons on a responsible employee who at the time of service is apparently in-charge of the reputed main office of the union or employers' organization or, if there is no person willing to accept service, by affixing a copy of the summons to the main door of the office;

(c) if the person is a partnership, firm or association, by serving a copy of the summons on a person who at the time of service is apparently in-charge of the premises and apparently at least 16 years of age at the reputed place of business of such partnership, firm or association or, if

such partnership, firm, or association has no place of business by serving a copy of the summons on a partner, the owner of the firm, the chairperson, secretary or the manager of the controlling body of the partnership, firm or association, as the case may be;

(d) if the person is an assembly, by serving a copy of the summons on the chief executive or assistant chief executive or any person acting on behalf of the chief executive or assistant chief executive;

(e) if the person is a statutory body, by serving a copy on the secretary or similar officer, a member of the board or committee of the body or any person acting on behalf of the body; or

(f) if the person is the Government, by serving a copy at the office of the Attorney General or other person authorized to act on behalf of the Government in respect of such proceedings.

7. Proof of service of summons

(1) Service shall be proved in any one of the following ways—

(a) by an affidavit by the person who effected service;

(b) if the service was effected by a facsimile or other electronically printed transmission by an affidavit of the person who effected service which must provide proof of the correct facsimile number and confirmation that the whole of the transmission was completed; and

(c) if the person on whom the summons has been served is already on record as a party, by a signed acknowledgement or receipt by the party on whom the summons was served.

(2) If the Disciplinary Committee is not satisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems fit.

8. Personal service of summons

Where service of summons is effected personally—

(a) the person named in the summons shall sign at the back of the summons; and

(b) the person serving the summons shall endorse at the back of the signed copy, the time, date and place of service of the summons and shall, return it to the Council.

9. Service by post

(1) Service of a summons by post shall be effected by posting the envelope containing the summons to the address of the person named in the summons.

(2) Summons served in terms of subrule (1) shall be deemed to have been duly served after the expiration of 15 days from the date of posting the envelope containing the summons.

10. Appearance of legal practitioners

(1) A legal practitioner entitled under the Legal Education and Legal Practitioners Act to practice before the courts in Malawi shall be entitled to represent a party during the inquiry. Cap. 3:04

(2) A legal practitioner referred to in subrule (1) shall have a right to—

- (a) examine his client and his witnesses in chief;
- (b) cross-examine the other witnesses; and
- (c) make submissions before the Disciplinary Committee.

11. Where respondents disobey summons

(1) Where a respondent who was duly served with summons fails to attend the hearing of the inquiry, the Disciplinary Committee may—

- (a) proceed to hear the inquiry and make its finding in the absence of the respondent;
- (b) adjourn the hearing of the inquiry to another date to give another chance to the respondent to attend the hearing of the inquiry; or
- (c) initiate contempt proceedings before the High Court against the respondent.

(2) Where a finding is made by the Disciplinary Committee in the absence of a respondent who failed to attend the hearing of an inquiry, a copy of the finding shall be served on him as soon as possible.

12. Setting aside finding made in absence of a party

A finding made by the Disciplinary Committee in the absence of the respondent may, upon application by the respondent showing good cause why he failed to attend the hearing of the inquiry, be set aside on such terms and conditions as the Disciplinary Committee deems fit.

13. Oath

(1) Subject to subrule (5), no person shall give evidence in any inquiry unless he takes an oath or affirmation.

(2) An oath shall be taken by a person who believes in God and an affirmation shall be taken by a person who does not believe in God.

(3) A person to be sworn shall hold his right hand uplifted and say the words “I swear by Almighty God that the evidence I shall give shall be truth, the whole truth and nothing but the truth.”.

(4) A person to be affirmed shall raise his right hand and say the words “I solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth,”.

(5) Where the Disciplinary Committee considers that a respondent or witness is unable by reason of youth to understand the nature of either an oath or affirmation, the Disciplinary Committee may receive his evidence, though not given on an oath or affirmation, if, in the opinion of the Disciplinary Committee, he has sufficient intelligence to justify the reception of his evidence.

14. Disciplinary Committee not bound by strict rules of evidence and practice

(1) In conducting an inquiry, the Disciplinary Committee shall not be required to follow the strict rules of evidence and practice.

(2) An inquiry may be conducted by the Disciplinary Committee in an informal manner, without regard to legal forms and solemnities.

15. Expert witness

(1) Any party intending to call an expert witness shall deliver a notice to that effect together with a summary of the evidence of the expert to both the Disciplinary Committee and the other party at least 14 days before the date of the inquiry.

(2) If a party fails to comply with subregulation (1), the Disciplinary Committee may—

(a) decline to admit the evidence of the expert witness; or

(b) admit the evidence of the expert witness if he is satisfied that the failure was due to a good reason.

16. Language to be employed

(1) The language to be employed in the inquiry shall be English and the evidence, all processes and all the records of proceedings in the Court shall be in English.

(2) If any of the parties or witnesses in the inquiry does not understand English, then the proceedings shall be interpreted from English into the language understood by the parties or the witnesses concerned, as the case may be, and vice versa.

17. Oath of office for interpreter

Before any interpreter may interpret, he shall take an oath or make an affirmation in the following form—

"I,

.....

(Full names)

do hereby swear/solemnly, sincerely and truly affirm and declare that whenever I may be called upon to perform the functions of an interpreter in an inquiry, I shall truly and correctly and to the best of my ability interpret from the language I am called upon to interpret into English and vice versa."

18. Conduct of the inquiry

(1) The Registrar or any other officer appointed by the Council for the purpose shall state the facts alleged against the respondent and shall call and examine such witnesses and produce such documentary evidence as he considers necessary to substantiate the charges and the respondent, if present, shall be given an opportunity to cross-examine such witnesses and to produce such oral or written evidence as he desires:

Provided that—

(a) no documentary evidence shall be used against a respondent unless not less than 48 hours before it is so used the copy thereof has been furnished to him or he has been given an opportunity to inspect it; and

(b) the Disciplinary Committee may refuse to admit any evidence which is not relevant to the complaint under consideration.

(2) If, during the course of inquiry, grounds for the framing of additional charges are disclosed, the Disciplinary Committee shall so inform the Registrar who shall follow the same procedure as was adopted in framing the original charges.

(3) The Disciplinary Committee, having inquired into the matter, shall deliberate thereon and make its decision in the absence of any unauthorized person including the Registrar and shall, not later than twenty-eight days after inquiry into the matter, forward to the Council its report thereon together with the record of the charges framed, the evidence given, the defence and any other matter relevant to the inquiry.

(4) The report of the Disciplinary Committee shall include—

(a) a statement whether in the opinion of the Disciplinary Committee the respondent has or has not committed the offence or offences charged and a brief statement of the reasons for its opinion;

(b) details of any matters which in the opinion of the Disciplinary Committee aggravate or alleviate the gravity of the case;

(c) a summing up and such comments as will indicate clearly the opinion of the Disciplinary Committee on the matter under inquiry; and

(d) the penalty, if any, recommended for infliction on the respondent.

19. Respondent to surrender licences and certificates

Where a respondent has been suspended by Council, he shall not later than fourteen days after being notified of the decision of the Council return licences or certificates, issued to him under the Act, by registered post or personal delivery to the Registrar.

20. Communication of decision

The Registrar shall communicate to the respondent the decision of the Council in writing and in either event the reason for the decision shall be given.

21. Restoration or lifting of suspension

(1) Where the Council has inflicted on a respondent the penalty of suspension or cancellation of licence or certificate, the respondent may apply to the Registrar for lifting of suspension or restoration.

(2) The application under subrule (1) shall—

- (a) be in writing; and
- (b) contain names and addresses of at least two persons who are able and willing to attest to the character of the applicant and his manner of conducting the affairs of his practice.

22. Service of documents

Where under the provisions of these Rules, it is necessary either—

- (a) to serve any notice, complaint or other document on any person; and
- (b) to communicate any information to any person,

it shall be sufficient if such notice, complaint or other document, or a letter containing such information, is sent by registered post in a cover addressed to such person at his last known address.

23. Procedure in other cases

The procedure in cases not provided for in these Rules shall be such as the Disciplinary Committee may determine on reference of the cases being made to it.

24. Records

(1) The Registrar shall keep a record of—

- (a) any decision before the Disciplinary Committee;
- (b) any evidence given before the Disciplinary Committee;
- (c) any objection made to any evidence received or tendered;
- (d) any on-the-spot inspection and any matter recorded as a result thereof; and
- (e) the proceedings of the inquiry generally:

Provided that the Disciplinary Committee may direct that argument need not be recorded.

(2) Records of an inquiry shall be kept by such means, including handwritten notes, shorthand notes or electronic recording as the Disciplinary Committee may deem expedient.

(3) Handwritten notes, shorthand notes and electronic recordings shall be filed as part of the record after they have been certified as correct by the person who made them.

(4) A transcript of the notes or record or a part thereof may be made on request to the Disciplinary Committee upon payment of such fees as may be prescribed from time to time.

(5) After the person who made the transcription has certified it as correct, the transcript together with the handwritten notes, shorthand notes or electronic record shall be returned to the Registrar.

(6) The transcript of the handwritten notes, shorthand notes or electronic record certified as envisaged in subrule (5) shall be deemed to be correct until the contrary is proved.

SCHEDULE

FORM I rule 3 (2)

HEADED

Ref. No.

Date:

Mr./Mrs./Miss:

.....

.....

.....

Dear Sir/Madam,

NOTICE OF DISCIPLINARY INQUIRY

In accordance with rule 3 (2) of the Nurses and Midwives (Disciplinary Inquiry) Rules, you are hereby informed that you are required to appear on

day of at before the Disciplinary Committee which is to inquire into an allegation made against you. The allegation is set out hereunder—

ALLEGATION

.....

.....

.....

.....

.....

PARTICULARS OF ALLEGATION

.....
.....
.....
.....

Your attention is drawn to the provisions of Part XII of the Nurses and Midwives Act to which it is important in your own interest that you immediately refer.

Dated Signed

Registrar

FORM II rule 4 (2)

HEADED

Ref. No.Date:

Mr./Mrs./Miss:

.....
.....
.....
.....

Dear Sir/Madam

SUMMONS TO A WITNESS

In accordance with rule 4 (2) of the Nurses and Midwives (Disciplinary Inquiry) Rules, you are required to come to on the day of at..... o'clock in the noon as a witness on behalf of.....

You are further required to bring with you the following documents and things—

- (a)
-
-
- (b)
-
-

If you do not come or bring the aforementioned documents or things you may be liable to be committed to prison for contempt.

Dated Signed

Registrar

[Chap3701]CHAPTER 37:01

PUBLIC AUDIT

ARRANGEMENT OF SECTIONS

SECTION

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PRELIMINARY

- 1. Short title
- 2. Interpretation
- 3. Purpose of this Act

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- 4. Auditor General

5. Appointment, qualifications, tenure, removal and salary of the Auditor General
6. Duties of the Auditor General
7. Powers of the Auditor General
8. Power to summon
9. No civil liability
10. Contracting out audits and purchasing services
11. Conduct of audits
12. Incompatible functions
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PART III

REPORTING

14. Reporting
15. Annual reports
16. Auditor General may communicate with the President and others
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PART IV

THE PUBLIC ACCOUNTS COMMITTEE

18. Purposes and objectives
19. Functions of the Committee
20. Powers of the Committee
21. Sittings to be in public except in certain cases
22. Evidence before the Committee
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PART V

MISCELLANEOUS

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26. Reference to relevant Bills
27. Fees for audits
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29. Offences
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31. Transitional
32. Repeal and savings

6 of 2003

G.N. 44/2003

An Act to reform the law relating to Public Audit

[8TH JULY 2003]

PART I

PRELIMINARY

[Ch3701s1]1. Short title

This Act may be cited as the Public Audit Act.

[Ch3701s2]2. Interpretation

In this Act, unless the context otherwise requires—

“agency” includes an office or instrument of the Government, other than a Ministry, Government Department or statutory body;

“Appropriation Act” means an Act of Parliament the principal purpose of which is the application of public moneys for such goods and services as are specified in the Act;

“Auditor General” means the person appointed as Auditor General under section 184 (3) of the Constitution and this Act, and is head of the National Audit Office;

“books and accounts” or “books or accounts” includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms,

photo-static negatives, prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written or electronic record whatsoever, and also includes all papers and other records relating to accounting operations and practice;

“Chairperson” means the Chairperson of the Committee;

“Committee” means the Public Accounts Committee of the National Assembly referred to under Part IV;

“Controlling Officer” means any person appointed by the President who is—

- (a) the head or principal person in charge of a Ministry or Department; and
- (b) charged with a duty to, or who actually does, collect, receive, disburse or deal in any way with any public money, or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public resources or public securities;

“document” means a document in any form, and includes—

- (a) any writing, printing or images on any material; or
- (b) any information recorded or stored by means of any tape-recorder, computer, diskette, tape or other device, and any material subsequently derived from information so recorded or stored; or
- (c) any label, marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means; or
- (d) any book, map, plan, graph, or drawing; or
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“Estimates” means the statement of the proposed public revenue and expenditure during any financial year, as approved by the National Assembly, through the passing of an Appropriation Act;

“generally accepted auditing practice” means—

- (a) approved auditing standards as determined by the international community, and in particular those promulgated by the International Organization of Supreme Audit Institutions for application to the public sector and in so far as those standards apply in the application of this Act; and
- (b) in relation to matters for which no provision is made in approved auditing standards, and which are not subject to any applicable rules of law, auditing policies, concepts or principles which may be regarded as appropriate in relation to the application of this Act and having the authoritative support of the auditing profession;

“Government contract” means any contract concerning the use of public resources or for the supply of goods, services or the execution of any works in consideration of any payment of public money or any money, and includes any sub-contract made in relation to such contract, whether or not the contract or sub-contract has been wholly or partly performed or executed;

“Ministry” means a Ministry of Government, and includes a Government Department, or branch or division within a Ministry or Department, whether established by a written law or otherwise;

“National Assembly” means the National Assembly established under Part VI of the Constitution;

“National Audit Office” means that part of the Office of the Auditor General charged with the responsibility of audit under this Act;

“public expenditure” means the commitment or expenditure of public money, and includes—

- (a) any loan obtained for or given by; or
- (b) any public security provided to or by,

the Government, a Minister, Ministry or agency;

“public money” means all money, other than trust money, received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any Ministry by—

- (a) any officer of Government in his capacity as such; or
- (b) any person on behalf of Government;

“public resources” means all real and personal property that belongs to, or is owned or held, by the State or held by any Ministry, agency, statutory body or other person for and on behalf of the State or the Government, and includes long-term investment of the Government in statutory bodies;

“statutory body” means any body of persons, whether corporate or unincorporated, other than the Reserve Bank of Malawi, established by any written law, and includes an Assembly established under the Local Government Act, and any corporation or a subsidiary of a corporation where the Government, directly or indirectly— Cap. 22:01

- (a) controls the composition of any board of directors of the body; or
- (b) controls more than 50 per cent of the voting power of the body; or
- (c) holds more than 50 per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital).

(2) Where a document is held by a board, committee, subcommittee, or other body—

(a) which is established for the purpose of assisting or advising, or performing functions connected with any Minister, Ministry, agency or statutory body; and

(b) which is established in accordance with the provisions of any written law or by the Cabinet, a Minister, Ministry, agency or statutory body,

that document shall, for the purposes of this Act, be deemed—

(i) in any case where that body is established in respect of any Ministry, agency or statutory body, to be a document held by that Ministry, agency or statutory body; and

(ii) in any case where that body is established in respect of a Minister, to be a document held by that Minister.

(3) Where subsection (2) applies in respect of any body and that body is established for the purpose of assisting, advising, or performing functions conducted with any Ministry, agency or statutory body, that body shall for the purposes of this Act, be deemed to be part of that Ministry, agency or statutory body.

(4) A document held by an officer or employee of a Ministry, agency or statutory body in his capacity as such, or in his capacity as a statutory officer shall, for the purposes of this Act, be deemed to be held by the Ministry, agency or statutory body of which he is an officer or employee or statutory office holder.

(5) Any document held by any independent contractor engaged by any Minister, Ministry, agency or statutory body shall, for the purposes of this Act, be deemed to be held by the Minister, Ministry, agency or statutory body by whom the independent contractor is engaged.

[Ch3701s3]3. Purpose of this Act

The purpose of this Act is to give effect to the principle of the accountability of the Government to the public through the National Assembly to—

(a) make available such information as will enable the National Assembly to be informed of the scrutiny of public expenditures, revenues, assets, liabilities and the management of public money;

(b) promote the accountability of Ministers of the State and Ministries where public expenditure, revenues, assets, liabilities and public money are concerned; and

(c) promote the accountability of agencies and statutory bodies in the management of public money, other money and the resources of such agencies and statutory bodies.

PART II

THE AUDITOR GENERAL

[Ch3701s4]4. Auditor General

The Auditor General shall be responsible for carrying out the duties and responsibilities conferred on him under the Constitution, this Act, or any other written law, and shall be responsible for the National Audit Office.

[Ch3701s5]5. Appointment, qualifications, tenure, removal and salary of the Auditor General

(1) The Auditor General shall be appointed in accordance with subsection (3) of section 184 of the Constitution.

(2) No person shall be appointed as Auditor General unless that person has formal relevant qualifications, significant experience in audit work and has and maintains no interest in the undertaking or outcome of any work required by this Act or the National Audit Office other than an interest in common with members of the public generally.

(3) The Auditor General shall have independence of office in accordance with subsections (7) and (8) of section 184 of the Constitution.

(4) In accordance with subsection (4) of section 184 of the Constitution, the Auditor General shall serve for a term of five years, and may be reappointed for such further term not exceeding five years as the President deems appropriate.

(5) No person shall be appointed or reappointed as Auditor General if he has attained or is over the age of sixty-five years.

(6) The Auditor General may only be removed from office by the President in accordance with subsection (6) of section 184 of the Constitution.

(7) The salary of the Auditor General shall be fixed by the National Assembly, and shall be a charge against the Consolidated Fund.

(8) The salary of the Auditor General fixed under subsection (7) shall be reviewed at two yearly intervals and shall not be reduced during his term of office.

[Ch3701s6]6. Duties of the Auditor General

(1) Without limiting any other written law and subject to subsection (2), the Auditor General shall undertake a programme of audits, and in accordance with section 7 (2), examine transactions, books and accounts, and other public records of every Ministry, statutory office, office, agency, board, commission and bureau of the Government, and public funds received by a non-profit organization, including relevant international organizations.

(2) The Auditor General shall undertake an audit programme to review and approve the audited accounts of statutory bodies and conduct audits of any statutory body that has not had its financial statements audited by a firm of public auditors, and where the Auditor General does not approve the audited financial statements of a statutory body, he shall commence an independent audit of the statutory body within thirty days of rejecting the private audit report.

(3) The Auditor General shall audit and examine transactions, books and accounts, and other financial records associated with any project, programme, and other activity receiving funding in whole or in part from public moneys.

(4) Without limiting the general duties of the Auditor General under subsections (1) to (3), the Auditor General shall—

(a) monitor compliance with the requirements of any written law governing the management and control of public money and public resources;

(b) examine and review the estimates of revenue and expenditure of the Consolidated Fund, and other funds operated by the Government, accounts of Ministries, agencies, statutory bodies and other entities receiving public moneys;

(c) review and confirm the discharge of financial management obligations, including maintenance of accounting records and adequate controls in the accounting system, to ensure that Controlling Officers, Ministries, agencies and statutory bodies have complied with their financial management obligations under the law; and

(d) in reviewing financial management obligations, determine whether the procedures and systems of internal control of each Ministry, agency and statutory body does ensure—

(i) revenue is properly assessed and collected;

(ii) expenditure is validly and correctly authorized;

(iii) revenue, expenses, assets and liabilities are properly recorded and accounted for;

(iv) financial and operating information is reliable;

(v) assets are safeguarded against loss or destruction;

(vi) resources are employed and managed in an effective, economic and efficient manner;

(vii) there has been no waste or extravagance;

(viii) outcomes or provisions produced are consistent with those specified in any Appropriation Act;

(ix) relevant Government policies and legislation are being complied with;

(x) all expenditure is charged against the relevant allocation appropriated by the National Assembly; and

(xi) the accounts and records have been properly kept;

(e) arrange for all audits to be undertaken and confirm that such audits are completed to a standard consistent with generally accepted audit practice;

(f) pursue any concern that arises in respect of the management of public resources which, in the Auditor General's opinion, justifies further investigation;

(g) perform follow-up audits when the Auditor General considers it appropriate; and

(h) carry out such other audits or reviews as may, from time to time, be necessary.

(5) Subject to agreement of priorities and the allocation of budgeted funds and resources for this purpose, the Auditor General shall—

(a) assist the Committee in its scrutiny of adherence to any written law dealing with the administration and management of public money and public property;

(b) assist the Committee to discharge its obligations, functions and responsibilities under section 19, including—

(i) conducting audits, reviews, investigations and inquiries into matters referred to the Auditor General by the Committee;

(ii) furnish the Committee with such information, analysis, appraisals, recommendations and advice that will assist in the performance of the duties and functions of the Committee;

(iii) consider issues and recommendations contained in the report of the Committee to Parliament and other audit reports concerning Ministries, agencies, statutory bodies and ministerial offices and, where applicable, take the appropriate follow-up action; and

(iv) ensure that every reference to the Auditor General by the Committee shall contain specific terms upon which the Auditor General shall be expected to undertake any audit, review, investigation or inquiry.

[Ch3701s7]7. Powers of the Auditor General

(1) For the purpose of fulfilling the functions and duties lawfully conferred or imposed on the Auditor General, the Auditor General and every person authorized by him—

(a) shall have full access at all reasonable times to all documents, books and accounts, public funds, public securities, Government contracts and books and accounts relating thereto and subject to audit, and to any place where they are kept;

(b) may require any person to supply any information or answer any questions relating to documents, books and accounts, money, or operations subject to audit and examination by the Auditor General;

(c) may, by notice in writing, require any person having possession or control of any documents, books and accounts subject to audit and examination by the Auditor General to deliver all or any of them, at a time and place and to such person specified in the notice;

(d) may inspect, measure or test any real or personal property to which any Government contract relates; and

(e) may enter any land, building, or place, other than a dwelling-house, where a Government contract is being performed that is subject to audit and examination by the Auditor General.

(2) The Auditor General may, if required in order to perform his duties under this Act, by written request require for examination, documents, books and accounts from any person or entity who is for the time being liable for the payment of any money to the Government, or any royalties under any lease or licence.

(3) The Auditor General shall have all such other powers as are conferred by this Act or any other written law.

[Ch3701s8]8. Power to summon

(1) The Auditor General may by subpoena summon any person to appear at a reasonable time before him and administer an oath to such person, and further may question such person, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the execution of the duties vested in the Auditor General by this Act.

(2) The Auditor General may issue a subpoena within a reasonable time requiring the production of books or accounts, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

(3) Any subpoena issued under the authority of the Auditor General pursuant to subsections (1) and (2), shall be—

(a) in the name of the Auditor General of Malawi, and a copy provided to the Solicitor General before it is served; and

(b) signed by the Auditor General and shall identify the witnesses to be served or the books or accounts, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection or audit.

(4) Any officer to whom a subpoena is directed shall forthwith serve or execute the same upon delivery of it to him.

(5) Any person who willfully fails or refuses to appear upon receiving service of a subpoena, or who willfully fails or refuses to produce any books or accounts, records, documents, or other relevant financial papers or objects designated in a subpoena properly issued by the Auditor General, shall be guilty of an offence.

(6) Any failure by the Auditor General to comply in any material aspects with the requirements of this section shall relieve any person of the obligation to appear or the obligation to produce designated materials, and such failure shall be a defence in any proceedings against such person.

(7) Any person subject to a subpoena under this section shall have only those privileges against producing books or accounts, records, documents, or other relevant financial papers or

objects which are authorized under the rules of evidence of the High Court as applied in Malawi, the Constitution or any other applicable law.

[Ch3701s9]9. No civil liability

Neither the Auditor General nor any employee of the National Audit Office shall have any civil liability for any act or omission done in good faith in the course of his duties and functions under this Act.

[Ch3701s10]10. Contracting out audits and purchasing services

(1) The Auditor General may, as he thinks fit, contract out to any other person or organization of established competence and reputation any of the activities of the Auditor General under this Act.

(2) The Auditor General shall in any one financial year contract out sufficient number of the audits of the Auditor General in order to ensure that all his responsibilities are being carried out efficiently.

(3) The Auditor General shall contract out audits of a specialized nature that require particular expertise where the National Audit Office does not possess that expertise.

(4) Any person or organization appointed in accordance with subsections (1) and (2) shall, after consultation with the Auditor General, but before commencement of the work, agree with the Auditor General upon a fee, which represents a reasonable charge for the work to be undertaken.

(5) The Auditor General may second or employ on contract any person to assist him in undertaking any audit or review of a specialized nature.

[Ch3701s11]11. Conduct of audits

(1) In carrying out all audits the Auditor General shall, where appropriate, express an opinion on the reliability of the information contained in statements produced under any written law governing the management and control of public money and public resources and shall ensure—

(a) that the audit is properly specified, planned and managed, so as to ensure that the audits are completed to the required standard in the time specified;

(b) that all audits contracted out to a person or organization in accordance with section 10 shall include an agreement as to all the necessary terms and conditions of that audit;

(c) that the audit is the subject of a formal opinion and report which shall include a statement that generally accepted auditing standards have been complied with; and

(d) that the Auditor General shall remain responsible to ensure that audits contracted out under section 10 are undertaken in accordance with the provisions of this Act.

(2) The Auditor General and employees of the National Audit Office shall have all such other functions and duties as are lawfully conferred upon that person.

(3) All provisions relating to auditors contained in any written law concerning provisions and regulation of companies and corporations shall not derogate from the functions, duties and powers of the Auditor General under this Act.

[Ch3701s12]12. Incompatible functions

(1) Neither the Auditor General nor any employee of the National Audit Office shall undertake, perform or engage in any duty or function that is inconsistent with the performance by him of the duties or functions imposed on him under this Act.

(2) Neither the Auditor General nor any employee of the National Audit Office shall hold any other public office or other Government position while holding the position of Auditor General or employed in the National Audit Office, as the case may be.

[Ch3701s13]13. Procedures

(1) The Auditor General shall, subject to the provisions of this Act, establish, review and regulate the procedures of his office in accordance with generally accepted auditing practice.

(2) The Auditor General shall maintain a continual programme of audits and reviews, which will provide for the regular and systematic review of all Ministries, agencies and statutory bodies.

PART III

REPORTING

[Ch3701s14]14. Reporting

(1) The Auditor General shall separately report to the Controlling Officer, head of an agency, statutory body or other affected person in respect of any matters that may relate to an audit, review, investigation or inquiry, and may require that person to respond to the Auditor General within fourteen days of receiving the report.

(2) The Auditor General shall in the annual report, or in any other report which the Auditor General may elect to provide to the President or the Speaker of the National Assembly, make such recommendations as the Auditor General deems appropriate.

[Ch3701s15]15. Annual reports

(1) Without limiting the right to report at any other time, the Auditor General shall by 31 December of each year forward to the President and to the Speaker of the National Assembly, a report containing such information relating to the audits and reviews undertaken under this Act or any other written law as the Auditor General deems appropriate, together with such other information as the Auditor General considers desirable.

(2) Without limiting the generality of subsection (1), the Auditor General shall provide in the report required under subsection (1) a signed statement in respect of every account of a Ministry, agency, statutory body or other organization audited that shall—

(a) comment on the audit undertaken, containing such information as will fairly disclose the compliance by the Ministry, agency, statutory body or organization with the matters referred to in section 6, together with such other information and comments relating thereto as the Auditor General thinks fit; and

(b) a statement or statements containing such matters as the Auditor General thinks fit relating to—

(i) any accounts or transactions that are required to be audited under this Act;
or

(ii) the performance or exercise by the Auditor General of any of the functions, duties, or powers under this Act or any other written law.

(3) The Speaker of the National Assembly shall, when the National Assembly is in session, forthwith present the report referred to under subsection (1) to the members of the National Assembly and give the members the opportunity to comment on the report, and where the National Assembly is not in session the Speaker shall forthwith present the report to the members at the start of the next ensuing session of the National Assembly and give the members the opportunity to comment on the report.

[Ch3701s16]16. Auditor General may communicate with the President and others

(1) The Auditor General may communicate with the President, a Controlling Officer or any other person upon any matter which is the subject to audit, review, investigation or inquiry.

(2) The Auditor General may report to the responsible person the name of any person failing to comply with the requirements of this Act or any other written law, or of any failure by any person to comply with the recommendations or otherwise address the concerns that the Auditor General has raised in any report.

[Ch3701s17]17. Budget support

The National Assembly shall appropriate sufficient moneys, on a timely basis, to enable the effective and efficient operation of the Auditor General and the National Audit Office.

PART IV

THE PUBLIC ACCOUNTS COMMITTEE

[Ch3701s18]18. Purposes and objectives

The purposes and objectives of this Part are to give effect to the principle of the accountability of Government to the public, acting through the Public Accounts Committee (in this Act otherwise referred to as the "Committee"), by—

(a) making available such information as will enable the National Assembly to be informed of the management of public expenditure, public money and public resources;

(b) promoting the accountability of Ministers and members of the National Assembly, where public expenditure, public money and public resources are concerned;

(c) holding accountable Ministries, agencies and other entities controlled by Government for the lawfulness, economy, efficiency and effectiveness with which they use public money and public resources; and

(d) promoting the accountability of statutory bodies and those other persons charged with the management of public money and public resources.

[Ch3701s19]19. Functions of the Committee

(1) The functions of the Committee are—

(a) to examine and report to the National Assembly on the financial statements of the Government generally; and in particular to examine and report on the financial statements of the Government in the light of the outputs proposed and the performance criteria in the relative Estimates, together with each statement and report of the Auditor General presented to the National Assembly;

(b) to examine and report to the National Assembly on the financial statements of statutory bodies;

(c) to examine and report to the National Assembly on the transactions and financial statements of any body other than a Ministry or Government Department or statutory body for whose purposes a specified sum of money, or a sum not exceeding a specified sum, has been appropriated by the National Assembly by way of grant, subsidy or loan or to which a grant, subsidy or loan has been made out of the Consolidated Fund (but only so far as it relates to the application of the money appropriated or granted or lent for that purpose);

(d) to report to the National Assembly, with such comments as it thinks proper, any items or matters in any financial statements and reports or any circumstances connected with them, to which the Committee is of the opinion that the attention of the National Assembly should be directed, and to report to the National Assembly any alteration that the Committee thinks desirable—

(i) in the form of the annual Estimates or financial statements;

(ii) in the method of accounting for Government financial transactions;

(iii) in the method of collection, receipt, expenditure or issue of public moneys;

or

(iv) for the receipt, custody, disposal, issue or use of public resources;

(e) to inquire into any question in connexion with the financial management of the Government that is referred to it by the National Assembly, and to report to the National Assembly on the question;

(f) to pursue any concerns that the Committee believes are justified; and

(g) to undertake such other duties as are assigned to the Committee by the Standing Orders.

(2) Any member of the National Assembly may move for a question in connection with the financial management of the Government to be referred to the Committee and for the Committee to report back on that question to the National Assembly by an agreed date.

[Ch3701s20]20. Powers of the Committee

(1) For the purpose of fulfilling any function or duty lawfully conferred or imposed on it, the Committee—

(a) shall have full access at all times to Government records relating to revenue and expenditure, public money and public resources which are relevant to any inquiry;

(b) may, by notice in writing signed by the Chairperson of the Committee, require any person having possession or control of any Government records relating to revenue or expenditure, public money or public resources to deliver to the Committee at a time and place specified in the notice, all or any such records; and

(c) may cause extracts to be taken from any Government records relating to revenue and expenditure, public money or public resources without the payment of any fee.

(2) No member of the Committee shall have any civil liability for any act or omission done in good faith under this Part.

[Ch3701s21]21. Sittings to be in public except in certain cases

(1) Subject to subsections (2) to (4), the Committee shall take all evidence in public.

(2) The Committee may, of its own volition, or at the request of any witness, take the evidence, oral or documentary, of that witness in private where the Committee is of the opinion that the evidence relates to a secret or confidential matter.

(3) Where, pursuant to subsection (2), evidence is taken by the Committee in private, no person, including a member of the Committee, may, without the authority of the Committee, disclose or publish the whole or a part of that evidence, other than evidence that has already been lawfully published.

(4) A person who discloses or publishes evidence in contravention of subsection (3) is guilty of an offence and on conviction is liable to a fine of K50,000 and imprisonment for two years.

[Ch3701s22]22. Evidence before the Committee

Part III of the National Assembly (Powers and Privileges) Act shall apply to meetings of the Committee. Cap. 2:04

[Ch3701s23]23. Reports of the Committee

(1) In addition to the reports required by section 19 (1) (a) and (b), the Committee shall at least twice in every year prepare a written report signed by the Chairperson of the Committee on all matters considered by the Committee.

(2) Every report, including every interim report, shall be submitted to the Controlling Officer of a Ministry, head of a statutory body or organization, or Minister affected thereby, who may add comments thereto within seven days of receiving the report.

(3) The Committee shall forward the report, together with the comments made under subsection (2) to the Speaker of the National Assembly who shall forthwith present it to the National Assembly if the Assembly is in session, and if not, at the start of the next ensuing session.

(4) The Committee shall in each of its reports indicate the dissenting views of a member if that member so requests.

(5) Except in the performance of the duties, functions and powers conferred by this Act or by Standing Orders on the Committee or a member of the Committee, it shall not be lawful for the Committee or any member of the Committee to disclose to any person any information that shall come to the attention of the Committee or member of the Committee pursuant to this Act, and all such information shall remain confidential.

[Ch3701s24]24. Assistance generally

(1) It shall be the duty of every Minister, and every person in control of, employed in or engaged by every Ministry, Department, agency or statutory body, and every agent thereof to give assistance to the Committee and to every member acting on behalf of the Committee.

(2) The Committee shall be entitled to enlist the assistance of any person, authority or organization in the performance of its functions, duties and powers.

PART V

MISCELLANEOUS

[Ch3701s25]25. Confidentiality

Except than in the performance of the duties, functions and powers conferred by this Act or by any other written law on the Auditor General or employee of the National Audit Office, the Auditor General or any employee shall not disclose to any person any information that shall come to the attention of the Auditor General or employee of the National Audit Office pursuant to this Act, and all such information shall remain confidential.

[Ch3701s26]26. Reference to relevant Bills

The Auditor General shall have the right to review and comment on any Bill that affects his office and when doing so shall provide his comments in writing to the Minister responsible for the introduction of the Bill and to the Speaker of the National Assembly who shall present the same to the National Assembly at the first reading of the Bill.

[Ch3701s27]27. Fees for audits

(1) The Auditor General may, with the approval of the Minister responsible for finance, charge a fee for undertaking specified audits, reviews, inquiries or examinations.

(2) Any fee charged for an audit, review, inquiry or examination pursuant to subsection (1) shall be based on full cost recovery.

[Ch3701s28]28. External audit

(1) There shall be conducted by competent public auditors appointed by the Committee, an annual audit of the financial statements of the National Audit Office, and the audit report together with the annual financial statements shall be forwarded to the Speaker of the National Assembly not later than six months from the end of the financial year to which they relate, and the Speaker shall present them to the National Assembly forthwith if the National Assembly is in session, and if the National Assembly is not in session, at the start of the next ensuing session.

(2) The cost of the external audit under subsection (1) shall be charged to a separate appropriation under the vote of the Auditor General.

[Ch3701s29]29. Offences

(1) A person commits an offence who—

(a) refuses to attend at a time and place required by the Auditor General in accordance with this Act;

(b) refuses to produce any document in that person's possession or under that person's control when required to do so under this Act;

(c) refuses to answer any question by any person lawfully entitled to do so under this Act;

(d) makes any statement or declaration or gives any information, certificate or document required by this Act knowing it to be false or misleading;

(e) resists, obstructs, deceives or attempts to deceive the Auditor General or any employee of the National Audit Office in the discharge of his functions, duties or powers under this Act; and

(f) aids, abets, counsels or procures the commission of an offence under this Act.

(2) A person who commits an offence against this section is liable on conviction—

(a) in the case of an individual, to a fine of K50,000 and imprisonment for two years, and if the offence is a continuing one, to a further fine not exceeding K10,000 for every day that the offence continues; or

(b) in the case of a body corporate (including a statutory body), to a fine of K100,000 and if the offence is a continuing one to a further fine of K20,000 for every day that the offence continues.

(3) Where the body corporate commits an offence under this Act, every director, secretary or other officer of a body corporate and every person purporting to act in such capacity shall also be guilty of an offence unless that person satisfies the Court that either—

(a) the offence was committed without that person's knowledge, consent or not through that person's gross negligence; or

(b) that person took all reasonable steps to prevent the commission of the offence.

[Ch3701s30]30. Regulations

(1) The Minister responsible for finance may, on the recommendation of the Auditor General, make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and the due administration thereof.

(2) Any regulations made pursuant to subsection (1) may prescribe offences against contravention of the regulations for which the penalty shall not exceed K20,000 and imprisonment for twelve months.

[Ch3701s31]31. Transitional

(1) The person holding office as Auditor General immediately before the commencement of this Act shall continue to hold office as the Auditor General in accordance with the provisions of this Act.

(2) Every person holding office as an officer or employee of the National Audit Office immediately before the commencement of this Act shall continue to hold office as an officer or employee of the National Audit Office upon the same terms and conditions of employment, in accordance with the provisions of this Act.

(3) Every audit, review, investigation, inquiry or examination undertaken or being undertaken by the Auditor General on or before the commencement of this Act shall continue to have effect or be undertaken by the Auditor General in accordance with the provisions of this Act.

[Ch3701s32]32. Repeal and savings

(1) Part VI of the Finance and Audit Act is repealed. Cap. 37:01

(2) All subsidiary legislation made under Part VI of the Finance and Audit Act repealed by subsection (1) and in force immediately before the commencement of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

[Chap3702]CHAPTER 37:02

PUBLIC FINANCE MANAGEMENT

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7 of 2003

14 of 2006

G.N. 45/2003

An Act to foster and enhance effective and responsible economic and financial management by Government, including adherence to policy objectives; to provide accompanying accountability arrangements together with compliance with those arrangements; to require the Government to produce statements of proposed budget policy, confirmation of adherence to fiscal discipline, economic and fiscal statements, including economic and fiscal forecasts and updates, and performance information, including comprehensive financial statements; and for matters connected therewith and incidental thereto

[8TH JULY 2003]

PART I

PRELIMINARY

[Ch3702s1]1. Short title

This Act may be cited as the Public Finance Management Act.

[Ch3702s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Appropriation Act” means an Act of Parliament the principal purpose of which is the application of public moneys for such goods and services as are specified in the Act;

“bank” means—

(a) a financial institution whose operations include the acceptance of deposits subject to withdrawal or transfer by cheque or other means of third party transfer; and

(b) any financial institution in Malawi or outside Malawi in which any public money is deposited or kept in accordance with the provisions of this Act, and includes an international financial institution;

“Cabinet” means the Cabinet of Ministers appointed in accordance with section 92 of the Constitution;

“chief executive” means the head, however called, of a statutory body;

“Consolidated Fund” means the Consolidated Fund established by section 172 of the Constitution;

“Controlling Officer” means any person appointed by the President who is—

- (a) the head or principal person in-charge of a Ministry or Department; and
- (b) charged with a duty to, or who actually does collect, receive, disburse or deal in any way with any public money, or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public resources or public securities;

“Estimates” means the statements of the proposed public revenues and expenditure in any financial year as approved by the National Assembly through the passing of an Appropriation Act;

“expenditure” means the actual payment of moneys by Government, whether required or unrequired and whether for current or capital transactions;

“financial statements” means the financial statements required under Part IX and the Third Schedule;

“financial year” means—

- (a) in relation to the Government and Government financial statements, a period of twelve months ending on 30th June; and
- (b) in relation to a statutory body, the annual accounting period of the statutory body;

“generally accepted accounting practice” means—

- (a) standards and practices promulgated by the International Federation of Accountants as applicable to Governments and statutory bodies; or
- (b) if no standard or practice exists, then accounting principles or practices which have the authoritative support of the accounting profession in Malawi or in countries that maintain accounts and records and prepare financial statements similar to the Government of Malawi and its statutory bodies;

“Government” means the executive Government of Malawi established under Chapter VIII of the Constitution;

“Government agency” or “agency” means an office, entity or instrument of the Government, other than a Ministry, or statutory body;

“grants” means—

- (a) non-repayable receipts from other Governments, international institutions or domestic institutions or individuals; or
- (b) non-repayable payments made by the Government to other Governments, international institutions or domestic institutions or individuals;

“imprestee” means a person in whose hands any public money is placed for expenditure;

“internal control” includes the controls adopted to ensure that within Government—

- (a) revenue is properly assessed and collected;
- (b) expenditure is validly and correctly authorized;
- (c) revenue, expenditure, assets and liabilities are properly recorded and accounted for;
- (d) financial and operating information is accurate and reliable;
- (e) assets are safeguarded against loss or destruction;
- (f) public resources are employed and managed in an effective, economic and efficient manner;
- (g) there is no waste or extravagance with respect to public resources;
- (h) outcomes or provisions produced are consistent with those specified in an Appropriation Act;
- (i) relevant Government policies and legislation are being complied with; and
- (j) there is effective and efficient management of the financial resources of Government;

“National Assembly” or “Assembly” means the National Assembly established under Chapter VI of the Constitution;

“National Audit Office” means that part of the office of the Auditor General charged with the responsibility of audit;

“officer” includes an officer, a contract officer and an employee of the Public Service of Malawi;

“outcomes” mean the impacts or consequences for the people of Malawi of the outputs or activities of Government or the results of the outputs produced;

“outputs” means the goods and services that are produced by a Ministry or other person or body who receives an appropriation;

“personal emoluments” includes salaries, wages, fees, contract payments for the provision of personal services, and taxable allowances, but does not include any payment in the nature of reimbursement for expenses incurred;

“public debt” means all liabilities of the Executive Government and other branches of Government, but does not include liability where the Government is trustee for another person, or the liabilities of any statutory body;

“public interest” means something that is to the advantage, direct or indirect, of the people of Malawi;

“public money” means all money, other than trust money, received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other

securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any Ministry by—

- (a) any officer of Government in his capacity as such; or
- (b) any person on behalf of Government;

“public resources” means all real or personal property that belongs to or is owned or held by the State or held by any Ministry, agency or other person for and on behalf of the State or the Government;

“public securities” means securities representing the investment, or securing the payment, of any public money;

“records” means information recorded and kept by any means, and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms photo static negatives prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever, and all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

“revenue” means all non-repayable Government receipts;

“Secretary to the Treasury” means the Principal Secretary having supervision for the time being of the Ministry of Finance;

“State” means the independent State of Malawi, established under the Constitution and includes the Government;

“statutory body” means a body of persons, whether corporate unincorporated, other than the Reserve Bank of Malawi, established by any written law, and includes a Council established under the Local Government Act, and any corporation or a subsidiary of a corporation where the Government, directly or indirectly— Cap. 22:01

- (a) controls the composition of any board of directors of the body; or
- (b) controls more than fifty per cent of the voting power of the body; or
- (c) holds more than fifty per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital);

“statutory expenditure” means—

- (a) expenditure which is not subject to the vote of the National Assembly; and
- (b) expenditure charged on the Consolidated Fund under the provisions of the Constitution or charged on the Consolidated Fund or any other public fund or account by any other written law in which it is expressly stated to be statutory expenditure;

“trading revenue” means the revenue received from the supply of goods or services in a contestable environment;

“transactions on behalf of the State” or “payments on behalf of the State” means the categories of appropriations listed in section 23 (3) (c), (d) and (e);

“Treasury Instructions” means Treasury Instructions issued under section 92;

“trust account” means a trust account established under section 41;

“Trust Fund” means the Trust Fund established under section 41;

“unclaimed money” means unclaimed money defined under section 44;

“Vote” means a sum of money authorized to be spent under section 23 (2).

PART II

RESPONSIBILITY FOR FINANCIAL MANAGEMENT

[Ch3702s3]3. General responsibilities of the Minister

(1) The Minister is responsible to the Cabinet and to the National Assembly for—

(a) the preparation and presentation of economic and fiscal policy in accordance with this Act;

(b) ensuring adequate procedures, internal controls and guidelines exist for the use of public money and public resources; and

(c) the compliance by the Ministry of Finance with its responsibilities under this Act.

(2) When submitting the draft Estimates to Cabinet the Minister shall provide—

(a) a detailed assessment of the economic and fiscal impact of the projected revenue in relation to the projected expenditure contained in the Budget Policy Statement required under section 15; and

(b) where appropriate, details of options to change the draft Estimates including details of possible changes in Government expenditure and programmes to make them compatible with the Budget Policy Statement.

[Ch3702s4]4. Specific responsibilities of the Minister

The Minister is responsible for—

(a) the formulation of economic and fiscal policy of the Government of Malawi, and for the financial management of ongoing operational activities, both annually and for such longer periods as he considers appropriate, specifying agreed policies, outcomes and outputs to be achieved, and taking into account the views of prior policy consultations;

(b) the preparation of the annual draft Estimates and such other Estimates as may be necessary and overseeing their implementation on behalf of the Government;

(c) the supervision of the finances, assets and liabilities of the State so as to ensure that a full accounting is made to the National Assembly of all transactions involving public moneys or the disposition of public resources;

(d) the oversight of the finances of statutory bodies; and

(e) the publication in the Gazette and by whatever other means he considers appropriate, of information as to economic plans and projects approved by the National Assembly or Government and the progress made in their implementation.

[Ch3702s5]5. Minister may delegate powers

(1) Subject to subsection (2), the Minister may in writing delegate his powers under this Act where he is unable, for the time being, to exercise those powers.

(2) The Minister shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.

(3) The responsibility of the Minister under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

[Ch3702s6]6. General responsibilities of Ministers

(1) Each Minister of Government is responsible to Cabinet and the National Assembly for ensuring that Controlling Officers coming within the area of the assigned responsibilities of the Minister comply with their responsibilities under this Act for the effective and efficient financial management of all public money and public resources under their control.

(2) Each Minister shall ensure that all estimates of revenue and expenditure provided from entities that comprise the assigned responsibilities of the Minister are realistic, practicable and fully consistent with the budget policy statement of the Government published under section 15.

(3) Each Minister shall ensure that the financial management of the public money and public resources that are allocated to the assigned responsibilities of the Minister in an Appropriation Act achieves the objectives and outputs approved for each vote.

(4) Each Minister shall ensure compliance with all reporting responsibilities coming within the assigned area of responsibility of the Minister under this Act.

[Ch3702s7]7. Secretary to the Treasury

(1) There shall be the office of Secretary to the Treasury, who shall be the principal financial adviser to the Government and the administrative head of Treasury, responsible for the administration of this Act.

(2) The Secretary to the Treasury shall report and is responsible to the Minister for compliance by Treasury with its obligations under this Act.

[Ch3702s8]8. Specific responsibilities of the Secretary to the Treasury

In addition to the responsibilities of Controlling Officers set out in section 10 (with the necessary modifications to paragraphs (k) and (o) in subsection (1)), the Secretary to the Treasury is responsible for—

- (a) providing economic, fiscal and financial advice to and assisting the Minister in presenting the draft Estimates, supplementary Estimates and periodic and annual financial statements for Government;
- (b) setting policies, practices and procedures for all financial management;
- (c) providing the information required by this Act in accordance with generally accepted accounting principles;
- (d) monitoring the accounting systems for Government;
- (e) coordinating and monitoring systems of financial management, internal control and reporting in all Government ministries;
- (f) exercising and maintaining control and direction of all matters relating to the financial management of the Government in accordance with Government policy as communicated by the Minister; and
- (g) collection of revenue owing to the State.

[Ch3702s9]9. Secretary to the Treasury may delegate powers

(1) Subject to subsection (2), and excepting his powers under Part VII, the Secretary to the Treasury may in writing delegate to a senior officer of Treasury his powers under this Act so as to ensure the effective and efficient operation of the Treasury, or where he is unable, for the time being, to exercise any powers under this Act.

(2) The Secretary to the Treasury shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.

(3) The responsibilities of the Secretary to the Treasury under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

[Ch3702s10]10. Responsibilities of Controlling Officers

- (1) Each Controlling Officer is responsible for ensuring that, in relation to his Ministry—
- (a) the provisions of this Act are complied with;
 - (b) advice on financial management is provided to the responsible Minister;
 - (c) all accounts and records relating to the functions and operations of the Ministry are properly maintained;

(d) all necessary precautions are taken to safeguard the collection and custody of public money;

(e) all expenditure, including salaries and other personal emoluments, is properly authorized and applied to the specific purposes for which it is appropriated;

(f) there is no over-expenditure or over-commitment of funds and a review is undertaken each month to ensure that there is no such over-expenditure or over-commitment;

(g) the collection of public moneys is according to approved plans and the Estimates;

(h) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste;

(i) all necessary precautions are taken to safeguard public resources;

(j) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is collected promptly and to the fullest extent;

(k) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is reviewed and reported upon in the format specified by the Secretary to the Treasury or in Treasury Instructions at least once in each year in order to establish—

(i) whether the level of such tax, duty, fee, levy or other charge is adequate;
and

(ii) whether such tax, duty, fee, levy or other charge should be varied and, if so, by what amount;

(l) any proposal to charge for the supply of goods or services confirms that the charge is consistent with the economic and fiscal policy of the Government;

(m) any financial information required by any Standing Committee of the National Assembly is submitted to that Committee accurately and promptly;

(n) estimates and forecasts in respect of collection and expenditure of public moneys are prepared in the format specified in Treasury Instructions;

(o) after the first six months of each financial year and at such other times as required by the Secretary to the Treasury he shall submit reports, as may be specified in Treasury Instructions, of the management of funds provided for the achievement of the outputs of the Ministry and the collection of revenues;

(p) an effective system of internal control is developed and maintained and, unless the Secretary to the Treasury approves otherwise in circumstances provided for in Treasury Instructions, an effective internal audit function is developed and maintained; and

(q) all officers in his Ministry are aware of their duties and responsibilities under this Act and any other written law for which the Ministry is responsible.

(2) The responsibility of a Controlling Officer under subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.

(3) Responsibilities other than those listed in subsection (1) may be conferred or imposed on a Controlling Officer by this or any other Act.

(4) A Controlling Officer in breach of his responsibilities under this section is liable to disciplinary action under section 87.

[Ch3702s11]11. Access to information

(1) The Secretary to the Treasury has power—

(a) to obtain full and free access at all times to all accounts and records of Controlling Officers that relate, directly or indirectly, to—

(i) the collection, receipt, expenditure, issue or use of public money; and

(ii) the receipt, custody, disposal, issue or use of public resources,

and to inspect and inquire into and call for any information arising from, those accounts and records; and

(b) where he has reason to believe that a Controlling Officer has been or may have been in breach of this Act, recommend to the Secretary of the Office of the President and Cabinet that the Controlling Officer be suspended from all financial duties and responsibilities, pending an investigation.

(2) In the exercise of his powers under this section, the Secretary to the Treasury may appoint any person by writing under his hand to inquire into and report to him on any matter or matters specified in the instrument of appointment.

PART III

ECONOMIC, FISCAL AND FINANCIAL POLICY

[Ch3702s12]12. Principles of responsible fiscal management

(1) Subject to subsection (4), the Government shall pursue its policy objectives in accordance with the principles of responsible fiscal management specified in subsection (2).

(2) The principles of responsible fiscal management are—

(a) managing total public debt at prudent levels so as to provide a buffer against factors that may impact adversely on the level of total public debt in the future;

(b) ensuring that within any borrowing programme the total overall expenditures of the State in each financial year is in the public interest and designed to achieve long-term fiscal stability;

(c) achieving and maintaining levels of the State's net worth that provide a buffer against factors that may impact adversely on the State's net worth in the future;

- (d) managing prudently the fiscal risks facing the State;
- (e) pursuing policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years; and
- (f) agreement of Government on the fiscal limits that will apply to the current and future financial expenditure on Ministries and Government projects.

(3) The Government may depart from the principles of responsible fiscal management specified in subsection (2) only in cases of exceptional circumstances, and when the Government does so—

- (a) any such departure shall be temporary; and
 - (b) the Minister shall specify—
 - (i) the detailed reasons for the Government's departure from those principles, including justification of those exceptional circumstances;
 - (ii) the approach the Government intends to take to return to those principles;
- and
- (iii) the period of time that the Government expects to take to return to those principles.

(4) Where such exceptional circumstances arise which force a departure from the principles of responsible fiscal management specified in subsection (2) during the financial year, those exceptional circumstances shall be disclosed to the National Assembly forthwith if the Assembly is in session, and if not, at the commencement of the next ensuing session, and the exceptional circumstances shall also be included in the next ensuing economic and fiscal update.

[Ch3702s13]13. Generally accepted accounting practice

Financial reports, financial statements, associated information and accounting procedures required by this Act shall be in accordance with generally accepted accounting practice.

[Ch3702s14]14. Economic and fiscal policy statement

(1) The Minister shall submit to the National Assembly and publish, not later than 1st April of each year, an economic and fiscal policy statement for the financial year commencing on 1st July after publication, and forecasts for the two years following that financial year, and the economic and fiscal policy statement shall—

- (a) specify the economic and fiscal policy that the Government will follow in all economic and fiscal dealings, and disciplines that the Government will adhere to;
- (b) specify or re-affirm the Government's long-term fiscal policy objectives and in particular, provide for the principal variables specified in sections 18 and 19;

(c) specify the broad strategic priorities by which the Government will be guided in preparing the Estimates for that fiscal year; and

(d) indicate by appropriate means the Government's intentions regarding the variables specified in sections 18 and 19.

(2) The economic and fiscal policy statement shall also—

(a) assess the extent to which the objectives, priorities, and intentions referred to under subsection (1) are consistent with the requirement to produce a fiscally responsible budget under section 12 (2) (b); and

(b) assess the consistency of the objectives, priorities, and intentions referred to under subsection (1) with the objectives, priorities, and intentions indicated in the immediately preceding economic and fiscal policy statement, or, if amended, the amended statement and, where these are not consistent, justify the difference.

(3) Any member of the public may, within twenty-eight days of the economic and fiscal policy statement being published, deliver in writing to the office of the Minister any submission that that person may have in respect of that statement.

[Ch3702s15]15. Budget policy statement

(1) The Minister shall lay before the National Assembly, with the Estimates, a written budget policy statement.

(2) The budget policy statement shall include—

(a) a budget message, which shall include such supporting financial, statistical, output performance, and other information, data and recommendations as the Minister may determine are in the public interest and consistent with the principles of fiscal responsibility set out in section 12; and

(b) a statement, including forecasts, providing a projection of expenditures for each category of outputs for the ensuing financial year and the two years following that financial year including—

(i) the details of the estimated revenue of the Government;

(ii) the details of the estimated expenditures of the Government;

(iii) the Government's debt management responsibilities and, where applicable, the details of a financial plan to meet those responsibilities; and

(iv) a statement that the annual budget is fiscally responsible in accordance with the principles set out in section 12.

[Ch3702s16]16. Fiscal strategy

(1) The Minister shall submit to the National Assembly, at the same time as, and in addition to, the budget policy statement referred to in section 15 a report on the Government's fiscal strategy.

(2) The report on the fiscal strategy shall—

(a) include an assessment of the extent to which the budget policy statement is consistent with the economic and fiscal policy statement required under section 14;

(b) include an explanation of the reasons for any significant differences between the current economic and financial situation of the State and the information and intentions presented in the previous economic and fiscal policy statement required under section 14;

(c) where the circumstances have changed, present an amended set of intentions; and

(d) provide projections of movements in the variables specified in sections 18 and 19 which demonstrate intended progress towards achieving the longer-term objectives specified in the economic and fiscal policy statement most recently published and state the significant assumptions on which the projections are based.

[Ch3702s17]17. Economic and fiscal update

(1) The Minister shall, no later than 30th June in each year, publish a report updating the economic and fiscal policy statement for the following financial year.

(2) The economic and fiscal update report shall contain—

(a) an economic and fiscal update for the current financial year, and forecasts for the following two financial years, containing the information specified in sections 18 and 19; and

(b) a statement of the date on which the contents were finalized confirming that the data used was the most recent available.

[Ch3702s18]18. Economic and fiscal data

(1) Economic reports required under this Part shall include, where available, forecasts of projected movements in Malawi of the information specified in Part I of the First Schedule. First Schedule

(2) Fiscal forecasts required under this Part shall include, where available, the information specified in Part I of the First Schedule. First Schedule

(3) Economic forecasts shall include a statement of all significant assumptions underlying them.

(4) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reason why the information is not available.

[Ch3702s19]19. Reporting requirements

(1) Any forecast or statement required under this Part shall include, where available, details of the information specified in Part II of the First Schedule. First Schedule

(2) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reasons why the information is not available.

[Ch3702s20]20. Provision of relevant information

Every Controlling Officer and the head of every agency of Government shall provide to the Secretary to the Treasury such relevant information, as may be in his possession, that will assist the Secretary to the Treasury to produce the economic and fiscal data and reporting information required under this Part.

PART IV

PARLIAMENTARY APPROPRIATION AND BUDGET

[Ch3702s21]21. Estimates

(1) The Minister shall, not less than fourteen days before introducing the Estimates to the National Assembly, prepare and submit to Cabinet a statement of anticipated revenue for the forthcoming financial year together with a statement of the anticipated budgetary appropriations.

(2) The Cabinet shall consider and approve a proposed budget and the Minister shall then cause the Ministry of Finance to prepare the Estimates, in accordance with the budget approved by Cabinet, for introduction to the National Assembly for the forthcoming financial year.

(3) The Minister shall, on behalf of the Government, lay before the National Assembly a statement of the estimated receipts, grants, all other revenue and expenditure for the forthcoming financial year.

(4) Details of statutory expenditure, shall be included in the Estimates in order to present the total expenditure proposed in the Government's programmes or activities, but shall not be submitted to the vote of the National Assembly.

(5) The statement of statutory expenditure shall include a brief description of all projected statutory expenditures for the forth-coming financial year, stating the authority for any payment to be made and showing comparative revised estimates figures for each item in respect of the previous appropriation period.

[Ch3702s22]22. Form of the Estimates

The Estimates shall include the following information in respect of each Vote—

- (a) the Minister responsible for the Vote;
- (b) the Ministry and Controlling Officer administering the Vote;

(c) a brief description of each output to be delivered by the Ministry together with an estimate of the expenditures to be made and any receipts from charges made for the delivering of that output;

(d) all other revenues to be collected on behalf of the State;

(e) a brief description of any output to be provided by a third party on behalf of Government together with an estimate of the expenditures to be made;

(f) a brief description of any transaction on behalf of the State together with an estimate of the expenditures to be made;

(g) comparative revised estimates figures for each of the items in paragraphs (c) to (f) of this subsection for the previous appropriation period; and

(h) any other relevant information as directed by the Minister.

[Ch3702s23]23. Appropriation required

(1) Subject to section 178 of the Constitution, no public money shall be expended unless the expenditure has been authorized by an Appropriation Act in accordance with subsection (2) or is statutory expenditure.

(2) No expense or liability will be incurred unless the expenditure in relation to such expense or liability is chargeable to a category specified in subsection (3).

(3) A separate appropriation shall be made for each of the following—

(a) each category and output to be delivered by a Ministry;

(b) any payment to a non-government agency or person by way of grant or otherwise;

(c) loans by Government to any third party; and

(d) capital contributions and capital purchases; and

(e) each item of statutory expenditure or any other payment on behalf of the State.

(4) The authority to expend cash or incur expenses or liabilities under an Appropriation Act will lapse at the end of the financial year to which that Act relates.

(5) Subject to this Part, any money appropriated under this section shall be expended only in relation to that appropriation, and for no other purpose.

(6) Each expenditure of public money made in respect of statutory expenditure shall be managed and accounted for in the same manner as public money expended under an Appropriation Act.

[Ch3702s24]24. Adjustment for unforeseen expenditure

(1) The annual Estimates presented to the National Assembly shall contain a Vote for Unforeseen Expenditure, with a proposed appropriation not exceeding two per cent of the total appropriation for outputs.

(2) The Minister may only use funds from the unforeseen expenditure vote in exceptional circumstances and any expenditure of unforeseen expenditure shall be first approved by the Cabinet.

(3) Subject to subsection (2), where the Minister considers that expenditure from the Consolidated Fund in any financial year in excess of, or without, appropriation by the National Assembly should be approved, he may transfer to one or more nominated Votes from the Unforeseen Expenditure Vote such sum or sums as he considers necessary up to but not exceeding the amount of the balance from time to time available in the Unforeseen Expenditure Vote.

(4) If during any regular or other review of budget performance, it appears to the Cabinet that any vote or votes may be under-spent during the financial year, the Cabinet may direct the Minister to transfer any such surplus to the Unforeseen Expenditure Vote and such sum or sums shall be available for transfer as provided in subsection (3).

(5) No expenditure in excess of, or without, appropriation other than is provided in this section, is permitted.

(6) This section does not apply to statutory expenditure.

(7) Without affecting the validity of any transfers approved under subsections (1) and (2), the financial statements for the financial year in which any such transfer occurs shall disclose each instance of a revised appropriation, (regardless of whether such sum has been subsequently appropriated during the course of the financial year in an amended or Supplementary Appropriation Act) together with an explanation of the reasons for such revision.

[Ch3702s25]25. Transfer between outputs

(1) The Secretary to the Treasury may, with the approval of the Minister at the request of a Controlling Officer, direct that an amount appropriated for a specified output to be delivered by a Ministry be transferred to another output to be delivered by that Ministry where—

(a) the amount transferred does not increase an appropriation for the financial year for an output by more than twenty per cent;

(b) the transfer does not conflict with performance of the outputs or policy specified in the Estimates; and

(c) the total appropriation for that financial year for that Ministry is unaltered.

(2) Without limiting the validity of the transfers made under subsection (1), a clause recording any transfers made under subsection (1) in that financial year shall be made in an Appropriation Act for the same or the succeeding financial year, and all such budget variations shall be noted in the financial statements for that year.

[Ch3702s26]26. Approval of Appropriation Bill

Upon an Appropriation Bill receiving the assent of the President, the Secretary to the Treasury shall make funds available to the respective votes according to the cashflow forecasts agreed between the head of the entity responsible for the Vote and the Secretary to the Treasury, and if agreement cannot be reached, as approved by the Minister.

[Ch3702s27]27. Charge for supply of goods or services

Save as expressly otherwise provided in any other written law, a Ministry may, with the approval of the Minister, charge for the provision of goods or services:

Provided that, if the recipient of the goods or services is another Ministry, there is a prior agreement to charge the costs incurred to an output of the recipient Ministry.

PART V

PUBLIC MONEY AND THE CONSOLIDATED FUND

[Ch3702s28]28. Consolidated Fund

(1) The Secretary to the Treasury may establish such accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Fund.

(2) Subject to any other written law and the terms of any trust, the Secretary to the Treasury shall in respect of any such account or class of accounts referred to in subsection (1) specify the person by whom and the manner in which such account or class of accounts shall be controlled.

(3) Subject to any other written law and the terms of any trust, the Secretary to the Treasury may direct that any deposit account shall be closed and after all liabilities of the account have been met, the account shall be closed and any balance of moneys standing to the credit of such account shall be transferred to the Consolidated Fund.

[Ch3702s29]29. Development Fund

(1) There shall be paid into the Development Fund all moneys held by the Treasury for the purposes of such Fund immediately prior to the coming into operation of this Act, and all moneys subsequently received or appropriated for the purposes of the Fund, including the proceeds of any loan which may be raised for general development purposes.

(2) Moneys held for the purposes of the Development Fund shall be accounted for in a separate account in the Consolidated Fund.

(3) The estimates of expenditure to be made from the Development Fund shall show the total estimated cost of each project and the amount estimated to be required for expenditure during the current year in respect of such projects.

(4) The amount applied in respect of any project during any year shall be in accordance with the directions of the Secretary to the Treasury but shall not exceed the unexpended balance of the

total estimated cost of the project as shown in the latest estimates approved by the National Assembly.

(5) Where it is expedient in the public interest for sums to be spent on a project for which no total estimated cost has been approved in any Development Estimates laid before the National Assembly, the Minister of Finance may direct that an additional item be created to provide for such project with such particulars, including an estimate of the total cost, as may be appropriate and may authorize the issue of sums to be applied to such purpose out of the total appropriated by the National Assembly:

Provided that in any case where the Minister has so directed a supplementary Development Estimate providing for such project shall be laid before the National Assembly not later than the next meeting of the National Assembly occurring after the expiration of seven days from the date of the direction.

(6) Where it is expedient in the public interest for the total estimated cost shown in the Development Estimates in respect of any project to be varied the Minister may direct that it be varied accordingly.

(7) The powers conferred by subsections (5) and (6) shall not be exercised so as to increase the total estimated cost of the projects provided for in the Development Estimates approved by the National Assembly by an amount exceeding one million Kwacha, nor so as to cause the amount authorized to be spent in the Appropriation (Development Fund) Act to be exceeded.

[Ch3702s30]30. Treasury Funds

(1) The Minister may, on the recommendation of the Secretary to the Treasury, by Order published in the Gazette, establish special funds to be known as Treasury Funds, and may make orders for the regulation and management of such Treasury Funds.

(2) Where a Treasury Fund is established pursuant to subsection (1), the Secretary to the Treasury shall cause to be maintained separate accounts within the Consolidated Deposit Account in respect of the Treasury Fund which shall be regulated and managed in accordance with orders made by the Minister for that purpose.

(3) Section 175 (1), (2), (3) and (4) of the Constitution shall not apply to receipts and expenditure of Treasury Funds.

[Ch3702s31]31. Dealing with public money

(1) Public money is the property of the State.

(2) Public money shall, except as otherwise provided in this Act, be paid into bank accounts designated by the Secretary to the Treasury for that purpose and such accounts shall form part of the Consolidated Fund.

(3) Money paid into any designated bank account is public money, and shall not be removed except as provided by the Constitution or this Act.

(4) Notwithstanding any other written law to the contrary and except as permitted in subsection (5), no bank account shall be opened or operated or continue to be operated for the deposit or withdrawal of public money without the express authority of and on such conditions as the Secretary to the Treasury determines.

(5) No Ministry shall continue to operate after three months from the commencement of this Act, any bank account other than in accordance with subsection (4).

(6) The Secretary to the Treasury may make demand on the manager of a bank operating in Malawi for disclosure of the records of the accounts current or otherwise operated by a Ministry or statutory body and on receiving such demand, the manager shall comply with the demand accordingly.

[Ch3702s32]32. Banking business of the Government

(1) The Secretary to the Treasury may agree with any bank upon terms and conditions for the conduct of the banking business of Government, including arrangements for deposits to be made under the authority of this Act or any other written law and for interest to be payable by the bank on balances held.

(2) The Consolidated Fund shall be kept at the Reserve Bank of Malawi, and the Secretary to the Treasury may transfer money within the Consolidated Fund from the Reserve Bank of Malawi to another or other banks.

(3) The Secretary to the Treasury may make arrangements with any bank for the receipt, custody, payment and transmission of public money within or outside Malawi.

[Ch3702s33]33. Banks to furnish statements

(1) Every bank at which any Government account of any nature is kept shall send to the Ministry of Finance and to the National Audit Office, statements of such accounts as the Secretary to the Treasury or the Auditor General may require.

(2) All such statements shall show such particulars of the accounts concerned as the Secretary to the Treasury or the Auditor General may require.

[Ch3702s34]34. Overseas imprests and other accounts

(1) The Secretary to the Treasury may direct that any public money received outside Malawi be paid into a bank account for the credit of such imprest account or other account as he may determine.

(2) Any bank account referred to in subsection (1) may be operated by any person appointed for that purpose by the Secretary to the Treasury, who may cancel the authority of any person to operate any bank account, and may remove the money in any account, or such amount as he thinks fit, from any bank to any other bank.

(3) No money shall be withdrawn from any bank account referred to in subsection (1) except in the manner provided by this Act.

(4) Subject to the provisions of Part IV, any money in an overseas account may be utilized for expenditure approved under the provisions of the Constitution or this Act or any other written law, and shall be deemed to have been issued by way of imprest under section 37 and the provisions of that section shall, with the necessary modification, apply accordingly.

[Ch3702s35]35. Balances may be invested

(1) The Secretary to the Treasury may invest any balances of the Consolidated Fund, or any part thereof, at call or for such period and on such terms as he thinks fit at any bank and in such other securities as the Minister may declare to be securities consistent with the financial policies of Government.

(2) Interest earned on investments made pursuant to subsection (1) shall be credited to the Consolidated Fund and may be used only in accordance with an Appropriation Act.

(3) The Secretary to the Treasury may sell and convert into money any such securities, and that money shall be paid into the Consolidated Fund to the credit of the fund to which it belongs.

[Ch3702s36]36. Temporary transfers from one fund to the other

(1) Subject to any other provision of this Act, the Secretary to the Treasury may transfer any balances or any part of any balances of any fund or account within the Consolidated Fund to another fund or account within the Consolidated Fund for such periods and on such terms as he thinks fit.

(2) Any money transferred pursuant to subsection (1) shall be deemed to have been borrowed by the fund or account into which the transfer has been made, and shall be paid out and restored to the fund or account from which the transfer was made, together with any interest thereon, before the end of the financial year in which the transfer was made.

(3) Particulars of every such transfer made in any financial year pursuant to subsection (1) shall be reported in the financial statements for that year.

(4) No transfer shall be made from or between trust accounts.

[Ch3702s37]37. Imprests

(1) Money may be issued by way of imprest in the name of the Government from the Consolidated Fund for the purpose of effecting payment of amounts payable by the Government to such persons or to such accounts within or outside Malawi.

(2) The Secretary to the Treasury may, in such cases as he thinks fit, authorize an imprest account to be opened at a bank and such account shall be identified as a Government of Malawi account.

(3) Except in special circumstances approved in writing by the Secretary to the Treasury, all withdrawals from an imprest account shall be made by the imprestee and another designated officer.

(4) Money required to be issued by way of imprest shall as far as practicable be charged against the other Vote or other authority for the service for which the imprest is required, but the Secretary to the Treasury may charge money by way of general imprest against the relative fund or account instead of a Vote or other authority, and in any such case the amount so charged shall be issued accordingly; and expenditure against money so issued to general imprest shall in due course be transferred to the several votes or authorities for the purposes of which the money is expended:

Provided that money issued by way of general imprest shall not at any time exceed ten per cent of the total amount of all sums appropriated by all Appropriation Acts for the current financial year.

[Ch3702s38]38. Remission or refund of revenue

14 of 2006(1) The Minister may, in cases of national disaster or calamity, authorize any public officer to remit any revenue, which may be due, or to refund any sum received, by way of revenue, if he is satisfied that such remission or refund is desirable and in the public interest.

(2) Subsection (1) shall not apply to the remission or refund of non-tax revenue.

(3) Where the Minister has exercised the power conferred by subsection (1) notification thereof shall be published in the Gazette.

[Ch3702s39]39. Refunds and corrections

(1) Within six years of any sum being paid into the Consolidated Fund, the Secretary to the Treasury may refund as statutory expenditure all or so much of such sum as was not properly payable to the Government, whether or not application has been made for a refund.

(2) The Secretary to the Treasury shall record the payment of the amount against the appropriate Vote or other authority or fund or account.

(3) Where any person has become indebted to the Government and it is subsequently discovered that there is an error in the amount of the debt or the identity of the debtor, the Secretary to the Treasury on being satisfied as to the facts may amend the records to reflect the true position.

PART VI

TRUST MONEYS AND UNCLAIMED MONEY

[Ch3702s40]40. Trust money

(1) For the purposes of this Part trust money means—

(a) money that is deposited with the State pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the State or any other person;

(b) money that is paid into Court for possible repayment to the payer or a third party, by virtue of any written law, judicial direction or other authority;

(c) unclaimed money that is due to or belongs to any person and is deposited with the State;

(d) money that is paid to the State in trust for any purpose as approved by the Secretary to the Treasury; and

(e) money that belongs to or is due to any person and is collected by the State under any agreement between the State and that person

(2) Trust money shall be held and accounted for separately from public money.

(3) Trust money shall be used only in accordance with the provisions of this Part.

[Ch3702s41]41. Establishment of a Trust Fund and trust accounts

(1) Secretary to the Treasury may establish a Trust Fund and trust accounts under the Fund to receive trust moneys, and all such moneys shall be paid into trust accounts constituting the Trust Fund established for that purpose.

(2) For each trust account established or to be established within the Trust Fund there shall be prepared by the Controlling Officer or the appropriate officer of the organization responsible for the account an instrument, signed by that person, setting out—

(a) a request for the establishment of the account;

(b) the name of the account;

(c) the name of the Ministry or organization operating the account;

(d) any legal requirement to set up or manage a trust account, citing the name and relevant section of the Act;

(e) the names and designations of not less than two authorized signatories;

(f) the purpose of the account;

(g) the source or sources of funds to be deposited in the account;

(h) the approved categories of expenditure to be paid from the account;

(i) any particular conditions; and

(j) instructions for the disposal of funds on the completion of the purpose or the closure of the account.

(3) The Secretary to the Treasury shall endorse approval or disapproval of the request on the face of the instrument:

Provided that the Secretary to the Treasury shall not disapprove the request where the money has already and unavoidably been received by the department and is trust money as defined by section 40.

(4) Where the Secretary to the Treasury approves a request for a trust account, the instrument shall constitute an agreement for the operation of the relevant account which shall be established forthwith.

[Ch3702s42]42. Operation of trust accounts

(1) There shall be paid to the credit of a trust account, which shall always be in credit, all moneys paid by any person for the purposes of the account and there shall be issued and paid to or on behalf of that person such amounts, in such manner and at such times as may be set forth in any agreement; and the Government shall not be liable to any such person for any money so payable into the Trust Fund except for money actually received under any such agreement.

(2) Moneys may be paid out of a trust account only—

(a) for the purposes of the account or as authorized by law;

(b) if sufficient credit is available in the account; and

(c) in accordance with Treasury Instructions or, if no Treasury Instructions exist, then in accordance with the rules and procedures prescribed for the payment of public moneys.

(3) The Secretary to the Treasury may appoint an agent to manage some or all trust moneys on such terms and conditions as he may determine, subject to the requirements of this section, and to the requirement that the agent is a recognized professional institution of a kind and with experience in the handling of trust moneys.

[Ch3702s43]43. Investment of trust account money

(1) The Secretary to the Treasury or any trust agent appointed under section 42 (3) may invest any trust account money for such periods, and on such terms and conditions as are consistent with sound trust investment practice.

(2) No person shall have any right of action against the Secretary to the Treasury or against the Government in respect of the investment or non-investment of any trust money.

(3) Subject to subsection (4), when any trust account money becomes payable or repayable to the depositor or other person entitled thereto, there shall be added any amount of interest certified by the Secretary to the Treasury to have been earned thereon.

(4) When any trust account money becomes payable or repayable to the depositor or any other person entitled thereto under subsection (3), a reasonable charge may be deducted for the services of the Secretary to the Treasury, which sum may be established in accordance with Treasury Instructions.

(5) The provisions of subsections (2), (3) and (4) shall apply to an agent appointed under section 42 (3) in the same manner as if the agent were the Secretary to the Treasury.

[Ch3702s44]44. Unclaimed money — interpretation

In sections 44 to 53, unless the context otherwise requires—

“holder” includes—

- (a) every bank (including any savings bank) carrying on business in Malawi;
 - (b) every person, partnership, company and corporation carrying on business in Malawi;
- and
- (c) the Secretary to the Treasury, in respect of money to which in this Part, trust funds apply;

“owner” means the person entitled to any unclaimed money, and includes his executors, administrators or assigns, or his or their lawful attorney or agent;

“unclaimed money” means, subject to sections 45 and 49, all principal and interest money, and all unclaimed dividends, bonuses, profits and other sums of money whatsoever owing to any owner which, on the coming into force of this Act or at any time before the coming into force of this Act, have been in the possession of any holder for a period of six years or more after the time when the money became payable, and in respect of which no claim has been made by the owner against the holder.

[Ch3702s45]45. Period after which money becomes unclaimed

The following money deposited in any bank (including any savings bank) shall become unclaimed money within the meaning of this Act at the following times, whether or not it has at any prior time become payable, namely—

- (a) money deposited so as to bear interest for a fixed term, at the expiration of six years from the date when such fixed term expired;
- (b) money deposited so as to bear interest without any limitation of time, at the expiration of twenty-five years from the date when the account was last operated on by the customer; and
- (c) money deposited on current account or otherwise and not bearing interest, at the expiration of six years from the date when the account was last operated on by the customer, in the case of a bank other than a savings bank, and at the expiration of twenty-five years, in the case of a savings bank.

[Ch3702s46]46. Register to be kept

(1) It shall be the duty of every holder, on the first day of July in each year, to enter in a register to be kept by such holder at his principal office in Malawi, in the form provided in the Second Schedule or to the like effect, and with the particulars therein specified in the form provided in the Second Schedule, all unclaimed money in Malawi then held by the holder. Second Schedule

(2) From and after 8th July in each year, each such register shall be open to the inspection of all persons at such office during ordinary business hours on payment of a fee from time to time determined by the Secretary to the Treasury.

(3) On ceasing to carry on business in Malawi, a holder shall deposit his register in the custody of the Secretary to the Treasury and pay all unclaimed money to the credit of the Consolidated Fund:

Provided that any holder may at any time so deposit his register or any part of it, if no entry has been made in it for a period of not less than six years immediately preceding the date of such deposit.

[Ch3702s47]47. Holder to notify Secretary to the Treasury and owner of entry

Not later than 15th July in each year, or such later date as the Secretary to the Treasury approves in writing, every holder shall—

(a) furnish to the Secretary to the Treasury a copy of every entry made on the first working day of that month in the register kept by him under section 46; and

(b) send to every person in respect of whom any such entry was made as the owner of unclaimed money a notice in writing specifying the amount of money that is held as unclaimed money.

[Ch3702s48]48. Payment of unclaimed money to the Consolidated Fund

(1) All unclaimed money that has not been paid by a holder to the owner within three months after the posting to the owner of the notice prescribed by section 47 shall be paid by the holder to the credit of the Consolidated Fund, and the holder shall thereupon be relieved from all further liability in respect of the money so paid.

(2) All money payable to the credit of the Consolidated Fund in accordance with this section shall be recoverable in any court of competent jurisdiction as a debt due to the State.

[Ch3702s49]49. Unclaimed trust money

(1) Any trust money that is unclaimed for a period of three years after having become repayable to the depositor or payable to any other person entitled thereto, and after due inquiry and notice by publication, shall, together with interest (if any) added in accordance with section 43 (3) be deemed to be public money and shall, subject to section 43 (4) be transferred to the Consolidated Fund.

(2) Where any trust money is claimed within six years of being deposited under subsection (1) and the Secretary to the Treasury is satisfied that the trust money is payable to the claimant then that money shall be paid to the claimant together with any interest thereon in accordance with section 43 (3) but subject to section 43 (4).

[Ch3702s50]50. Offences

If any default is made in complying with sections 46, 47 or 48, the holder, and every director, manager, secretary, and other officer of the holder who knowingly and willfully authorizes and permits the default, shall be liable to a fine of K50,000 for every day during which the default continues.

[Ch3702s51]51. Examination of accounts

(1) The Secretary to the Treasury may, at any time of accounts examine any register kept by a holder under section 46 and any accounts of the holder relating to unclaimed money, and may, for that purpose require the production before him or any of his officers of any records relating to such money.

(2) The Secretary to the Treasury or any officer authorized by him shall at all times have full and free access to all records and have the right to make copies.

(3) Every person shall as required by the Secretary to the Treasury furnish in writing any information which may be in his knowledge, or produce any records in his possession or control that relates to money which is or may be unclaimed money.

(4) If any error is found in any such register or accounts or notice sent to the owner, or copy of any such document, the Secretary to the Treasury may require it to be amended.

(5) The Secretary to the Treasury and every officer authorized by him shall maintain and assist in maintaining the secrecy of all matters which come to his knowledge in the course of any inspection under this section, and shall not communicate any such matter to any person, except for the purpose of carrying this Part into effect.

(6) Every person who fails to comply with any of the requirements of this section commits an offence, and is liable to a fine of K50,000.

[Ch3702s52]52. Secretary to the Treasury may make payment to claimant

If any claimant makes any demand on any unclaimed money within six years of its having been paid to the Consolidated Fund under section 48, the Secretary to the Treasury, on being satisfied that the claimant is the owner of the money demanded by him, shall order and direct payment of the money to be made to him and the payment shall be statutory expenditure.

[Ch3702s53]53. Responsibility to second claimant

Where any unclaimed money paid to a claimant is afterwards claimed by another person, the Secretary to the Treasury shall not be responsible for the payment of the amount, but that person may have recourse against the claimant to whom the Secretary to the Treasury has paid the unclaimed money.

PART VII

BORROWING, LOANS AND GUARANTEES

[Ch3702s54]54. Government not to borrow except under an Act

The Government may only borrow in accordance with this Act and under an Act authorizing it to do so.

[Ch3702s55]55. Instrument of loan agreement

Every loan under this Part shall be in the name of the Republic of Malawi, and every document required to be signed evidencing the terms of the loan shall be executed by the Minister or by any other person authorized in writing by the Minister.

[Ch3702s56]56. Minister may borrow when authorized

(1) Subject to this Part, the Minister is empowered to borrow by way of term loan within Malawi or elsewhere, as the National Assembly shall determine by an authorizing Act, not more than such sums of money as that Act authorizes.

(2) Prior to raising a loan the Minister shall first—

- (a) ensure that it is in the public interest to do so;
- (b) ensure that it is fiscally responsible in accordance with section 12;
- (c) ensure it is consistent with Government economic and fiscal policy;
- (d) satisfy himself that the Government has or is likely to have on current projections the financial ability to meet all the obligations under the loan including future loan payments; and
- (e) consult with the Attorney General and obtain in writing from the Attorney General, an opinion approving the legal aspects of the loan agreement.

(3) All money received by the Government under the loan agreement shall be paid into an account within the Consolidated Fund, and the proceeds shall only be expended for the purposes for which it was borrowed.

(4) All principal, interest and other money payable under the loan agreement shall be a charge on the public revenues of Malawi and on the Consolidated Fund or such other fund or account as the Minister determines, and shall be statutory expenditure payable at the time or times provided in the loan agreement.

[Ch3702s57]57. Provisions for general borrowing

(1) When exercising his power to borrow under section 56 the Minister may, with the approval of Cabinet and after consultation with the Secretary to the Treasury, raise loans in currency other than that of Malawi.

(2) When an Act authorizing the borrowing of money other than from a foreign government or an international agency becomes law and the Minister decides to raise a loan accordingly, subject to any regulation that provides for the same, the provisions (where applicable) of Part II of the Third Schedule shall apply.

[Ch3702s58]58. Subsidiary loan agreement

The Minister may on-lend loan to another body, including a statutory body, under a written subsidiary loan agreement, such amounts of money on such terms and conditions as are specified in the subsidiary loan agreement.

[Ch3702s59]59. Borrowing on overdraft

(1) Subject to the provisions of this section, the Minister may, from time to time, borrow money from the Reserve Bank of Malawi by way of overdraft to meet expenditure that has been appropriated, and in anticipation of revenue payable into the Consolidated Fund:

Provided that on receipt of the anticipated revenue the overdraft shall be reduced by the full amount of the revenue received.

(2) The amount owing on overdraft at any time during the financial year shall not exceed the aggregate total amount permitted to be advanced to the Government by the Reserve Bank of Malawi in accordance with section 40 of the Reserve Bank of Malawi Act. Cap. 44:02

(3) All amounts borrowed under this section shall be repaid, together with any interest thereon, not later than the end of the current financial year.

[Ch3702s60]60. Treasury Bills

(1) The Secretary to the Treasury may, with the prior approval of the Minister, borrow for and on behalf of the Government by the issue of Treasury Bills payable at the Reserve Bank of Malawi, sums not exceeding the sum prescribed in paragraph 45 of the Third Schedule or such further sums as may from time to time be directed by the Minister in accordance with a resolution of the National Assembly. Third Schedule

(2) The principal moneys represented by the Treasury Bills issued under this section shall form part of the public debt.

(3) Subject to any regulation providing for the same, the rules and procedures for the issuing and management of Treasury Bills shall be as prescribed in Part V of the Third Schedule. Third Schedule

[Ch3702s61]61. Borrowing by stocks, bonds or promissory notes

(1) The Minister may, from time to time, raise money in the currency of Malawi by the issue of stocks, bonds or promissory notes not exceeding the aggregate amount as may be authorized by an Act of Parliament.

(2) The principal moneys and interest represented by stocks, bonds and promissory notes issued under this section shall form part of the public debt.

(3) All expenditure in connexion with the raising of such loans may, if the Minister so directs, be paid out of the principal moneys raised.

(4) Subject to any regulation providing for the same, the terms and conditions on which any stock, bonds or promissory notes shall be issued are set out in the Third Schedule. Third Schedule

(5) The Reserve Bank of Malawi shall be appointed Registrar of all registered stocks or bonds issued under this section.

[Ch3702s62]62. Liability of the State

The Government shall not be liable to contribute towards the payment of any debt or liability of the State unless the State is liable to contribute under any other written law, or is, liable to contribute under any guarantee or indemnity given under section 63, or is liable to pay to any creditor.

[Ch3702s63]63. Power to give guarantees and indemnities

(1) Subject to subsection (2), the Minister, on behalf of the State, may, if it appears to the Minister to be in the public interest and necessary to do so, give in writing a guarantee or indemnity upon such terms and conditions as the Minister thinks fit, in respect of the performance of any person, company or body corporate, organization or statutory body, but may only do so—

- (a) with the prior approval of the Cabinet; and
- (b) where such guarantee or indemnity is consistent with section 12.

(2) The Minister shall report the giving of the guarantee or indemnity within seven days to the National Assembly if the Assembly is then in session, and if not, at the commencement of the next ensuing session, and shall give reasons as to why it was in the public interest and necessary to give the guarantee or indemnity, and provide an assessment of the risks associated with the guarantee or indemnity.

(3) Any money paid by the State under a guarantee or indemnity given under this section will constitute a debt due to the State from the person, company or body corporate, organization or statutory body in respect of whom the guarantee or indemnity was given, and may be recoverable in any court.

(4) Where a guarantee is given to a company or body corporate the Minister shall, in addition to the matters he is required to consider under subsection (1), satisfy himself that the guarantee will facilitate such company or body corporate in the initiation or advancement of any enterprise conducive to national economic development or growth in Malawi.

(5) No guarantee involving a financial liability shall be binding upon the State or the Government unless entered into in accordance with this section.

[Ch3702s64]64. Taking and releasing of securities by the State

(1) Wherever security is taken in respect of an advance of public money, unless the Act authorizing the advance provides otherwise, the security shall be given to and taken in the name of the Republic of Malawi.

(2) Where any security is for the time being vested in the State, whether it has become so vested before or after the commencement of this Act, the Minister may, on behalf of the Government, exercise any powers, functions and rights (including any power of disposal), and undertake and perform any liabilities in respect of or in connexion with the security which could be exercised, undertaken, or performed by the State.

(3) Any document purporting to be executed by the Minister under this section shall be deemed to have been duly executed on behalf of, and shall bind, the State.

[Ch3702s65]65. Expenditure for protection of public securities

(1) Subject to Part IV and to the provisions of this section, money may be expended out of any fund or account in the Consolidated Fund for the protection, preservation and improvement of any real or personal property on the security of which any money in that fund or account has been lawfully invested, whether before or after the commencement of this Act; and the authority conferred by this section may be exercised notwithstanding the prior exercise in respect of the mortgaged property of any power of sale or entry into possession.

(2) No amount shall be expended under this section in respect of any property without the specific approval of the Minister acting on the recommendation of the responsible Minister, if that amount, together with all other amounts advanced or expended in respect of that property and still outstanding, would exceed the amount of the valuation of the property.

(3) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by or under this section.

[Ch3702s66]66. Power to lend money

Subject to section 23, where it is in the public interest to do so, the Minister may on behalf of the State, on terms and conditions approved by the National Assembly, lend money to any organization whether within or outside of Malawi.

PART VIII

STATUTORY BODIES

[Ch3702s67]67. Application of this Part

(1) This Part applies to all statutory bodies.

(2) A body ceasing to comply with the definition of statutory body in section 2 shall cease to be a statutory body.

(3) In this Part, a “subsidiary” means a subsidiary of a statutory body, which shall itself be a statutory body for the purposes of this Part.

[Ch3702s68]68. Performance, management plan and budget

(1) The head of every statutory body, however called, shall within three months before the end of its financial year submit to the Minister and to the Secretary to the Treasury a performance and management plan, including projected financial statements for the following financial year.

(2) Where a statutory body seeks Government assistance by way of appropriation, grant, subsidy or otherwise, it shall not later than three months before the end of the Government financial year submit to the Secretary to the Treasury its performance and management plan together with estimates of its revenue, expenditure and cash flows for the following financial year, in such form as the Secretary to the Treasury approves.

[Ch3702s69]69. Financial activities

(1) The head of the statutory body shall advise the Minister and the responsible Minister by notice in writing immediately upon a significant event occurring or becoming known which adversely affects the financial position of the statutory body.

(2) The notice shall specify the nature of the event, quantify when practicable the likely effect of the event on the statutory body and what steps have been taken, or are being taken or proposed, to rectify any adverse effects.

(3) The head of the statutory body shall at the same time as delivering the notice to the Minister and responsible Minister under subsection (1), deliver a copy to the Secretary to the Treasury.

[Ch3702s70]70. Bank accounts

(1) A statutory body shall at all times maintain at least one bank account.

(2) Subject to sections 75 and 81, a statutory body shall pay all its moneys into an account referred to in subsection (1).

[Ch3702s71]71. Moneys payable to statutory bodies

Where money is appropriated by the National Assembly for the purposes of a statutory body, such money shall be payable at such times and in such amounts as the Secretary to the Treasury determines.

[Ch3702s72]72. Private loans

(1) A statutory body may, with the prior written approval of the Minister, borrow money for its purposes, on such terms as are agreed between the statutory body and the lender.

(2) The statutory body shall repay a loan made under subsection (1) in accordance with the terms on which it was made.

(3) Where a statutory body raises a loan under subsection (1) there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

[Ch3702s73]73. Borrowing on overdraft by statutory body

A statutory body may, with the prior written approval of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister approves, and there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

[Ch3702s74]74. Guarantees

(1) A statutory body shall not give a guarantee without the prior written approval of the Minister.

(2) Before giving approval of a statutory body giving a guarantee under subsection (1), the Minister shall first ascertain from the Secretary to the Treasury the financial implications on

Government of the statutory body giving the guarantee, and ensure that the giving of the guarantee is in the public interest.

(3) There shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

[Ch3702s75]75. Investment

(1) Moneys of a statutory body that are not immediately required may be invested—

- (a) in any securities of, or guaranteed by, the Government;
- (b) in any manner in which a trustee may, under any law, invest trust moneys;
- (c) on deposit with a bank; or
- (d) in any other manner approved by the Minister.

(2) The Secretary to the Treasury may issue investment guidelines and reporting requirements as a Treasury Instruction.

[Ch3702s76]76. Application of resources

The resources of a statutory body may be applied only for the purposes specified in its empowering Act, this Act or otherwise lawfully conferred on the body.

[Ch3702s77]77. Contracts for works, supplies and services

A statutory body may enter into contracts for the works, acquisition, disposal or management of goods, services and construction works in accordance with the provisions of the Public Procurement Act. Cap. 37: 03

[Ch3702s78]78. Accounts and records

(1) A statutory body or a subsidiary shall keep proper accounts and records of its transactions and financial position, and shall do all things necessary to ensure that all payments are correctly made and properly authorized and shall maintain adequate internal control over its assets, or assets in its custody, and over the incurring of liabilities by it.

(2) A statutory body or a subsidiary shall keep the accounts and records referred to in subsection (1) in such a way as to facilitate the preparation of financial statements required by section 79 and enable them to be conveniently and properly audited.

(3) The accounts and records required by subsection (1) shall be kept in accordance with generally accepted accounting practice.

(4) A statutory body or a subsidiary shall retain all the accounts and records referred to in subsection (1) for at least seven years after the completion of the transactions to which they relate.

(5) Every statutory body shall within two years of the coming into force of this Act adopt an accounting period ending 30th June.

[Ch3702s79]79. Reports and financial statements

(1) Notwithstanding the provisions of any other written law, a statutory body shall prepare and furnish to the Minister and the responsible Minister, within four months of the end of the financial year of the statutory body, a performance and management report of its operations for that financial year, together with its financial statements.

(2) Before furnishing financial statements to the Minister and the responsible Minister, a statutory body shall submit the financial statements to the Auditor General who may report on the extent to which they present fairly the financial operations and financial position of the statutory body and comply with its performance and management plan.

(3) On receipt, the Minister shall cause the report and financial statements, together with any report of the Auditor General, to be laid before the National Assembly forthwith if it is in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

(4) When the report or financial statement of a statutory body is reproduced for publication or for other purposes, the report of the Auditor General shall be included in the reproduction.

[Ch3702s80]80. Powers of inspection of the Secretary to the Treasury

(1) Where the Secretary to the Treasury considers it appropriate or has reason to believe that a statutory body has or may have failed to implement the performance and management plan as submitted under section 68, the Secretary to the Treasury may carry out a performance review or initiate an investigation into, or inspection of, the records of that statutory body.

(2) Where an investigation into, or inspection of, the records of a statutory body is being carried out, the Secretary to the Treasury has power to obtain full and free access at all times to all accounts and records of such statutory body and any subsidiary that relate, directly or indirectly to—

(a) the collection, receipt, expenditure and issue of moneys of the statutory body and any subsidiary;

(b) the receipt, custody, disposal, issue or use of public resources or other property of, or property in the custody of the statutory body and any subsidiary; and

(c) the incurring of any liabilities by the statutory body or any subsidiary.

(3) The Secretary to the Treasury may, by written instrument, delegate to a person specified in the instrument, all or any of his powers under this section, other than this power of delegation, in respect of all statutory bodies or of specified statutory bodies or of a specified statutory body.

(4) Except in the performance of the duties, functions and powers under this Part, the Secretary to the Treasury or any delegate shall not disclose to any person any information that shall come to his attention, and all such information shall remain confidential.

[Ch3702s81]81. Payment of surplus funds to Consolidated Fund

(1) Subject to the principles of responsible fiscal management in section 12, the Minister may direct a statutory body to pay into the Consolidated Fund any money determined to be surplus to the purposes of such statutory body.

(2) Any money paid into the Consolidated Fund in accordance with subsection (1) shall be first applied towards the discharge of any obligation of the statutory body concerned to the Government.

[Ch3702s82]82. Investments in corporations other than statutory bodies

Details of investments in corporations in which the Government owns a shareholding but are not otherwise deemed to be a statutory body shall be disclosed in the financial statements in accordance with section 83.

PART IX

FINANCIAL REPORTING

[Ch3702s83]83. Financial statements

(1) The Secretary to the Treasury shall, as soon as practicable, but not later than 31 October of each year, prepare in accordance with section 13, and send to the Auditor General the financial statements for that year in the form specified in the Fourth Schedule, including statements of any such funds and accounts as are by this Act or any other written law required to be included in the financial statements. Fourth Schedule

(2) The Auditor General shall examine the financial statements and provide a written report to be attached to the financial statements for presentation to the National Assembly, and the report shall state whether, in the opinion of the Auditor General the financial statements—

- (a) have been prepared in accordance with this Act and any other written law; and
- (b) present fairly the matters required by this Act and any other written law.

(3) If the Auditor General is not able to report in terms required by subsection (2), he shall state the reasons, and if the Auditor General is of the opinion that he did not obtain all necessary information and explanations, he shall give particulars of the shortcomings.

(4) The financial statements together with the report of the Auditor General shall be returned to the Secretary to the Treasury not later than six months from the end of the financial year to which they relate, and the Minister shall lay them before the National Assembly forthwith if the Assembly is then in session, and if the National Assembly is not in session at the commencement of the next ensuing session.

(5) The financial statements, in such summarized form as may be authorized by the Minister, shall be published in the Gazette and in a newspaper with a wide circulation in Malawi.

[Ch3702s84]84. Quarterly summaries and monthly reporting

(1) The Secretary to the Treasury shall within one month of the end of each quarter, except the last quarter of every financial year, prepare and send to the Auditor General a summary of the receipts and payments of the Consolidated Fund from the beginning of the financial year to the end of that quarter.

(2) Each summary referred to in subsection (1) after being certified by the Auditor General shall be returned not later than two months after the end of the quarter to which it relates to the Secretary to the Treasury, who shall forthwith publish the summary certified as aforesaid in the Gazette, and in a newspaper with a wide circulation in Malawi.

(3) Every Controlling Officer shall supply to the Secretary to the Treasury, within fourteen days of the end of the month, a monthly summary of financial transactions in the form specified by the Secretary to the Treasury.

[Ch3702s85]85. Details to be included in quarterly and monthly statements

(1) All quarterly and monthly summaries required under section 84 shall include all receipts and payments brought to charge by the Treasury during the period to which the summaries relate.

(2) Imprests unaccounted for at the end of any quarter shall not be included in the payments, but shall be shown as balances in hand.

[Ch3702s86]86. Annual reports

(1) Every Controlling Officer shall, within four months of the end of the financial year submit to the responsible Minister and to the Minister an annual report in a form approved by the Minister.

(2) Annual reports required under this section to be submitted by a Ministry shall include information relevant to that Ministry taken from the financial statements required by section 83, and the Secretary to the Treasury shall certify the information contained in the statement as being a true extract from the financial statements.

(3) On receiving the report under subsection (1) the Minister shall forward a copy to the President and at the same time table a copy in the National Assembly if it is in session, and if it is not in session, at the commencement of the next ensuing session.

PART X

OFFENCES AND DISCIPLINE

[Ch3702s87]87. Disciplining of Controlling Officers and chief executives in certain circumstances

(1) For the purposes of this section, “appointing authority” means the authority by whom, under the Constitution or any other written law, a Controlling Officer or chief executive is appointed.

(2) Where a Controlling Officer or chief executive authorizes expenditure or commitment of funds in excess of the approved limit or commits or expends funds where there is no appropriation permitting such expenditure by the Ministry or statutory body, the appointing authority may suspend without pay the Controlling Officer or the chief executive, as the case may be, with effect

on and from the date on which the Secretary to the Treasury certifies the unauthorized expenditure or commitment.

(3) A Controlling Officer or chief executive suspended under subsection (2) may within fourteen days of the date of such suspension make written submissions to the appointing authority as to the circumstances giving rise to the unauthorized expenditure or commitment.

(4) After the expiry of fourteen days from the date of the suspension the appointing authority, may after considering any submission made under subsection (3), remove the suspension or terminate the appointment of the Controlling Officer or chief executive.

(5) A person subject to disciplinary action under this section may also be liable to sanction under section 88.

[Ch3702s88]88. Offences

(1) A person commits an offence who—

(a) in connexion with an inspection or inquiry under this Act refuses, or without reasonable excuse fails, to attend at a time and place required of him by the Secretary to the Treasury;

(b) refuses to produce any records in his possession when required to do so under this Act;

(c) refuses or neglects to pay any public money or trust money into the account or fund into which it is payable;

(d) refuses to provide reports under this Act;

(e) intentionally or recklessly over-commits or overspends funds under his control or expends funds where there is no appropriation permitting such expenditure;

(f) makes any statement or declaration or gives any certificate required to be made or given by or under this Act, knowing it to be false;

(g) does any act or omission for the purpose of procuring for that person or for any other person or organization—

(i) the improper payment of public money or trust money; or

(ii) the improper use of public resources; or

(h) willfully fails to meet any obligation imposed on him under this Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of K100,000 and to imprisonment for five years or where the person is a statutory body to a fine of K500,000.

(3) Where any statutory body or body corporate commits an offence against this Act, every director, chief executive, or other officer of the statutory body or body corporate and every person

purporting to act in any such capacity shall also be guilty of an offence unless that person satisfies the Court that either—

(a) the offence was committed without the knowledge or consent of that person or not through the gross negligence of that person; or

(b) that person took all reasonable steps to prevent the commission of the offence.

(4) The Director of Public Prosecutions shall convey details of offences and penalties in each case under this section to the Public Accounts Committee of the National Assembly.

[Ch3702s89]89. Obligation to report

(1) A person who has knowledge of any circumstances which may cause him to consider that an offence under section 88 may have occurred shall report those circumstances to the Secretary to the Treasury.

(2) A person who, without malice, alleges a breach of this Act to the Secretary to the Treasury shall not be penalized in any way whether the allegation is proved or not.

PART XI

MISCELLANEOUS PROVISIONS

[Ch3702s90]90. Write-off of losses

(1) A Controlling Officer shall report promptly, in the prescribed form, to the Secretary to the Treasury, any—

(a) losses or deficiencies of public moneys;

(b) irrecoverable amounts of revenue;

(c) irrecoverable debts and overpayments;

(d) the value of lost, deficient, condemned, unserviceable or obsolete public property;

(e) investments to be written off.

(2) The Secretary to the Treasury may, following any investigation that he thinks necessary in a particular case—

(a) approve the write-off of an amount not exceeding K10,000;

(b) refer to the Minister any case in which the amount exceeds K10,000; and

(c) take such action under Part X as he considers appropriate.

(3) In any case referred by the Secretary to the Treasury to the Minister pursuant to subsection (2) (b), the Minister may—

(a) approve the write-off of an amount, not exceeding K50,000; or

(b) in a case in which the amount exceeds K50,000, refer the matter to the Cabinet who shall approve or decline the proposed write-off; or

(c) take such action under Part X as he considers appropriate.

(4) All amounts approved for write-off by the Secretary to the Treasury, the Minister or Cabinet respectively, shall be reported in the financial statements.

(5) The Minister may, by notice published in the Gazette, amend the figures prescribed in this section.

[Ch3702s91]91. Regulations

The Minister may make such regulations as are deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration of this Act, and in general for the better control and management of public money and public resources and, without limiting the generality of this section, such regulations may include the following matters—

- (a) the registration of stocks and bonds;
- (b) the issue, transfer, conversion replacement and redemption of stocks or bonds;
- (c) prescribing the method of redemption of stock by drawing;
- (d) prescribing the method by which any payment in respect of any stock or bond may be made;
- (e) providing for the payment of interest, repayment of principal and transfer of stock or bonds in the case of persons who are or may be under any legal liability;
- (f) providing for the replacement of certificates which have been lost or destroyed;
- (g) providing for registers of stockholders or bondholders upon whose stocks or bonds the interest has been unclaimed;
- (h) providing the fees and charges for any services rendered pursuant to this Act; and
- (i) providing for the periodical closing of any register.

[Ch3702s92]92. Treasury Instructions

(1) The Secretary to the Treasury may issue Treasury Instructions setting out detailed procedures and requirements not inconsistent with this Act as to any matter prescribed by this Act to be so provided for, or that is necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of public moneys and public resources.

(2) The Treasury Instructions referred to in subsection (1) may be issued and distributed in printed, electronic or other form.

(3) Treasury Instructions shall—

- (a) be headed "Treasury Instruction" with an identifying number, and contain an explanatory headnote;
- (b) state a commencement date;
- (c) make reference to the enabling section of the authorizing Act and to any other statutory provision or regulation to which the content relates;
- (d) state whether the Treasury Instruction is new, adds to or replaces a previous Instruction and refer to the previous Instruction being added to or replaced; and
- (e) be signed by the Secretary to the Treasury.

[Ch3702s93]93. Transitional provisions

(1) No person in the preparation of financial statements, budgets or forecasts, unless it is shown that that person acted intentionally, shall be convicted of any offence under section 88 for any act or failure to act by that person in respect of the reporting provisions in Parts III and IX during the period of eighteen months from the coming into force of this Act.

(2) Where, during the period of eighteen months from the coming into force of this Act, any report, statement or update required by this Act is not provided by the due date in accordance with this Act, the Minister shall report the circumstances to the National Assembly forthwith, and if the Assembly is not in session, at the commencement of the next ensuing session.

(3) Every act, matter or thing done in the name of the Minister, the Secretary to the Treasury, the Treasury or the Ministry of Finance before the commencement of this Act will, if validly done continue to have effect as if done in the name of the Minister, the Secretary to the Treasury, the Treasury or Ministry of Finance after the commencement of this Act, and every act, matter or thing in progress before the commencement of this Act and which is affected by this Act may continue in progress after the commencement of, but subject to, this Act.

[Ch3702s94]94. This Act to prevail

Where any provision of this Act conflicts with a provision of any other written law, other than the Constitution, the provisions of this Act shall prevail.

[Ch3702s95]95. Repeals and savings

(1) Parts I, II, III, IV, V, VA, VII, and VIII, and sections 33, 34 and 45 of the Finance and Audit Act are repealed. Cap 37:01

(2) All subordinate legislation made under the Finance and Audit Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

FIRST SCHEDULE ss. 18 and 19

CONTENTS TO BE INCLUDED IN REPORTS AND STATEMENTS UNDER PART III

PART I

ECONOMIC AND FISCAL DATA

1. Economic reports required under Part III of this Act shall include forecasts of projected movements in Malawi, of—

- (a) gross domestic product, including the major components of gross domestic product;
- (b) consumer prices;
- (c) employment levels;
- (d) balance of payments; and
- (e) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.

2. Fiscal forecasts required under Part III of this Act shall include—

- (a) forecast information with respect to the statements required under section 19;
- (b) forecast information with respect to the current year fiscal update and comparative budgeted and actual (where available) or provisional (where not) figures for the immediately preceding financial year; and
- (c) details of fiscal risks and, where they cannot be quantified, a statement of possible impacts.

PART II

REPORTING REQUIREMENTS

1. Any forecast or statement required under Part III of this Act shall include details of—

- (a) the total trading revenues;
- (b) all other revenue;
- (c) the total grants or subsidies;
- (d) the total operating expenditures;
- (e) all other expenditures;
- (f) the difference between all expenditure and all revenue;
- (g) the level of total public debt; and
- (h) the level of asset values, including a statement of Government policy for the maintenance of asset values.

REGISTER OF UNCLAIMED MONEY

Register of Unclaimed Money held by

(insert name of holder)

Name, Occupation and last known Address of Owner of Unclaimed Money	Date of Last Claim	Total Amount due to Owner	Description
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THIRD SCHEDULE ss. 60 and 61

PROVISIONS FOR GENERAL BORROWING

PART I

PRELIMINARY

1. Interpretation

In this Schedule, unless the context otherwise requires—

“book-entry securities” means securities which are issued, held or transferred through the book-entry system;

“book-entry system” means a system whereby Government securities are issued; held or transferred by crediting or debiting, as the case may be, the securities accounts maintained by the Registrar without requiring the issuance, holding, or transfer of paper, and if transfer certificates are issued immobilizing the certificates in a central depository;

“holder” means any person registered as the holder of any stock;

“prescribed” means prescribed by the Minister;

“Registrar” means the Registrar in whose register any stock issued under the provisions of this Schedule is for the time being registered;

“securities” means Treasury Bills, Treasury Notes, Treasury Bonds, local registered stock, debentures, promissory notes, and other long-term debt instruments issued by, or on behalf of, the Treasury, from time to time.

PART II

TERMS AND CONDITIONS OF LOANS

2. Cabinet to determine certain matters

When an Act authorizes the borrowing of money and the Minister decides to raise a loan accordingly, the Cabinet shall determine the following matters—

- (a) the price of the securities (if any);
- (b) the date or dates on which the money is to be repaid;
- (c) whether the Government will reserve the right to repay the loan before maturity, and if so, on what notice;
- (d) the rate or rates of interest to be paid on the amount borrowed;
- (e) the date or dates from which interest is to be computed and the half-yearly dates on which interest is to be paid;
- (f) the amount of the loan within the limit set by the authorizing Act;
- (g) whether or not the Minister may accept subscriptions in excess of the amount of the loan within the limit set by the authorizing Act: and
- (h) any other special conditions which shall apply to money borrowed in terms of the authorizing Act.

3. Receipt and expenditure of loan money

All money borrowed under the authority of an authorizing Act shall be received into the Consolidated Fund or into such other fund or account as the authorizing Act empowers or directs

and may be expended from that fund or account only in accordance with an Appropriation Act or as statutory expenditure for which provision is made in this Schedule or the authorizing Act.

4. Issue of securities

Securities may be issued and registered for any amount borrowed under the provisions of this Schedule, and where securities are issued, shall be known as Malawi Government securities.

5. Securities not to be free of income tax

Unless expressly stated to the contrary, no securities shall be issued with the condition that the interest derived therefrom shall be exempt from income tax.

6. Loans to be charged on public revenue

All principal and interest payable under any securities are declared to be a charge upon the public revenues of Malawi and to be payable as statutory expenditure out of the Consolidated Fund or such other fund or account as the Minister thinks fit.

7. Security converted for lenders

All money borrowed and all securities issued under this Schedule and an authorizing Act shall, so far as concerns the lender or holder, be deemed to have been lawfully borrowed, issued or converted within the powers conferred by this Schedule and that authorizing Act, and no such lender or holder shall be concerned to inquire whether or to what extent authority has been given or occasion has arisen for the exercise of any such powers.

8. Prior securities not affected

Neither the authority to borrow any money given by any authorizing Act nor the exercise of any such authority under this Schedule and that Act shall alter or affect or vary any security theretofore issued.

9. Saving of existing claims

Nothing in this Schedule and nothing done under this Schedule, except by agreement, shall take away, abridge, or prejudicially affect any right or interest, by way of priority or otherwise, of any person in or against the Consolidated Fund, or the public revenues of Malawi, or any of them, or any remedy which any person would have had or might have exercised in respect of any such right or interest if this Act had not been passed.

10. Authorized investment for trust funds

Securities issued under this Act are declared to be an authorized investment for trust funds and the relevant provisions of any written law relating to trustee investments shall apply in respect of such securities accordingly.

11. Payment of loan before due date

The Minister may repay the whole or part of any loan before the due date, on such terms as he shall think fit.

12. Agreement with Registrar as to securities

(1) The Minister, acting on the advice of the Cabinet, may from time to time, enter into an agreement with any Registrar in or outside Malawi providing for all or any of the following matters—

(a) for registering any securities in a register kept by the Registrar at his principal place of business, and for issuing certificates of title relating to any such securities;

(b) for managing the creation, registration, and issue of securities;

(c) for receiving any money borrowed under this Schedule;

(d) for paying such money into the Consolidated Fund, or into such other fund or account as is duly appointed for that purpose;

(e) for issuing script for deposits on loans;

(f) for managing transfer of securities;

(g) for paying interest on securities;

(h) for reissuing, or re-registering securities, and reissuing certificates of title;

(i) for redeeming securities;

(j) for generally conducting all business connected with securities; and

(k) for the protection and remuneration of the Registrar under and in respect of any such agreement.

(2) Every agreement made with any Registrar under this section shall be as valid and effectual as if the terms thereof had been set forth and enacted in this Act, and all remuneration payable under any such agreement to any Registrar shall be statutory expenditure and be charged upon and be paid out of the Consolidated Fund or such other fund or account as the Minister thinks fit,

13. Register of securities

Each Registrar shall keep a register of securities in which shall be entered with respect of every holder of securities registered therein, the following particulars—

(a) the full name and address of the holder;

(b) the amount of securities held by him;

(c) the rate of interest payable in respect of those securities;

(d) the date or dates in each year on which the interest is payable;

- (e) the due date for repayment of the principal; and
- (f) such other special conditions as apply to those securities.

14. Application for securities

Any person who desires to lend to the Minister any money on the security of securities under this Schedule may apply to the appropriate Registrar in the prescribed form, and that Registrar may, on payment of the price of the securities and subject to the provisions of this Schedule, register the name of that person in the register kept by him as the holder of the securities accordingly.

15. No notice of trust to be received or registered

No notice of any trust in respect of any securities or certificate of title shall be entered in any register or be receivable by any Registrar; and no liability shall attach to the Government or to any Registrar, by reason of any express, implied or constructive notice of any trust affecting any such securities or certificate of title.

16. Registered holder of securities

Every person whose name is for the time being on any register as the holder of any securities shall be deemed to be the holder of that securities for that amount standing to his credit in the register, with the right, subject to the provisions of this Schedule, to receive the interest thereon.

17. Certificates of title to securities

(1) Each Registrar shall, on application in writing by the registered holder of any securities registered in his register, issue to him a certificate of title in the prescribed form certifying that the applicant is the registered holder of the securities referred to in it, being the whole or any part of the amount of securities of which he is the registered holder.

(2) Any such certificate of title shall be conclusive evidence of the ownership of the securities to which it relates by the person named in it as the holder,

(3) Where the Registrar is satisfied that any such certificate of title has been lost or destroyed, the Registrar may, on such terms and subject to such conditions as may be prescribed, issue a substitute certificate of title with the word "Substituted" stamped or written on it, and shall record the issue of it in the register accordingly.

(4) Every substituted certificate of title shall have the same effect to all intents and purposes as the original certificate of title for which it is substituted.

(5) The Registrar shall enter in the register full particulars of the issue of certificates of title under this section.

(6) The transfer, whether by delivery or otherwise, of any such certificate of title shall not operate as a transfer of the legal or equitable interest of the holder in the securities to which it relates, and no dealing with any securities to which any such certificate of title relates shall be

recorded by the Registrar unless and until the certificate of title has been produced to and cancelled by the Registrar.

18. Infants may be registered as holders of securities

Any infant of the age of ten years or upwards may be registered as the holder of any securities under this Schedule, and apply for the issue of certificates of title in relation to securities, or may execute a memorandum of transfer of any securities, as effectually in all respects as if he were of the age of twenty-one years.

19. Application of book-entry system

(1) Where Government securities are issued, held or transferred in book-entry form—

(a) the Registrar may issue to the security-holder, once a month, a statement which shall indicate the type of security, its nominal value, the date of its acquisition or disposal, its maturity date and a running nominal balance:

Provided that any additional statement requested by any security-holder during the month shall be provided at such fee which reflects the cost of producing such a statement as the Registrar may, from time to time, require.

(b) the Registrar may issue a paper certificate to the security-holder and such certificate shall be registered in the name of the Registrar or his appointed agent as nominee and deposited in a central depository for depositing such certificates and established for that purpose; and

(c) the Registrar shall not be liable for any claim or demand which may be brought against the Registrar by reason or in consequence of book-entry securities information acquired from the security-holder and used to unlawfully acquire or transfer book-entry securities.

20. Transfer of securities

(1) The registered holder of any securities under this Schedule may, by memorandum of transfer, transfer to any other person the whole of the securities or any part thereof, being an amount of K10,000 or a multiple of K1,000, or such other amount as the Registrar may in any particular case agree to.

(2) On application to the Registrar, either by the registered holder or by the transferee, and on production to the Registrar of a duly executed memorandum of transfer of securities and any outstanding certificate of title to those securities, the Registrar shall enter in the register the name of the transferee as the registered holder of the securities to which the memorandum of transfer relates.

(3) Every such entry shall operate as a transfer of the securities to which it relates and shall vest those securities in the transferee.

(4) No transfer of securities shall be made under this section while any certificate of title is outstanding in respect of the securities, unless the amount of the securities proposed to be

transferred is not more than the amount standing on the register and unaffected by the outstanding certificate.

21. Acquisition of securities by operation of law

When the right to any securities under this Schedule is acquired by any person on the death or bankruptcy of the registered holder, or under a writ of execution, or in any manner other than by way of a transfer under paragraph 20 of this Schedule, the Registrar, on application by or on behalf of the person entitled, and on being satisfied that he is legally entitled to be registered as the holder of the securities, shall enter his name in the register as the holder of the securities accordingly.

22. Vesting of securities of deceased holder without requiring probate or letters of administration

(1) Where the registered holder of any securities under this Schedule has died, and the total nominal amount of the securities does not exceed K10,000, the Registrar shall have a discretion, without requiring the production of probate or letters of administration, to register as the holder of the securities any person who proves to the satisfaction of the Registrar—

(a) that he is entitled to the securities under the will or on the intestacy of the deceased security-holder; or

(b) that he is entitled to obtain probate of the will of the deceased security-holder, or letters of administration of his estate; and

(c) that in neither case has any grant been made of any such probate or letters of administration.

(2) Notice of any exercise of the powers conferred by this section shall within fourteen days thereafter be given by the Registrar to the Administrator General.

23. Payment of interest

(1) The Registrar shall, from time to time, according to the terms of the loan issue cheques for the payment of interest on any securities registered in his register.

(2) Every such cheque shall be drawn in favour of the registered holder of the securities to which it relates or, in the case of securities held jointly or otherwise by two or more persons, may be in the name of the security-holder first named in the register.

(3) Nothing in this section shall preclude the Registrar from paying interest otherwise than by cheque if he thinks fit, or from accepting a direction from a security-holder or security-holders, as the case may be, for payment to be made to an agent,

(4) All payments authorized by this section shall be statutory expenditure.

24. Closing of register

(1) The Registrar shall, for a period of fourteen days before each payment of interest on any securities registered in his register, close the register of that securities as regards transfers.

(2) The persons who on the day of such closing are registered as security-holders shall, as between them and their transferees, be entitled to the interest then next payable on the security.

25. Power of attorney

(1) Any person may, by power of attorney in the prescribed form, appoint any other person to be his attorney for any purpose in relation to securities under this Schedule.

(2) Every power of attorney under this section shall be deposited in the office of the Registrar.

(3) Every such power of attorney that is deposited with office of the Registrar shall be valid and effectual for all the purposes mentioned in it until notice in writing of its revocation, or of the death, disability, bankruptcy, winding up or dissolution of the principal has been received in the office of the Registrar.

26. Redemption, conversion or renewal of securities

(1) The Cabinet may authorize the Minister to issue, in Malawi or elsewhere, on such terms as he thinks fit, new securities for such amount as may be necessary for the purpose of redeeming or converting any securities; and the Minister may, from time to time, by agreement with the holders, renew any securities by extending the currency of it for such period as he thinks fit.

(2) The Cabinet may authorize the Minister to pay to the holder of any securities being converted such amount by way of premium or bonus as may be necessary to effect the conversion, and every such premium or bonus shall be deemed to be part of the costs, charges, and expenses of the conversion.

(3) In every case where money is borrowed under this section it shall not be applied other than in redeeming or converting the securities for which it was borrowed and defraying the costs, charges, and expenses incurred in connexion with the borrowing and the redemption or conversion:

Provided that nothing in this subsection shall be construed to prevent the temporary investment of any such money pending its application to the purpose aforesaid.

(4) Trustees and other persons acting in a fiduciary capacity are expressly authorized to convert under this section any securities held by them, and shall not be liable for any loss resulting from any such conversion.

27. Interest on securities sold to redeem outstanding securities

In every case where securities are disposed of in order to provide money to redeem outstanding securities, interest may be paid on the securities so disposed of notwithstanding that interest is still payable under the outstanding securities.

28. Auditor General to be notified

The Secretary to the Treasury shall notify the Auditor General of all issues, renewals, conversions and redemptions of securities under this Schedule.

29. Costs, charges and expenses

The costs, charges and expenses incurred in connexion with raising any loan under this Schedule or converting, redeeming or renewing any securities shall be statutory expenditure and may at the discretion of the Minister, be charged upon and be paid out of the Consolidated Fund, or such other fund or account as the Minister thinks fit.

PART III

LOANS RAISED IN MALAWI

30. Subscriptions from non-Malawian or non-residents

The Minister is empowered on borrowing in Malawi under the authority of this Schedule and an authorizing Act, to accept subscriptions to the loan from persons who are not Malawian citizens, or from persons who are not for the time being residents of Malawi, but no securities issued for such subscription shall provide for the payment of interest, or the repayment of principal in any currency other than that of Malawi, and the transfer from Malawi of any interest or principal will be subject to any written law in this respect then in force.

31. Registrar of securities

The Reserve Bank of Malawi shall be the Registrar of securities under this Part of this Schedule,

32. Statements by Registrar

The Registrar shall, from time to time, furnish to the Secretary to the Treasury certified statements as to the amount of securities registered under this Part of this Schedule, with such other particulars relating to it as the Secretary to the Treasury may require, and the Auditor General may for all purposes accept any such certified statements as correct.

33. Exemption from stamp duty

Notwithstanding any written law to the contrary no stamp duty shall be payable on the transfer of any securities registered under this Part, or on any power of attorney given under paragraph 26 of this Schedule and relating exclusively to any such securities.

34. High Court may prohibit dealings with securities

(1) The High Court, on the application of an interested person made either ex parte or on notice to any other person as the Court may direct, may make an order prohibiting, for the time and subject to the conditions specified in the order, any dealings with any securities specified in the order, and may discharge any such order, with or without costs, and generally act in the premises in such manner as in the opinion of the Court the justice of the case requires.

(2) The Registrar, without being made a party to the proceedings shall, on being served with any such order, obey it, and make an entry of the order in the register.

(3) No liability shall attach to the Government or to the Registrar for any entry made or anything done by the Registrar pursuant to an order made under this section.

35. Evidence of contents of register

Any extract from the register, certified as correct by the Registrar, shall, for all purposes and in all courts, be conclusive evidence of the entry in the register to which the extract relates at the date when the extract was so certified.

PART IV

LOANS RAISED OUTSIDE MALAWI

36. Determination of certain terms for borrowing outside Malawi

Each Act authorizing the Minister to borrow money outside Malawi shall state the following matters—

- (a) the country in which the money is to be borrowed and the securities issued and registered for all amounts so borrowed;
- (b) the place for the payment of interest and the repayment of principal respectively;
- (c) the currency in which the money is to be borrowed; and
- (d) the currency or money of account in which the securities is to be issued and in which the interest, principal and any other money thereby secured is expressed to be measured or to be payable or repayable in, whether that of Malawi or of any other country or whether or not that in which the money thereby secured was originally borrowed.

37. Agreements relating to loans raised outside Malawi

(1) The Minister, acting on the advice of the Cabinet, may enter into any agreement with the Government or a Government agency of a country other than Malawi which he considers would facilitate the raising of a loan on reasonable terms in that country by the Government of Malawi.

(2) Without restricting the generality of subsection (1) any such agreement may provide for the giving of consideration to obtain a guarantee of the loan, and for the ultimate protection of the guarantor.

(3) A copy of any agreement entered into by the Minister under this section shall be laid before the National Assembly within fourteen days after the date of the execution of the agreement if the Assembly is then in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

38. Appointment of Registrars

The Minister, acting on the advice of Cabinet, may from time to time appoint in a country other than Malawi a Registrar of securities to be issued and registered in that country.

39. Loans agents for raising loans outside Malawi

If any loan authorized to be raised, or any securities authorized to be issued, under this Schedule is to be raised or issued outside Malawi, the Minister may by warrant under his hand, appoint any two or more persons as joint loan agents for raising the loan or issuing the securities and may also in like manner confer upon them all such powers as he thinks necessary in order to carry into effect the purposes of this Schedule and any authorizing Act, and notice of such appointment shall be published in the Gazette.

40. Removal of loan agents

The Minister may remove or accept the resignation of any loan agent; and in any such case, or if any loan agent dies, the Minister may appoint another person in his stead.

41. Minister's power not limited

The authority of the Minister to raise the whole or any part of the loans authorized to be raised, and generally to exercise all the powers conferred on him by this Act, shall be in no way limited or affected by the fact that he has made any appointment of a loan's agent.

42. Cost of stamp duty on transfers of certain securities

(1) The cost of composition of any stamp duty payable in a country other than Malawi in respect of transfers of any securities issued upon the raising of any loan or upon the conversion of any securities shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

(2) In any case where any stamp duty in respect of such transfers is not compounded the Minister may estimate the amount required for the payment of the stamp duty during the first twelve months after the raising of the loan or the issuing of the securities, and the amount so estimated shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

(3) All sums paid as stamp duty on transfers in excess of the amount estimated under subparagraph (2) of this paragraph, and all other sums so paid in cases where no estimate is made, shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

43. Transfer of securities from overseas to Malawi

(1) Subject to such conditions and on payment of such fees as may, from time to time, be prescribed, the holder of any securities repayable in a country other than Malawi may transfer the securities from the register kept in that country to the register kept in Malawi.

(2) After the registration in Malawi of any such securities so transferred, the securities shall at maturity be redeemable in Malawi, and all interest falling due thereon after the date of that registration shall be payable in Malawi, notwithstanding anything to the contrary printed on any certificate of title or contained in a prospectus issued in connexion with the raising of the loan.

(3) Any securities so transferred to the register kept in Malawi shall not at any later date be transferred to any register kept outside Malawi.

PART V

TREASURY BILLS

44. Interpretation

In this Part, unless the context otherwise requires—

“redemption date” means the date for the redemption of Treasury Bills determined by the Minister under paragraph 48 of this Schedule;

“Treasury Bill” means a Treasury Bill issued under paragraph 61 and pursuant to this Part and includes any coupon in connexion with it.

45. Issue of Treasury Bills

(1) The Minister may, on behalf of the Government, borrow by the issue of Treasury Bills in Malawi such amounts as may be authorized by a resolution of the National Assembly.

(2) The amount of Treasury Bills outstanding at any time shall not exceed twenty-five per cent of annual budgeted revenue.

46. Application to Treasury Bills

The provisions of paragraphs 2, 11 and 24 of this Schedule shall not apply to Treasury Bills.

47. Value and form of Treasury Bills

Every Treasury Bill shall—

(a) be for a sum of K10,000 or a multiple thereof which sum shall be recoverable by the Reserve Bank of Malawi which may recommend amendment of the sum to the Minister;

(b) be repayable at par at such time or times as the Minister shall, before the issue of the Treasury Bill, determine, being not later than one year from the date of issue of the Treasury Bill;

(c) be in such form as the Minister may determine; and

(d) be issued by such method as the Minister may determine.

48. Treasury Bills to be a charge on public revenue

The par value of Treasury Bills is hereby declared to be secured by way of charge upon the public revenues of Malawi and shall be payable as statutory expenditure.

49. Appointment of agent

The Reserve Bank of Malawi shall be the agent of the Government for the purposes of the issue and redemption of Treasury Bills.

50. Audit Office to be notified

The Reserve Bank of Malawi shall upon request notify the Auditor General of the par value of Treasury Bills outstanding at the time of notification.

51. Cancellation, redemption and discounting Bills

(1) Upon the redemption date Treasury Bills shall be delivered to the Reserve Bank of Malawi for cancellation and the par value shall be paid.

(2) The Reserve Bank of Malawi may at its discretion purchase Treasury Bills at a discount prior to the redemption date.

PART VI

MISCELLANEOUS

52. Forms and other matters may be prescribed

Subject to the provisions of this Schedule, the Secretary to the Treasury may, from time to time, in such manner as he thinks fit—

(a) prescribe the forms of application for securities, certificate of title, transfer of securities and other instruments under this Schedule; and

(b) prescribe all such other matters as may be deemed necessary or expedient for giving full effect to the provisions of this Schedule.

FOURTH SCHEDULE s. 83

FORM AND CONTENT OF FINANCIAL STATEMENTS

1. The financial statements must include the following information—

(a) a Consolidated Operating Statement showing revenue and expenditure and the surplus or deficit for the reporting period;

(b) a Statement of Financial Position showing the assets, liabilities and net financial position as at balance date of the reporting period;

(c) a Statement of Cash Flows showing the cash receipts and cash payments during the reporting period, and the cash balance as at balance date of the reporting period;

(d) a Statement of Funds showing, for each Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period;

(e) a Statement of Cash Balances showing a breakdown of the balances held by type of holding;

(f) a Statement of Service Performance showing appropriated budgets, approved variations to appropriated budgets, actual performance and variation between actual and budget;

(g) Disaggregated Statements of Service Performance for each Ministry and agency showing appropriated budgets and variations to those budgets, actual receipts and payments for

appropriated items, including third party outputs and transactions on behalf of the State, and the variation between appropriated budget and actual performance;

(h) a Statement of Statutory Expenditure showing details of domestic debt servicing, external debt servicing, statutory remuneration and other material items of expenditure;

(i) a Statement of Investments showing the nature or type of investments and current and non-current investments;

(j) a Statement of Borrowings showing total debt and the break-down of current and non-current debt, and for each debt showing the opening and closing balances for the reporting period and the nature of the movement during the period, the impact of exchange rate movements, average interest rate, and loan balances available for drawdown (if applicable);

(k) a Statement of Contingent Gains and Liabilities' showing where possible an indication of the gain or cost;

(l) a Statement of Ex-gratia Payments approved under the provisions of this Act; and

(m) a Statement of Write-offs approved under section 90 showing in aggregate losses and deficiencies of public money, irrecoverable amounts of revenue, irrecoverable debts and overpayment, the value of assets including investments written off; and detailing all individual items with a value greater than K50,000 which have been written-off;

2. A statement showing for each account in the Trust Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period.

3. A Statement of Accounting Policies setting out the significant accounting policies on which the financial statements are prepared, and other information specified by the Secretary to the Treasury in Treasury Instructions as are required to provide more detailed information or explanations.

4. Comparative Amounts—

(1) Comparative amounts for the corresponding previous reporting period must be shown in the Statements, except where inappropriate or the item has not previously existed.

(2) Where items included in the current reporting period have been reclassified, the comparative amount of the previous reporting period should be similarly reclassified.

(3) Where respective reporting periods are not equal in length, the period covered must be clearly identified.

(4) An amount in relation to the previous reporting period must be shown notwithstanding that there is no corresponding amount for the current reporting period.

5. Certification—

(1) There must be attached to the front of the financial statements—

(a) a statement, signed by the Secretary to the Treasury as to whether in his opinion, the financial statements present fairly the matters required by this Schedule; and

(b) a copy of the report by the Auditor General required by section 83 (2);

(2) At the same time that the financial statements are laid before the National Assembly, the Auditor General through the Speaker of the National Assembly shall lay before the National Assembly a return of public securities held in Malawi or elsewhere at the end of the financial year to which those financial statements relate; and every such return shall include a full account of all investments made under section 35, and of all securities redeemed or otherwise disposed of during that financial year.

[Chap3703]CHAPTER 37:03

PUBLIC PROCUREMENT ACT

ARRANGEMENT OF SECTIONS

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Schedule

8 of 2003

G.N. 31/2003

An Act to provide for the principles and procedures to be applied in, and to regulate, the public procurement of goods, works and services; to provide for the establishment of the office of Director of Public Procurement as the main authority responsible for the monitoring and oversight of public procurement activities, and, for the development of the related regulatory and legal framework and professional capacity of public procurement; and to make provision for matters connected therewith or incidental thereto

[1ST AUGUST 2003]

PART I

PRELIMINARY

[Ch3703s1]1. Short title

This Act may be cited as the Public Procurement Act.

[Ch3703s2]2. Interpretation

In this Act, unless the context otherwise requires—

“bidder” means, any participant or potential participant in procurement proceedings;

“bidding documents” means the tender solicitation documents or any other documents for solicitation of offers, proposals or quotations;

“cadre of procurement professionals” means the body of procurement professionals with a defined career path and skills requirements responsible for conducting public procurement;

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;

“Director” means the Director of Public Procurement appointed under section 6;

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, and includes collusive practices among bidders, whether prior to or after bid submission, designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring entity of the benefits of free and open competition;

“goods” means objects of every kind and description, including raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental

to the supply of the goods if the value of those incidental services does not exceed the value, of the goods themselves;

“procurement” means the acquisition by any means of goods, works or services;

“procurement contract” means a contract between the procuring entity and a supplier resulting from procurement “proceedings”;

“procuring entity” means any Ministry, department, agency or organ, of the Government or statutory body or other unit, or any subdivision thereof, engaging in procurement;

“procurement professional” means a member of the cadre of procurement professionals;

“Public Appointments Committee” means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;

“public funds” means any monetary resources appropriated to procuring entities through budgetary processes, aid grants and credits put at the disposal of procuring entities by foreign donors, or revenues of procuring entities;

“services” means any object of procurement other than goods or works;

“supplier” means a physical or judicial person that provides supply of goods, contracting of works, or consultants or other services;

“works” means all work associated with the construction, rehabilitation, demolition, maintenance or renovation of a building or structure, including site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to a procurement contract, if the value of those services does not exceed the value of the construction itself.

[Ch3703s3]3. Application

(1) This Act applies to all procurement carried out by procuring entities using public funds and, subject to sections 27 (5) and 30 (2), includes national defence and national security-related procurement;

(2) This Act shall not apply to—

- (a) employment contracts with public officers; and
- (b) subject to approval by the Director, the purchase or rental of real property.

(3) To the extent that this Act conflicts with procurement rules of a donor or funding agency, the application of which is mandatory pursuant to an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, the procurement shall be governed by the Act.

(4) It is not permissible to artificially divide procurement with the intention of avoiding any monetary threshold that may be prescribed in the Act or in regulations.

PART II

ESTABLISHMENT OF THE OFFICE OF DIRECTOR OF PUBLIC PROCUREMENT

[Ch3703s4]4. Establishment of office of Director

(1) There is hereby established the office of Director of Public Procurement (in this Act otherwise referred to as the "Director") whose office shall be a public office, and who shall be responsible for the administration of this Act.

[Ch3703s5]5. Functions of the Director

(1) The Director shall be responsible for the regulation and monitoring of public procurement in Malawi, and shall be accountable to and operate under the general supervision of the President.

(2) Without prejudice to the generality of subsection (1), the functions of the Director shall be—

(a) to assist in developing and enhancing the efficiency and effectiveness of public procurement operations;

(b) to ensure the availability and the accessibility to public officials and the general public of this Act and regulations made hereunder;

(c) to develop, in consultation with concerned professional and official entities, for issuance by the relevant authorities for use throughout Malawi, standardized and unified procurement regulations, instructions, and bidding documents, which shall be binding on all Government Ministries, departments and parastatal organizations;

(d) to promote the development of a professional procurement workforce, including by organizing and conducting training programmes, and developing government-wide policies and programmes aimed at establishing procurement-related positions, career paths and performances incentives;

(e) to collect data on public procurement and monitor the performance of Government Ministries, departments and parastatal organizations, and persons conducting procurement proceedings so as to ascertain efficiency and compliance with applicable legislation, regulations and instructions;

(f) to collect data on the performance of procurement contracts in Malawi by suppliers, and to maintain and circulate lists of debarred bidders and suppliers;

(g) to provide, periodically, a quantitative and qualitative assessment of procurement activities in Malawi to the Minister, who shall lay the report before the National Assembly;

(h) to refer violations of this Act and the Regulations relating to public procurement to the relevant budgetary and law enforcement authorities;

(i) to propose improvements in public procurement procedures;

(j) to provide administrative review of bid protests in accordance with section 38;

(k) to carry out economic studies on procurement, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term and long-term policy it may formulate in public procurement matters; and

(l) to establish a data and information base concerning procurement terminology and legislation, and to set policy for, and promote the application of, modern information and communications technology to public procurement.

[Ch3703s6]6. Appointment of Director and Deputy Director

(1) The Director shall be appointed by the President, on such terms and conditions as the President shall determine.

(2) The appointment and terms and conditions of service of the Director shall be subject to the approval of the Public Appointments Committee.

(3) The Director shall, subject to subsection (4), hold office for a period of four years, and shall be eligible for reappointment for one additional term of four years.

(4) The President may, subject to the approval of the Public Appointments Committee, terminate the appointment of the Director for—

(a) misconduct or misbehaviour; or

(b) inability, incapacity or incompetence to perform the duties of his office.

(5) The Director shall devote full time to the duties of the office and shall not hold any office of trust or profit, other than that of Director or engage in any occupation for reward outside the office of Director.

(6) There shall be a Deputy Director of Public Procurement who shall—

(a) be appointed by the President on such terms and conditions as the President shall determine; and

(b) perform such functions and duties as may be assigned to him by the Director, from time to time.

(7) The appointment and terms and conditions of service of the Deputy Director shall be subject to approval by the Public Appointments Committee.

(8) The Deputy Director shall—

(a) hold office for a period of four years, and shall be eligible for reappointment for one additional term of four years; and

(b) be eligible to be appointed Director.

(9) Subsections (4) and (5) apply mutatis mutandis to the Deputy Director.

[Ch3703s7]7. Appointment of other officers and staff

There shall be appointed in the public service, on terms and conditions approved by the President, other officers and staff subordinate to the Director as may be required for the proper performance of the functions of the Director, but the appointment of other officers and staff under this section shall not require confirmation of the Public Appointments Committee.

PART III

INTERNAL PROCUREMENT COMMITTEES AND SPECIALIZED PROCUREMENT UNITS

[Ch3703s8]8. Establishment of Internal Procurement Committees

(1) There shall be established in all Ministries, departments and parastatal organizations, and other entities and authorities of public administration in Malawi, Internal Procurement Committees.

(2) Procuring entities are responsible, and Controlling Officers and other officials concerned are accountable, for procurement in accordance with this Act and any Regulations and other applicable laws, regulations, and instructions applicable in Malawi.

(3) The functions of the Internal Procurement Committees shall include—

(a) ascertaining the availability of funds to pay for each procurement;

(b) the opening of bids;

(c) the examination, evaluation and comparison of bids, and the selection of the successful bidder; and

(d) such other functions as may be prescribed for the Committees by the Regulations.

[Ch3703s9]9. Composition of Internal Procurement Committees

(1) Internal Procurement Committees shall consist of the following personnel, who shall be well informed concerning public procurement, trained in procurement, and whose professional qualifications meet the requirements that may be established by the head of the procuring entity, in accordance with guidelines to be issued by the Director—

(a) the Controlling Officer, or where there is no designated Controlling Officer, the head of the procuring entity or his or her appointee, who shall chair the Internal Procurement Committee;

(b) at least a procurement professional, an accountant or other budget professional, as well as an engineer or technician familiar with the substance of the procurement; and

(c) in the case of procurement exceeding such threshold as maybe prescribed by the Director for goods, works and consultancy services, up to three external members nominated by the Director, who shall be—

(i) a procurement professional;

(ii) a technical expert and professional in the relevant field; and

(iii) a neutral member from agencies such as the National Audit Office, Accountant General or Ministry of Finance.

(2) The chairman of the Internal Procurement Committee in a Ministry, department, parastatal organization or other type of procuring entity subject to this Act, shall accept nominations of external members the Director made pursuant to subsection (1) (c), and such external members shall be in addition to the normal internal membership of the Internal Procurement Committee.

[Ch3703s10]10. Establishment of specialized procurement units

Heads of procurement agencies and heads of other public departments and organizations may establish specialized procurement units or, in the case of procurement entities with low levels of procurement, shared specialized procurement units, and assign to such units authority to conduct procurement activities in accordance with this Act and the Regulations.

[Ch3703s11]11. Staffing of specialized procurement units

The specialized procurement units established pursuant to section 10 shall be staffed with personnel trained in public procurement, and shall include at least two specialists whose professional qualifications have been certified by the Director to meet the requirements that shall have been issued by the Director.

[Ch3703s12]12. Career development and management of procurement officers

The Director shall develop and recommend to the Minister a career development and management programme, and a system for selection, appointment and termination of appointment for the cadre of procurement professionals.

PART IV

GENERAL PROCUREMENT PROVISIONS

[Ch3703s13]13. Qualifications of bidders

(1) The principles and rules in this Part apply to the ascertainment by procuring entities of the qualifications of bidders at any stage of the procurement proceedings, including pre-qualification proceedings if they take place, or at any other stage.

(2) In order to enter into a procurement contract, a bidder must qualify by meeting the criteria the procuring entity considers appropriate.

(3) The criteria referred to in subsection (2) may concern—

(a) only professional and technical qualifications;

(b) legal capacity;

(c) financial resources and condition;

(d) past performance, including history of legal disputes, conviction of a bidder, or of its directors or officers, of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement proceedings;

(e) debarment; and

(f) payment of taxes.

(4) The procuring entity is entitled to demand from bidders documentation reflecting their qualification data at any stage of the procurement proceedings.

(5) Any requirement established pursuant to this section shall be set forth in the pre-qualification documents, if any, and in the bidding documents, and shall apply equally to all bidders without discrimination and only the criteria referred to in subsection (2) may be applied.

(6) In the case of procurement of a particularly high value or complexity, the procuring entity may engage in pre-qualification proceedings with a view to identifying, prior to the submission of tenders, proposals or offers, bidders that are qualified.

(7) The procuring entity shall provide pre-qualification documents to all bidders responding to the invitation to pre-qualify, and the pre-qualification documents shall provide bidders with all the information required to prepare and submit applications for pre-qualification.

[Ch3703s14]14. Eligibility

In order to be eligible to be awarded a procurement contract, a bidder must be registered, depending upon the nature of the contract, with the Registrar of Companies, or with the National Construction Industry Council of Malawi, or such other entity as may be prescribed by regulations, but the sole absence of an application for entry in the registry or classification system is not ground for exclusion of a bidder from participation in procurement proceedings.

[Ch3703s15]15. Rules concerning description of goods, works and services

In the preparation of bidding and pre-qualification documents, any specifications, plans, drawings and designs goods, setting forth the technical or quality characteristics of the goods, construction or services to be procured, and requirements concerning testing and test methods, packaging, marking, labeling, or conformity certification, symbols and terminology, or description of services, and any contract terms, shall be drawn up in an objective, and performance and function

based manner, so as to maximize competition and avoid creating obstacles to participation by bidders in the procurement proceedings, while ensuring that applicable national and international standards and the requisite quality levels are met.

[Ch3703s16]16. Form of communication

Subject to other provisions of this Act, all documents, notifications, decisions and other communications referred to in this Act and in the Regulations required to be submitted by the procuring entity to a bidder or by a bidder to the procuring entity shall be in writing:

Provided that of other forms of communication may be used if a record of the content of the communications is preserved, and all other requirements set forth in this Act and in the Regulations are met.

[Ch3703s17]17. Use of modern information and communications technology

The Director may devise a strategy for, and to promote, the application of modern information and technology communications technology to public procurement.

[Ch3703s18]18. Conduct of public officials and bidders

(1) Public officials involved in requisitioning, planning, preparing, and conducting procurement proceedings, and administering the implementation of procurement contracts, shall—

(a) discharge their duties impartially so as to assure fair competitive access to public procurement by bidders;

(b) always act in the public interest, and in accordance with the objectives and procedures set forth in this Act and the Regulations;

(c) at all times avoid conflicts of interest, and the appearance of impropriety, in carrying out their duties and conducting themselves, and shall not interfere in the work of Internal Procurement Committees; and

(d) not commit or abet corrupt or fraudulent practices, including the solicitation or acceptance of improper inducements.

(2) Bidders and suppliers shall not engage in or abet—

(a) corrupt practices, such as the offering of improper inducements;

(b) fraudulent practices, including misrepresentation of facts in order to influence a procurement process or the execution of a contract;

(c) collusion among bidders, prior to or after bid submission, designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

(3) Any information concerning the occurrence or attempt of corrupt or fraudulent practices shall be reported immediately to the head of the procuring entity, to the Director and to the relevant law-enforcement authorities.

(4) A procuring entity shall—

- (a) reject a bid if the bidder offers, gives or agrees to give an inducement referred to in subsection (1) (d), or otherwise attempts to influence procurement decisions;
- (b) promptly notify the rejection to the bidder concerned; and
- (c) inform the Director and the relevant law-enforcement authority.

(5) All public officials shall keep confidential the information that comes into their possession relating to the procurement proceeding and to bids, including bidders' propriety information.

(6) Any person who contravenes subsection (5) shall be guilty of an offence, and shall be liable to a fine of K50,000 and to imprisonment for two years; and shall in addition be liable to disciplinary action.

(7) Every procurement officer and member of an Internal Procurement Committee shall upon the assumption of his or her functions, take an oath in the prescribed form, with specific reference to the obligation to adhere to rules of conduct set forth in this Act, the Regulations, instructions and other applicable requirements, and to execute the duties and tasks properly.

[Ch3703s19]19. Disclosure of interest

(1) If a public official or member of an Internal Procurement Committee, acquires any pecuniary interest, direct or indirect, in any matter to be determined by the Committee he or she shall declare the interest in accordance with the procedures set forth in the Regulations, and shall recuse himself or herself from acting in any way in that matter and shall not take part in the consideration or discussion of, or vote on any question with respect to the matter.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

[Ch3703s20]20. Debarment of bidders and suppliers

The Director may, after reasonable notice to the bidder or supplier, and after providing reasonable opportunity for that bidder or supplier to be heard and consultation with the affected procuring entities, exclude a bidder or supplier from participation in procurement for the misconduct prescribed in this Act and the Regulations, in accordance with procedures set out in the Regulations.

[Ch3703s21]21. Procurement planning

Procuring entities shall plan procurement with a view to achieving maximum value for public expenditures and the other objectives set forth in this Act, and in accordance with the applicable budgetary procedures.

[Ch3703s22]22. Contract administration

(1) Procuring entities are responsible for the administration of procurement contracts into which they enter, and to that end, procuring entities shall establish procedures for contract administration and provide the necessary material and human resources for their implementation.

(2) Procuring entities may agree to the submission to arbitration of disputes in the performance of procurement contracts.

[Ch3703s23]23. Rejection of all bids, termination for convenience, etc.

A procuring entity may—

(a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;

(b) cancel the procurement proceedings in the public interest, without incurring thereby any liability to the bidders;

(c) terminate a procurement contract for convenience, if it is determined to be in the public interest, and subject to payment for work satisfactorily completed, or services satisfactorily performed prior to the effective date of termination and for reimbursable expenses actually incurred, or for any goods specially manufactured under the procurement contract, and reasonable termination costs, but excluding lost profit.

[Ch3703s24]24. Debriefing of unsuccessful bidders

A procuring entity shall, upon request of an unsuccessful bidder, communicate to the bidder the grounds for the rejection of its application to pre-qualify, or of its bid.

[Ch3703s25]25. Entry into force of procurement contract

The manner of entry into force of procurement contract shall be indicated in the bidding documents.

[Ch3703s26]26. Public notice of procurement contract awards

A procuring entity shall promptly publish notice of all procurement contract awards when the price of the award exceeds the level set by regulation, and the notice, which shall indicate the contract price and the name and address of the successful bidder, shall be published in the Gazette.

[Ch3703s27]27. Record of procurement proceedings

(1) A procuring entity shall maintain a record and preserve documentation of the procurement proceedings, including originals of bids received.

(2) The documentation referred to in subsection (1) shall be maintained for a period of five years from the date of a decision to cancel or terminate the procurement action, the date of contract award, or the date of contract completion, whichever comes later.

(3) Information to be included in the record referred to in subsection (1) shall, to the extent applicable, include—

- (a) a description of the object of the procurement;
- (b) a list of the participating bidders and their qualifications;
- (c) bid prices;
- (d) a summary of the evaluation of bids;
- (e) summary of any review proceedings and decisions thereon;
- (f) requests for clarification, and responses thereto;
- (g) a statement of grounds for cancellation of procurement proceedings;
- (h) a statement of grounds for choice of a procurement method other than tendering or request for proposals for services;
- (i) a statement of grounds for reduction of bid-preparation periods; and
- (j) information concerning rejection of bids pursuant to sections 18 and 23.

(4) The record referred to in subsection (1) shall, on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed at an earlier point in time pursuant to regulation, or by order of a competent court.

(5) The disclosure referred to in subsection (4) may be restricted in the case of national defence or national security related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment set forth in the Regulations.

(6) Every record under this section shall be prepared in a manner that avoids disclosure of proprietary commercial information.

[Ch3703s28]28. Participation by small- and medium-sized enterprises

(1) It is the policy of the Government to provide maximum opportunities for small- and medium-sized enterprises to participate as suppliers, contractors, consultants and subcontractors in public procurement.

(2) Heads of procuring entities are responsible for effectively implementing the small- and medium-sized enterprise promotion programmes within their activities, including achieving programme goals, and shall ensure that procurement personnel maintain knowledge of small- and medium-sized enterprise promotion programme requirements and take all reasonable action to increase participation in procurement by those enterprises.

[Ch3703s29]29. Supply management

(1) Every Controlling Officer and head of a department or parastatal organization is financially responsible for the general supervision and control of stores and stores accounts in his Ministry or Department or parastatal organization, and for ensuring that the members of the store-keeping staff perform their duties satisfactorily.

(2) In formulating and updating procedures for supply management, modern information and communications technology shall be applied to the maximum practical extent.

(3) The Minister, on the recommendation of the Director, may promulgate regulations governing—

(a) the management of supplies during their entire life cycle;

(b) transfer of excess supplies; and

(c) the sale, lease or disposal of surplus supplies by public auction, tendering with sealed bids, or other appropriate method designated by regulation, but so however that no employee of the owning or disposing agency shall be entitled as of right to purchase any such supplies.

PART V

METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

[Ch3703s30]30. Choice of procurement method

(1) Public procurement shall be realized by means of open tendering proceedings, subject to the exceptions provided in this section, and outlined in the Schedule. Schedule

(2) Subject to the approval of the Director, the application of subsection (1) may be waived in the case of national-defence or national-security-related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment set forth in the Regulations, but so however that items such as general stores, uniforms, stationery, computers and standard vehicles may not be classified as sensitive items.

(3) Restricted tender may be held in the following cases, namely—

(a) when the goods, works or services are only available from a limited number of suppliers, all of whom are known to the procuring entity; and

(b) when the time and cost of considering a large number of tenders is disproportionate to the value of the procurement.

(4) A tender may be held in two stages in the following cases, namely—

(a) when it is not feasible at the outset of the procurement proceedings to define fully the technical or contractual aspects of the procurement; and

(b) when, because of the complex nature of the goods, works and services to be produced, the procuring entity wishes to consider various technical or contractual solutions, and to negotiate with bidders about the relative merits of those variants, before deciding on the final technical or contractual specifications.

(5) A tender in which the participation of foreign bidders is solicited ("international tender") shall involve publication in the international media of the invitation to submit tenders, or to apply for pre-qualification, if such procedures take place in accordance with section 13.

(6) An international tender shall be held in the following cases—

(a) when the estimated value of the stated procurement exceeds the amount set by regulation;

(b) when the goods, works or services are not available under competitive price and other conditions from more than two suppliers in Malawi; or

(c) when a supplier was not identified by a national tendering proceeding.

(7) Request for proposals for services is the method to be used for the procurement of consultants' services and other types of intellectual services.

(8) The request for quotations method may be used for the procurement of—

(a) readily available commercially standard goods not specially manufactured to the particular specifications of the procuring entity, when the estimated value of the procurement does not exceed the amount set by regulation;

(b) small works, when the estimated value of the procurement does not exceed the amount set by regulation; and

(c) routine services, when the estimated value of the procurement does not exceed the amount set by regulation.

(9) Local request-for-quotations proceedings shall be used when the desired goods, construction or services are ordinarily available from more than two sources in Malawi at competitive prices.

(10) Public procurement by means of the single-source procurement method is permitted only in the following circumstances, namely—

(a) when the estimated value of the procurement does not exceed the amount set in the Regulations;

(b) when only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured;

(c) when there is an emergency need for the goods, works and services, involving an imminent threat to the physical safety of the population or of damage to property, and engaging in tendering proceedings or other procurement methods would therefore be impractical; or

(d) when the procuring entity, having procured goods, works and services from a supplier, determines that additional goods, construction or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, construction or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question.

(11) Use of a method of procurement other than tendering or, in the case of procurement of consultants' services, a method other than request for proposals, is subject to approval by the Director; and the procuring entity shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.

(12) Contracts for privately financed infrastructure projects, and related forms of private sector involvement in providing public services, shall be awarded on a competitive basis, and the procurement regulations and instructions issued pursuant to this Act shall set forth specific procedures to be followed in the application of one or more of the procurement methods set forth in this section to procurement of works and services carried out on the basis of private financing, including forms such as "build-operate-transfer".

PART VI

MAIN PRINCIPLES AND PROCEDURES FOR METHODS OF PROCUREMENT

[Ch3703s31]31. Tendering proceedings

(1) An invitation to tender, or an invitation to pre-qualify, shall be published in the local press and in the Gazette and, in the case of international tendering, shall also be published in internationally recognized papers in the English language, and in other media of wide international circulation, including the internet.

(2) In addition to the publication referred to in subsection (1), the invitation to tender, or to apply for pre-qualification, shall be displayed in the head office of the procuring entity in a publicly accessible place.

(3) Bidding documents—

(a) shall be provided to all bidders responding to the invitation to tender or, in the event of pre-qualification proceedings to all bidders that have been pre-qualified;

(b) provide bidders with the information that they require in order to submit tenders that are responsive to the needs of the procuring entity; and

(c) include the terms of the contract.

(4) If a fee is charged for the bidding documents, the fee may only reflect the cost of printing and distributing the documents.

(5) All bidders shall be provided the same information.

(6) The procuring entity shall respond promptly to any request by a bidder for clarification of the bidding documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of tenders, and responses to such requests for clarification shall be circulated to all participating bidders.

(7) A tender shall be submitted in writing, signed and in a sealed envelope.

(8) The bidding documents may provide for submission of tenders electronically:

Provided that measures are in place to protect the confidentiality of tenders, and to assure their attribution and integrity.

(9) A procuring entity shall, upon request, provide to a bidder a receipt showing the date and time when its tender was received.

(10) The deadline for submission of tenders shall be set taking into account the nature of the procurement and the time required for the preparation of tenders.

(11) Tenders shall be opened at the time and place indicated in the bidding documents, and the time of opening of the tenders shall coincide with the deadline for submission of tenders.

(12) Bidders or their representatives may attend the opening of tenders, at which the names and addresses of the bidders submitting tenders, and the tender prices, shall be read out and recorded.

(13) Tenders shall be evaluated and compared only in accordance with the criteria, and their relative weight, as set forth in the bidding documents.

(14) Tenders containing non-material deviations shall be evaluated, with the deviations being quantified in the manner indicated in the bidding documents.

(15) No negotiations whatsoever may be held with bidders as to the substance or prices of their tenders.

(16) The procuring entity may seek only clarifications of tenders, and may not solicit or accept changes in the substance or prices of tenders.

(17) In the evaluation of tenders, a procuring entity may apply a margin of price preference in favour of domestic bidders in accordance with the Regulations:

Provided that the application of the margin of price preference in favour of domestic bidders has been disclosed in the bidding documents.

(18) The successful tender shall be the tender with the lowest price, subject to any margin of preference provided in the bidding documents; alternatively, if so stipulated in the bidding

documents, the successful tender shall be the lowest evaluated tender ascertained on the basis of price, subject to any margin of preference, and non-price criteria specified in the solicitation documents.

(19) Non-price criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable.

(20) Upon the entry into force of the procurement contract and, if so required, the provision by the successful bidder of a security for the performance of the contract, notice of the procurement contract shall be given to the other bidders, specifying the name and address of the bidder that has entered into the contract and the contract price.

[Ch3703s32]32. Restricted tendering

(1) When restricted tendering is employed on the grounds referred to in section 30 (3) (a), all suppliers capable of supplying the goods, works or services shall be solicited.

(2) When restricted tendering is employed on the grounds referred to in section 30 (3) (b), the procuring entity shall solicit tenders from a minimum number of three suppliers.

(3) The procedures for tendering proceedings set forth in section 31 and in the Regulations apply to restricted tendering proceedings, except to the extent they are modified by this section.

[Ch3703s33]33. Two-stage tendering

(1) In the case of two-stage tendering proceedings, the bidding documents shall call upon bidders to submit, in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals without a tender price, and the bidding documents may solicit proposals relating to the technical, quality or other characteristics of the goods, construction or services, as well as to contractual terms and conditions of supply, and where relevant, the professional and technical competence and qualifications of the bidders.

(2) A procuring entity may, in the first stage of the two-stage tendering proceedings, engage in negotiations with any bidder whose tender has not been rejected concerning any aspect of its tender.

(3) In the second stage of the two-stage tendering proceedings, a procuring entity shall invite bidders whose tenders have not been rejected to submit final tenders with respect to a single set of specifications.

(4) In formulating the specifications referred to in subsection (3), a procuring entity may delete or modify any aspect originally set forth in the solicitation documents, and any deletion, modification or addition regarding the technical or quality characteristics of goods, construction or services to be procured, and any criterion originally set forth in those documents for evaluating and comparing tenders and for ascertaining the successful tender, shall be communicated to all bidders in the invitation to submit final tenders.

(5) A bidder not wishing to submit a final tender in accordance with subsection (4) may withdraw from the tendering proceedings without forfeiting any tender security that the bidder may have been required to provide.

(6) The procedures for tendering proceedings set forth in section 31 and in the Regulations apply to two-stage tendering proceedings, except to the extent they are modified by this section.

[Ch3703s34]34. Request for proposals for services

(1) A procuring entity shall provide the request for proposals for services to a short list of at least three, but not more than six bidders.

(2) In order to establish the short list for purposes of subsection (1) the procuring entity may seek expressions of interest from as wide a geographic area as feasible by publishing a non-binding notice in the Gazette, as well as in a newspaper of wide circulation or in a relevant trade publication or technical or professional journal; and the procuring entity shall give first consideration to those bidders expressing interest that possess the relevant qualifications.

(3) The request for proposals for services under subsection (1) shall provide bidders with the information necessary to enable them to participate in the procurement proceedings and to submit bids that are responsive to the needs of the procuring entity.

(4) The procuring entity shall set the deadline for submission of proposals for services so as to allow sufficient time for preparation of proposals.

(5) Any modification or clarification of the request for proposals including modification of the criteria for evaluating proposals referred to in subsection (7), shall be communicated to all bidders participating in the request-for-proposals proceedings.

(6) The price of a proposal for services shall be considered by the procuring entity only after completion of the technical evaluation.

(7) Any award by the procuring entity shall be made to the bidder whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposals, which may, in accordance with the Regulations include—

- (a) quality and cost based selection;
- (b) quality based selection; or
- (c) least cost selection.

(8) The successful bidder shall not be permitted to substitute key staff, unless both parties agree that undue delay in the selection process makes such changes unavoidable or that such changes are critical to meet the objectives of the assignment; and the key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

(9) Any negotiations with a bidder referred to in subsection (7) in the award of a contract shall include, and may only concern, discussions of the terms of reference, the methodology, staffing, procuring entity inputs, and special conditions of the contract; and the negotiations shall not—

(a) substantially alter the original terms of reference or the terms of the contract so as to affect the quality of the final product, its cost, and the relevance of the initial evaluation; or

(b) reduce work inputs solely to meet the budget,

and the final terms of reference and the agreed methodology shall be incorporated in the “Description of Services,” which shall form part of the contract.

[Ch3703s35]35. Request for quotations

(1) A procuring entity shall request quotations from at least three bidders.

(2) A request for quotations shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time of delivery as well as any other special requirements.

(3) Bidders shall be given adequate time to prepare their quotations, and each bidder is permitted one quotation, which may not be altered or negotiated, and shall be submitted in written form including facsimile or telex or in any other form that leaves a record of the content of the communication and is acceptable to the procuring entity.

(4) The procuring entity shall place a purchase order with the bidder that provided the lowest-priced responsive bid, and the successful bidder shall provide written confirmation of the purchase order.

[Ch3703s36]36. Single-source procurement

(1) Where a procuring entity engages in single-source procurement on the grounds referred to in section 30 (10) (a) through (d), it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery, and may negotiate with the sole bidder.

(2) Procurement carried out on a single source basis shall be embodied in a written contract or purchase order.

PART VII

REVIEW

[Ch3703s37]37. Right to review

(1) Subject to subsection (2), any bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Act or the Regulations, may seek review in accordance with this Part.

(2) The following do not constitute grounds for the review under subsection (1)—

(a) the choice of a selection procedure in request for proposals for services, in accordance with the Regulations;

(b) a decision by the procuring entity under section 23 to reject all tenders, proposals, offers or quotations;

(c) a refusal by the procuring entity to respond to an expression of interest in participating in requests for proposals for services under section 34 (1).

[Ch3703s38]38. Review procedures

(1) An application for a review pursuant to section 37 shall be made prior to the entry into force of a contract, in the first instance, in writing, to the head of the procuring entity.

(2) The head of the procuring entity shall not entertain an application for review unless it was submitted within ten working days of the bidder submitting the application becoming aware of the circumstances giving rise to the application, or of when that bidder should have become aware of those circumstances, whichever is earlier.

(3) The head of the procuring entity shall render a decision on the application within ten days of the submission of the application for review.

(4) Appeals against the decision of the head of procuring agency shall be made to the concerned Minister or, in the case of procurement whose value exceeds the threshold prescribed in the Regulations, to the Director:

Provided that the appeal is submitted within ten working days of the date of the decision of the head of the procuring entity.

(5) An application for review may be made to the Director in the following circumstances—

(a) in the form of an appeal by the complaining bidder of a decision by the head of the procuring entity:

Provided that the appeal is submitted within ten working days of the date of the decision of the head of the procuring entity;

(b) in the event that the head of the procuring entity fails to render a decision within the period specified in subsection (3):

Provided that the application for review is filed within ten working days of the expiry of the time period for the decision by the head of the procuring entity;

(c) in the case of an application for review being submitted in the first instance to the Director, if the procurement contract has already entered into force:

Provided that such an application shall not be entertained unless it is submitted to the Director within ten working days of when the bidder submitting became aware of

the circumstances giving rise to the complaint, or of when that bidder should have become aware of those circumstances, whichever is earlier.

(6) For the purposes of hearing applications for review under this section, the Director shall establish a standing review committee (in this Act otherwise referred to as the "Review Committee") which shall consist of members of high integrity with experience in the different fields of procurement and procurement procedures, but with no direct or indirect personal involvement in public procurement functions during the period of their service on the Review Committee, and from the members of the Committee, the Director shall convene three-member ad hoc review committees to decide upon applications for review brought to the Director.

(7) The Review Committee established under subsection (6) shall render a decision under this Part within ten working days after receiving the complaint.

(8) Unless the complaint is dismissed, the remedies that may be ordered by the Review Committee may include—

(a) declaring the legal rules or principles that govern the subject-matter of the complaint, and directing the procuring entity to act or to proceed in a lawful manner or to reach a lawful decision;

(b) prohibiting the procuring entity from acting or deciding unlawfully or from following an unlawful procedure;

(c) annulling in whole or in part an unlawful act or decision of the procuring entity, other than any act or decision bringing the procurement contract into force;

(d) revising an unlawful decision by the procuring entity or substituting its own decision for such a decision, other than any decision bringing the procurement contract into force; and

(e) compelling the procuring entity to pay the successful protestor its costs of preparing and submitting a bid, and prosecuting the application for review.

(9) The timely submission of a complaint in accordance with deadlines set in this section suspends the procurement proceedings for a period of ten days.

(10) When the procurement contract enters into force, the timely submission of a complaint under this section shall suspend performance of the procurement contract for a period of ten days.

(11) The head of the procuring entity or the Director may extend a suspension period provided in subsection (9) in order to preserve the rights of the bidder submitting the application for review, provided that the total period of suspension shall not exceed thirty days.

(12) The suspension provided by this section shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement to proceed, and the certification, which shall state the grounds for the finding that such urgent considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of review under this Act, except judicial review.

(13) The High Court shall have jurisdiction over actions pursuant to section 37 and over petitions for judicial review of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time-limit.

PART VIII

AUDITING

[Ch3703s39]39. Regular auditing of procurement activities

Procurement activities shall be subject to regular auditing by the Auditor General to ensure that public funds are expended for their intended purpose, and with a view to maximizing value received by the public purchaser, ensuring that proper and accountable systems are in place and adhered to, and identifying any weaknesses in procurement.

[Ch3703s40]40. Cooperation with control bodies

All public entities, officials, and other participants involved in public procurement shall, in accordance with this Act and any other written law, provide full cooperation and disclosure to the Director, the Auditor General, and other authorities exercising monitoring and oversight over public procurement pursuant to the laws of Malawi.

PART IX

MISCELLANEOUS PROVISIONS

[Ch3703s41]41. Annual reports

(1) The Director shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning his activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include such information as the Minister may direct or as the Director may consider appropriate.

(3) The Minister shall, during the meeting of the National Assembly next following the receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Director shall publish the report for sale to the public.

[Ch3703s42]42. Exemptions from personal liability

No person shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of duties or functions under this Act.

[Ch3703s43]43. Regulations

The Minister may, on the recommendation of the Director, make regulations for the carrying into effect of the provisions of this Act.

SCHEDULE s. 30

PROCUREMENT METHODS

	Procurement Method	Conditions for Use	Main Procedures
1	Tendering services (non-consultancy services) pre-qualify	<ul style="list-style-type: none"> • Normal method for procurement of goods, works, and routine services • Open solicitation of tenders or of applications to pre-qualify 	<ul style="list-style-type: none"> • Objective and performance-based technical specifications • Complete contract terms included in bidding documents • Public bid opening • Evaluation of tenders and selection in accordance with pre-disclosed evaluation criteria • No negotiation
2	Restricted Tendering known to procuring entity (ground A)	<ul style="list-style-type: none"> • Object available only from limited number of suppliers, known to procuring entity (ground A) • Economy and efficiency in procurement do not justify preparation and evaluation of a large number of bids (ground B) 	<ul style="list-style-type: none"> • (In the case of ground A) invite all suppliers • (In the case of ground B) invite as many as practicable, enough to engender real competition (e.g., at least three bidders) • except for restricted solicitation, procedures of tendering proceedings apply
3	Two-stage tendering specifications;	<ul style="list-style-type: none"> • Not feasible or not advisable to finalize technical specifications; • In first stage, bidders submit the particular technical and contractual proposals in response to general, tentative specifications; technical proposals only, and no financial proposals submitted at this stage 	<ul style="list-style-type: none"> • Procuring entity wishes to consider various technical or contractual variants, prior to finalizing specifications • Procuring entity reviews proposals and may engage in technical discussions with bidders as to their proposals • Following conclusion of those discussions, procuring entity finalizes specifications
4	Request for proposals for services Solicitation to a short list of bidders		<ul style="list-style-type: none"> • Procurement of consultant services • Emphasis on quality and technical aspects of proposals in the selection process • Selection either on the basis of quality, or on combination of quality and cost, or by least cost method

5 Request for quotations • Procurement of standardized, “off-the shelf” goods, routine services, or minor works services • Solicitation of quotations from a minimum of three bidders

- One quotation per bidder, no negotiation
- Award to lowest price quotation responsive to requirements

6 Single source procurement • Object available for sole source • In cases of emergency procurement, limit to amount required to meet emergency

- Urgency, not due to dilatory conduct or negligence of procuring entity; imminent danger to person or property
- Standardization
- Artistic works

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G.N. 28/2004

PUBLIC PROCUREMENT REGULATIONS

under s. 43

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Public Procurement Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires, the several terms defined in the Act shall have the meanings set therein section 2 of the Act and—

“bid” means the tender, offer, proposal or quotation submitted by a bidder in response to an invitation from the procuring entity;

“consultancy services” means activities of an intellectual and advisory nature that do not lead to a measurable physical output, and includes design, supervision, training, auditing and software development;

“non-consultancy services” means any object of procurement other than goods, construction and consultants’ services;

“Procurement Units” means the units established by procuring entities pursuant to section 10 of the Act, for the purposes of fulfilling procurement-related functions, and includes Specialized Procurement Units as provided for in the Act;

“requisitioning unit” means the State entity or community by whom the goods, works or service being procured are intended to be utilized.

3. Purpose and scope of procurement regulations

(1) The purpose of these Regulations is to establish detailed rules and procedures for fulfilling the objectives and implementing the provisions of the Act.

(2) These Regulations apply to all procurement covered by section 3 of the Act.

(3) Compliance with these Regulations is obligatory for procuring entities and other participants in procurement.

4. Accessibility of legal texts governing public procurement

(1) The Act, the regulations, instructions and other administrative decisions of general character are subject to publication in the Gazette.

(2) In addition, the Director of Public Procurement shall, pursuant to section 5 (2) (b) of the Act, periodically issue an updated compilation of the main legal texts governing public procurement.

5. Language

All pre-qualification documents, bidding documents, and all contract agreements and contract conditions shall be in English.

6. Cancellation of procurement proceedings before opening of bids

(1) Cancellation of procurement proceedings shall only be done when it is clearly in the public interest, and cancellation is in the public interest in cases such as the following—

(a) when the procurement need in question has ceased to exist;

(b) when the bidding documents have to be modified to such an extent that economy and efficiency in procurement dictate the re-commencement of the tendering proceedings, and would likely lead to an inevitable cancellation of the proceedings after the opening of bids if no action is taken at this stage to cancel the proceedings.

(2) If the procurement proceedings are cancelled before opening of bids, any bids that have been received shall be returned unopened, if presentation of bids in sealed form was required.

7. Cancellation of procurement proceedings after opening of bids

(1) In order to protect the integrity of the public procurement process, it is essential that cancellation of procurement proceedings after opening of bids be avoided to the greatest extent possible and limited strictly to exceptional cases.

(2) Cancellation of procurement proceedings after opening of bids is subject to approval by the head of the procuring entity, and may be authorized only in the following cases—

(a) the object of the procurement is no longer required;

(b) it has become necessary to modify the specifications;

(c) defects or gaps in the specifications have been revealed, including failure to accommodate the fulfilment of the procurement need by a substantially less expensive and

functionally equivalent article other than the one called for in the bidding documents, and failure to include all items of cost to the procuring entity;

(d) there is evidence of collusion among bidders in setting bid prices; and

(e) there is no substantially responsive bid or the bids exceed the budget.

8. Defence-related items eligible for special treatment

The list of the types of defence-related items eligible for special treatment in accordance with sections 27 (5) and 30 (2) of the Act is set forth in Schedule A. Schedule A

PART II

INSTITUTIONAL AND ORGANIZATIONAL ARRANGEMENTS FOR PROCUREMENT

Division I—Office of the Director of Public Procurement

9. Structure of Office of the Director of Public

The Office of the Director of Public Procurement, established pursuant to section 4 of the Act, shall be organized so as best to support the fulfillment of the functions assigned to the Director of Public Procurement.

10. Procurement Oversight functions of the Director

(1) All procurement in Malawi is subject to oversight by the Director of Public Procurement.

(2) The oversight activities of the Director of Public Procurement are governed by the Act, and these Regulations and other regulatory instruments, including setting thresholds for public procurement entities, that may be issued, from time to time, by the Director.

(3) The Director of Public Procurement is authorized to collect information and require reports from procuring entities and requisitioning units concerning the conduct of procurement activities in Malawi.

(4) The office of the Director of Public Procurement shall inform procuring entities, requisitioning units and other organs of public administration as to the types of statistical and reporting information related to procurement that are required to be collected and the frequency of the collection of such statistical data and reports.

(5) At a minimum, the information to be collected pursuant to paragraph (4) shall include the number and value of contracts awarded, separately addressing public goods, works and services contracts awarded by procuring entities, and the data shall be broken down by the procurement method used, and according to category of products and services.

(6) Where the contracts have been concluded according to the single-source procedure, the data referred to in paragraph (4) shall also be broken down according to the circumstances referred to in section 30 (10) of the Act.

(7) The Director of Public Procurement may also maintain data bases of suppliers, contractors and consultants, including on their past contract performance.

(8) Procuring entities shall collect the necessary information and, as required by the Director of Public Procurement pursuant to paragraph (4), report on a quarterly basis to the Director on implementation of procurement activities.

(9) The Director of Public Procurement shall establish procedures and mechanisms to ensure the effective and timely solicitation of viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms.

11. Recommendations and reporting by Director

(1) The Director of Public Procurement shall analyze all information collected pursuant to regulation 10 and make recommendations to procuring entities as to improvements in the implementation of procurement procedures.

(2) In accordance with section 5 (2) (g) and section 41 (1) of the Act, the Director of Public Procurement shall submit an annual report to the Minister on the implementation of the Act, the regulations and instructions, and on related institutional arrangements, in relation to the implementation of the budget, and the requirements of the legal and regulatory framework for public procurement; and the report shall also cover consultations held with consultative and study organs.

12. Development of legal framework for public procurement

(1) The Director of Public Procurement shall, in consultation with interested parties, develop standard bidding documents, general conditions of contract and such other forms as the Director may deem necessary or useful for the implementation of the Act and regulations.

(2) Procuring entities shall utilize the standard bidding documents and other documents developed pursuant to paragraph (1).

(3) The Director of Public Procurement shall review and propose to the Government improvements to legislative and regulatory texts applicable to public procurement.

(4) The Director of Public Procurement shall provide opinions to the Government and to procuring entities as to the application of legal texts related to public procurement, with a view to fostering harmonized interpretation and application of the Act and these Regulations.

(5) The Director of Public Procurement shall take steps, in accordance with section 5 (2) (b) of the Act and regulation 4 (2), to ensure the availability and the accessibility to public officials and the general public of this Act and regulations made hereunder; and those measures may include—

(a) publication of a periodic bulletin containing information about the procurement system and procurement proceedings in Malawi, including, from time to time, compilations of legal instruments applicable to the procurement process; and

(b) conducting civic education programmes about the legal, procedural and organizational framework for procurement.

13. Assistance in developing and enhancing the efficiency of public procurement operations

(1) The Director of Public Procurement shall devise and implement programmes aimed at assisting procuring entities and bidders in conducting and participating in public procurement proceedings in Malawi; and the programmes shall include, but not be limited to the following—

- (a) organizing and conducting educational programmes and professional training;
- (b) assisting in the establishment and development of, and recruitment for, specialized procurement units;
- (c) developing proposals and plans for the phased introduction of professional procurement staffing in procuring entities, and establishing minimum entry-level requirements, procedures for professional certification, descriptions of authority and responsibilities of procurement officers, and grounds for termination;
- (d) certification of procurement officers, and of members of Internal Procurement Committees, for entities at various levels of administration and regions in Malawi;
- (e) assisting in the dissemination of information to bidders about the rules and procedures governing public procurement and about procurement opportunities in Malawi; and issuing opinions, providing advice, and proposing solutions to facilitate the work of procuring entities with a view to fulfilling the objectives of the Act;
- (f) establishing a central data bank for the purpose of recording information on the performance record of suppliers in the implementation of procurement contracts with procuring entities in Malawi in order to evaluate their performance;
- (g) developing proposals for methods of disseminating procurement-related information, including the issuance of procurement bulletins;
- (h) examining possible uses of information and communications technology and other technical innovations in procurement with a view to more cost effective and higher quality performance of public administration and delivery of public services; more effective management of operations of procuring entities; and increased competition and participation by bidders; and
- (i) studying the experiences and practices of other countries with a view to introducing innovations in Malawi.

14. Functions of the Director related to review procedures

Pursuant to section 5 (2) (j) of the Act, the functions of the Director related to the review procedures under Part VI of the Act, shall include—

- (a) appointing the members, and maintaining lists of the members, of the standing Review Committee established pursuant to section 38 (6) of the Act; and

(b) providing secretariat services for three-member ad hoc review committees established from the membership of the standing Review Committee.

15. Human resources development

(1) Pursuant to section 5 (2) (d) of the Act, the Director of Public Procurement shall devise, and facilitate the implementation of, strategies and programmes for the promotion of professional standards and development.

(2) Specific tasks to be undertaken by the Director of Public Procurement in order to fulfil the mandate referred to in paragraph (1) shall include—

(a) developing qualification requirements for appointment to Procurement Units, Procurement Committees and to the standing Review Committee;

(b) designing and implementing a scheme for certification of compliance of appointees to Procurement Units, Procurement Committees and the standing Review Committee with requirements referred to in subparagraph (a);

(c) designing of career development and promotion schemes for public officials serving in the procurement field; and

(d) developing, and facilitating the institutionalization of, a training programme aimed at promoting professional skills and standards in procurement in Malawi, including training courses that shall be made available upon induction to procurement functions, as well as on an ongoing and systematic basis continually to boost skill levels of officials; and to that end, the Director may recommend to the Government the designation of one or more entities as responsible for conducting procurement training on an ongoing basis;

16. Use of information and communications technology

(1) Pursuant to section 5 (2) (l) of the Act, the Director of Public Procurement shall devise, and facilitate the implementation of, strategies for introducing and spreading the use of information and communications technology in the procurement process.

(2) Specific tasks to be undertaken by the Director of Public Procurement in order to fulfil the mandate referred to in paragraph (1) shall include, but not limited to—

(a) conducting an assessment of the current extent of the use of information and communications technology in procurement in Malawi;

(b) recommending possible ways of introducing in procurement the use of information and communications technology;

(c) identifying ways in which traditional procurement processes may be revised in order to obtain the greatest possible benefit from the application of information and communications technology;

(d) proposing possible pilot projects for introduction of information and communications technology to the procurement process; and

(e) developing a website related to procurement in Malawi.

Division II—Internal Procurement Committees

17. Composition of Internal Procurement Committees

(1) In accordance with section 9 (1) of the Act, Internal Procurement Committees shall consist of a minimum number of three members and, in the case of appointment of external members pursuant to section 9 (1) (c), a minimum number of five members, and for the purpose of these Regulations, the minimum number of three shall comprise—

(a) the Controlling Officer or his or her deputy;

(b) the head of the respective procurement unit or his or her deputy; and

(c) the head of accounts or his or her deputy,

and no Internal Procurement Committee meeting shall proceed without the presence of the three mentioned members.

(2) An Internal Procurement Committee shall comprise a maximum of seven members.

(3) The members of Internal Procurement Committees referred to in section 9 (1) (a) and (b) of the Act shall be appointed by heads of procurement agencies and heads of other public departments and organizations, as the case may be.

(4) Membership in an Internal Procurement Committee is an additional task, requiring occasional meetings, and is not a full-time assignment.

(5) The Controlling Officer may rotate membership of the Internal Procurement Committee as he or she deems appropriate in accordance with section 9 (1) (a) and (b) of the Act, and members referred to in section 9 (1) (c) of the Act shall be appointed on an ad hoc basis for particular procurement proceedings, as the need arises.

(6) The head of the respective Procurement Unit in a Ministry or Department or parastatal organization shall serve as secretary of the Internal Procurement Committee.

(7) Members of Internal Procurement Committees may be removed only by the appointing official and only for the following reasons—

(a) incapacity or other inability to perform;

(b) abuse of office; and

(c) corrupt or fraudulent practices.

18. Functions of Internal Procurement Committees

(1) The general functions of the Internal Procurement Committees in the Ministries, Departments and parastatal organizations shall be, in accordance with the functions set forth in section 8 (3) of the Act, and on the basis of preparatory work by the concerned Procurement Unit established pursuant to section 10 of the Act, and regulation 20 the following—

- (a) verification of proper procurement planning and preparation of procurement proceedings;
- (b) verification of stock positions of the goods to be procured;
- (c) approval of the draft advertisements and other bidding documents;
- (d) conducting opening of bids;
- (e) conducting the preliminary screening of bids opened;
- (f) rejection of bids that do not comply with the instructions to bidders;
- (g) comparison and evaluation of bids, and selection of the winning bid;
- (h) approval of specific terms and conditions relating to—
 - (i) contract amounts;
 - (ii) completion periods; and
 - (iii) stages and conditions of part payments;
- (i) assessment of the quality of the procured goods, works and services;
- (j) consideration and approval of applications for contract variations above thresholds as set and issued by the Director of Public Procurement; and
- (k) maintaining minutes of the Internal Procurement Committee meetings.

(2) The Controlling Officer shall, upon recommendation from the head of the procurement unit in his or her Ministry or Department or organization, appoint at least three members to sit on an evaluation team, taking into consideration the required expertise in the procurement.

19. Quorum requirements

Internal Procurement Committees shall hold their meetings in accordance with quorum requirements, based on the presence of a majority of the membership.

Division III—Procurement Units

20. Establishment of Procurement Units

(1) For the purposes of these Regulations, specialized procurement units as stipulated in sections 10 and 11 of the Act refer to the generic procurement units that are established in all Ministries, Departments and parastatal organizations.

(2) Controlling Officers, heads of agencies and heads of other public departments shall establish procurement units and assign to the heads of such units authority to conduct procurement activities in accordance with the Act and these Regulations, including provision of secretariat services to the internal Procurement Committees.

21. Staffing of Procurement Units

The positions in Procurement Units shall be staffed by officers competently qualified in accordance with section 11 of the Act and shall be referred to as "Procurement Officers" who shall be full-time public officials and may be removed from office by the authority by whom he was appointed, only upon a showing of just cause.

22. Functions of Procurement Units

The functions of Procurement Units shall include—

- (a) planning and coordination of procurement;
- (b) preparation of invitations to bid and of bidding documents;
- (c) publication and distribution of invitations to bid;
- (d) reception and safeguarding of bids;
- (e) performance of secretariat services which shall include provision of technical advice to the Internal Procurement Committee; and
- (f) administering implementation of procurement contracts to the extent that is not carried out by requisitioning units.

PART III

PROCUREMENT PLANNING

Division I—Prerequisite Steps for Initiating Procurement Proceedings

23. Annual planning for budget preparation purposes

Prior to the determination of annual budgetary allocations, procuring entities shall provide to the Ministry of Finance, or in the case of local authorities, to the Local Government Finance Committee, a general plan describing the extent, timing and purposes of projected procurement requirements for the budgetary period.

24. Planning for individual procurement proceedings

(1) A procuring entity may initiate actual procurement proceedings only after the determination and approval of budgetary allocations, and only after obtaining a certification from the Ministry of Finance that budgetary allocations sufficient to fund the procurement are available for that purpose; and a specific reference to that certification shall be included in the bidding documents.

(2) Procuring entities shall devise procurement plans, taking into account the following factors and steps as appropriate under the circumstances—

- (a) identification and assessment of the need for the procurement;
- (b) designation of procurement planning team;
- (c) conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, and to determine the most favourable contractual and guarantee terms available in the commercial market that would be suitable for procurement;
- (d) studying acquisition history for similar goods, works or services;
- (e) conducting feasibility and other pre-contract studies;
- (f) defining and describing the requirement;
- (g) estimation of the cost of a proposed procurement;
- (h) identification of the sources and amount of financing;
- (i) selection of contracting approach and structure, including verification of possible availability of framework or indefinite quantity contract arrangements for the item in question;
- (j) selection of appropriate procurement method; and possible combinations and packages of tasks and contracts; and
- (k) determination of required contract administration resources.

(3) The procuring entity, prior to conducting procurement of goods, shall, in accordance with applicable procedures, ascertain whether the required supplies are available in Central Government Stores (Director of Supplies), and the Central Government Stores may verify the actual need for the supplies requested, and whether they are available in other depots.

25. General principles of describing requirements

(1) No requirement or reference shall be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless—

- (a) there is no sufficiently precise or intelligible way of describing the procurement requirements; and
- (b) words such as “or equivalent” are included in the specifications.

(2) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the pre-qualification documents or bidding documents.

(3) Due regard shall be given to the use of standardized trade terms such as the current version of International Commercial Terms (INCOTERMS), where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the pre-qualification or bidding documents.

26. Apportioning of procurement

(1) Without prejudice to section 3 (4) of the Act, when apportioning of an acquisition would be technically or financially feasible, the acquisition may be divided into lots, which may be awarded through separate procurement contracts.

(2) If one or more lots are not awarded, the procuring entity may initiate a new proceeding, modifying the content of the lots.

27. Valuation of procurement contracts

(1) For the purposes of applying monetary thresholds in the Act and these Regulations, selecting the appropriate procurement method, the procuring entity shall assess the expected value of a procurement contract or package of contracts taking into account—

- (a) all forms of remuneration, including any premiums, fees, commissions and interest receivable;
- (b) the likelihood and expected value of recurring orders;
- (c) the minimum expected duration and expenditure for a lease or for a contract of indefinite duration, taking into account relevant experience of similar contracting actions in the past; and
- (d) the estimated value of optional additional purchases to be permitted under the contract.

(2) The selection of the valuation method by the procuring entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding monetary thresholds referred to in the Act or in these Regulations.

28. Requisition for procurement

(1) In all cases, the request to initiate procurement shall be addressed to the head of the Procurement Unit, and the requisitioning unit has the responsibility to solicit the approval of the budget authorities to justify availability of funds.

(2) The Procurement Unit shall examine the procurement request for compliance with the Act and these Regulations, and in the event of non-compliance, the procurement request shall be sent back promptly and directly to the requisitioning unit for the appropriate modifications.

Division II—Selection of Appropriate Contract Form

29. Determination of appropriate contract form

In the planning and preparation of procurement, the procuring entity shall determine the appropriate contracting approach and structure to be utilized for any given procurement taking into account standard contract forms promulgated by the Director of Public Procurement and the conditions for their use.

30. Indefinite quantity contracts

(1) When, for economic, technical or financial reasons, the frequency or extent of the procuring entity's requirements cannot be determined with sufficient accuracy in the bid solicitation documents, the procuring entity may conclude an indefinite quantity agreement with a particular supplier, under which an indefinite number of purchase orders may be made.

(2) An indefinite quantity contract shall set forth the nature, specifications, and price of deliveries; the minimum and maximum levels of the deliveries, in terms of value or quantity; and the duration of the contract.

(3) An indefinite quantity contract shall be implemented through the issuance of successive purchase orders, as needs arise, and each purchase order shall specify which of the items enumerated in the basic indefinite quantity agreement, and the quantity, that are being ordered.

31. Framework agreements

(1) For the purpose of this regulation "framework agreement" means an agreement between one or more suppliers and a procuring entity under which the procuring entity, after following the procedures laid down by the Act and these Regulations for the award phase, selects the parties to the agreement on the basis of the bids they have submitted according to objective criteria, such as quality, quantity, technical merit, delivery period or period of completion and price; and under such agreement the suppliers, under certain terms laid down by the procuring entity, undertake to fulfill contracts awarded under the agreement.

(2) A framework agreement may take various forms, including—

(a) the form of a requirements contract, in which a single supplier is selected and the procuring entity promises to place all of its orders with the successful supplier and the supplier promises to fulfil the orders; and

(b) the form of an indefinite quantity contract, in which one or more suppliers are selected for a guaranteed minimum quantity of future orders of one or more goods, works or services at an agreed price.

(3) A framework agreement may designate one or more procuring entities as eligible to place orders under the agreement.

(4) Procuring entities which have concluded a framework agreement within the meaning of paragraph (1) with more than one supplier shall reopen competition between the parties to the framework agreement in accordance with the following procedure—

(a) for every contract to be awarded, the procuring entity shall consult all suppliers who are party to the framework agreement, in writing;

(b) the procuring entity shall fix a time-limit which is sufficiently long to allow bids for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract and the time needed to send in bids;

(c) bids shall be submitted in writing, and their content shall remain confidential until the time limit for reply has expired; and

(d) procuring entities shall award each contract to the supplier who has submitted the best bid on the basis of the award criteria established in accordance with the framework agreement.

(5) The procedure set out in paragraph (4) may be applied only between the procuring entity and the suppliers originally party to the framework agreement.

(6) Procuring entities shall enter into framework agreements as defined in paragraph (1) with a minimum of three parties, where there is a sufficient number of suppliers satisfying the selection criteria.

(7) The term of a framework agreement may not exceed one year.

(8) Procuring entities may not use framework agreements improperly or in such a way as to restrict or to distort competition.

32. Works contracts

(1) A contract for repairing or other forms of construction is awarded in formats, including the following—

- (a) unit price works contracts;
- (b) lump sum works contracts;
- (c) turnkey works contracts; and
- (d) time-and-material rate contracts.

(2) A contract based on unit price is awarded based on unit prices in the winning bid for estimated quantities of defined items of work that are required in order to carry out the works, and total payment is based on the units of work actually done and measured in the field.

(3) Bidders must consider the following points for contracts based on unit price—

(a) list of the quantities of labour and other inputs listed in the bill of quantities in the bidding documents, for which bidders give their unit prices in their bids; and

(b) list of quantities of work with total prices.

(4) In lump-sum contracts, the supplier agrees to perform the specified work for a fixed sum of money, and it is the supplier's responsibility and risk to remain on budget, since the procuring entity is liable only for the lump-sum price of the contract, subject to changes ordered by the procuring entity.

(5) In turnkey contracts the supplier is responsible for design, consultancy, building and implementation of the project, and in such contracts the supplier ensures the standard criteria for designing, implementation and technical specifications, in accordance with the procurement contract.

(6) In the case of maintenance and repair services, and other contracting situations in which the amount and combinations of various types of labour and materials cannot be predicted with certainty at the time of entry into the procurement contract, the procuring entity may enter into a time-and-materials-rate contract.

(7) A time-and-materials-rate contract shall stipulate hourly labour rates, including overhead and profits; reimbursement of materials; and a ceiling price within which the contractor shall make a good faith effort to remain.

PART IV

BIDDER QUALIFICATIONS

Division I—Qualification Data and Assessment

33. Qualification assessment criteria

(1) The procuring entity shall ensure that the supplier with whom it enters into a procurement contract meets such of the following criteria as the procuring entity considers appropriate in the particular procurement proceedings, namely—

(a) that the supplier possesses the necessary professional and technical qualifications and competence to perform the procurement contract;

(b) that the supplier possesses the necessary financial resources to perform the procurement contract;

(c) that the supplier possesses the necessary equipment and other physical facilities to perform the procurement contract;

(d) that the supplier possesses the necessary managerial capability, reliability, experience and reputation to perform the procurement contract; and

(e) that the supplier possesses the necessary personnel to perform the procurement contract.

(2) In addition, the procuring entity shall ensure that the supplier—

(a) has legal capacity to enter into the procurement contract;

(b) is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;

(c) has fulfilled its obligations to pay taxes and social security contributions; and

(d) has not, and its directors or officers have not, been convicted of any criminal offence related to its professional conduct, corruption, or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of one year preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.

(3) Subject to the right of bidders to protect their intellectual property or trade secrets, the procuring entity may require bidders participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that bidders are qualified in accordance with the criteria referred to in paragraphs (1) and (2), and in handling this information procuring entities shall take into consideration the legitimate interests of bidders as regards the protection of their technical or trade secrets.

(4) The bidding documents shall indicate the types of documentation, if any, to be provided by bidders to attest to their conformity with the qualification requirements set forth in the bidding documents.

34. Suitability to pursue the professional activity

(1) Any bidder, whether local or foreign, wishing to take part in a procurement contract may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration on oath or certificate in a prescribed format.

(2) In procedures for the award of service contracts where the service providers have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the service concerned, the procuring entity may require them to prove that they hold such authorization or membership.

35. Information as to economic and financial standing

Supporting documents to prove economic and financial standing under this Part may include—

- (a) appropriate statements from the bidder's bankers;
- (b) statement of accounts or extracts therefrom relating to the business of the bidder;
- (c) statements of liabilities and assets, and of profit and loss;
- (d) a statement of the overall inventory turnover of the business of the bidder and the turnover in respect of works in the previous three financial years of the bidder; and
- (e) other information if the types of information referred to in subparagraphs (a) to (d) are not appropriate or not available in order to assess the bidder's economic and financial standing.

36. Information as to technical capacity

(1) The technical and professional capabilities of bidders shall be assessed and examined in accordance with paragraphs (2), (3) and (4).

(2) In the procedures for awarding supply contracts, evidence of the bidder's technical capability may be furnished by means such as the following, according to the nature, quantity and purpose of the products to be supplied—

(a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved, and—

(i) where the supplies are made to public authorities, evidence of delivery shall be in the form of certificates and delivery notes;

(ii) where the supplies are to private purchasers, delivery shall be certified by the purchaser or, failing which, simply declared by the supplier to have been effected;

(b) a description of the bidder's technical facilities, its measures for ensuring quality and its study and research facilities;

(c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier, especially those responsible for quality control;

(d) samples, descriptions and photographs of the products supplied, the authenticity of which must be certified if the procuring entity so requests;

(e) certificates issued by official quality control institutes or agencies of recognized competence attesting to the conformity of products clearly identified by references to specifications or standards;

(f) where the products to be supplied are complex or exceptional, or are required for a special purpose, a check carried out by the procuring entity or on its behalf by a competent official body of the country in which the bidder is established, subject to that body's agreement, on the production capacities of the bidder and, if necessary, on his study and research facilities and quality control measures; and

(g) a bidder who is not a manufacturer shall be required to produce evidence of a manufacturer's authorization.

(3) In the procedures for awarding service contracts, the ability of bidders to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability, and evidence of the service provider's technical capability may be furnished by one or more means such as the following means according to the nature, quantity and purpose of the services to be provided—

(a) the bidder's educational and professional qualifications and those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services;

(b) a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private, of the services provided, and—

(i) where the services are provided to procuring entities, evidence of their performance shall be in the form of certificates issued or countersigned by the competent authority;

(ii) where they are provided to private purchasers, their performance shall be certified by the purchaser or, failing which, simply declared by the bidder to have been effected;

(c) a description of the bidder's measures for ensuring quality and his study and research facilities;

(d) where the services to be provided are complex or exceptional, or are required for a special purpose, a check carried out by the procuring entity or on its behalf by a competent official body of the country in which the bidder is established, subject to that body's agreement, on the technical capacities of the bidder and, if necessary, on his study and research facilities and quality control measures; and

(e) an indication of the proportion of the contract which the bidder may intend to sub-contract.

(4) In the procedures for awarding non-consultancy service contracts, the ability of bidders to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability, and evidence of the service provider's technical capability may be furnished by one or more means such as the following according to the nature, quantity and purpose of the services to be provided—

(a) an indication of the technicians or technical bodies involved, whether or not belonging directly to the bidder, especially those responsible for quality control;

(b) a statement of the bidder's average annual manpower and the number of managerial staff for the last three years;

(c) a statement of the tools, plant or technical equipment available to the bidder for carrying out the services; and

(d) where the services to be provided are complex or exceptional, or are required for a special purpose, a check carried out by the procuring entity or on its behalf by a competent official body of the country in which the bidder is established, subject to that body's agreement, on the technical capacities of the bidder and, if necessary, on his study and research facilities and quality control measures.

(5) In the procedures for awarding public works contracts, evidence of the bidder's technical capability may be furnished by one or more means such as the following, according to the nature, quantity and purpose of the works to be provided—

(a) the bidder's educational and professional qualifications and those of the firm's managerial staff, and, in particular, those of the person or persons responsible for carrying out the works;

(b) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works; the certificates shall indicate the value, date

and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed; and where necessary, the competent authority shall submit these certificates to the procurement entity;

(c) a statement of the tools, plant and technical equipment available to the bidder for carrying out the works;

(d) a statement of the firm's average annual manpower and the number of managerial staff for the last three years; and

(e) a statement of the technicians or technical divisions which the bidder can call upon for carrying out the works, whether or not they belong to the firm.

(6) The procuring entity shall specify, in the bidding documents or, if applicable, in the pre-qualification documents, which references under paragraphs (2), (3), (4) and (5) that it wishes to receive.

37. Selection followed by post-qualification procedure

In procurement proceedings that are not initiated by pre-qualification proceedings, following the evaluation of bids and the determination of the lowest priced or lowest evaluated bid, the procuring entity shall conduct a detailed examination of the qualification data submitted by the bidder that submitted that bid, prior to issuance of the notice of acceptance of the bid.

38. Subcontractor qualifications

A procuring entity may require bidders to provide qualification information and documentation in accordance with the Act and these Regulations for any subcontractor to be involved in the performance of the procurement contract, and where the procuring entity, in view of the circumstances of the case and because of the particularly critical nature of a subcontractor's role in the implementation of the procurement contract, decides that it is in the public interest to do so, the procuring entity may directly determine the suitability of the qualifications of a subcontractor, in accordance with the qualification criteria set forth in the Act.

39. False and deficient qualification information

(1) The procuring entity shall disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was false.

(2) The procuring entity may disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.

(3) Other than in a case to which paragraphs (1) and (2) apply, the procuring entity may not disqualify a bidder on the ground that information submitted concerning the qualifications of the bidder was inaccurate or incomplete in a non-material respect, but the bidder may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity.

40. Purpose of pre-qualification proceedings

(1) Pre-qualification shall be based entirely on the capacity and resources of potential bidders to successfully perform the contract and all pre-qualified bidders shall be invited to bid; and sufficient time shall be given for applicants to obtain the pre-qualification documents and prepare and submit their applications.

(2) Pre-qualification proceedings should be utilized in particular in the case of open invitations to participate in proceedings for the procurement of complex or high-value goods or works, or in any other circumstances in which the high costs of preparing detailed bids, proposals or offers could discourage competition, such as custom-designed equipment, industrial plant, specialized services, and contracts to be let under turnkey, design and build or management contracting, or for the purpose of establishing short lists for two-stage tendering.

(3) For pre-qualification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one supplier may be made on the basis of the supplier's resources, and the conditions to be satisfied by suppliers, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of a pre-qualification for a group of contracts, and the procedures for entry and for renewal of the pre-qualification shall be generally and regularly publicized, at least on an annual basis, in a manner to bring them to the attention of suppliers.

(4) Every pre-qualification is subject to annual renewal, and bidders shall be required to update the information on an annual basis as a precondition for renewal of their continued pre-qualification, and shall be informed of their removal from pre-qualified status if they are judged to no longer have the required resources or capability.

41. Contents of pre-qualification documents

(1) Pre-qualification documents shall include, at a minimum, the following information—

- (a) instructions for preparing and submitting pre-qualification applications;
- (b) a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings;
- (c) any documentary evidence or other information that must be submitted by suppliers to demonstrate their qualifications;
- (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for suppliers to prepare and submit their applications, taking into account the reasonable needs of the procuring entity;
- (e) any other requirements that may be established by the procuring entity in conformity with the Act and these Regulations relating to the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings; and

(f) the information required to be specified in the announcement by regulation 59 (1) (a) to (d), (f) and (g).

(2) The procuring entity shall respond to any request by a supplier for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to pre-qualify.

(3) The response by the procuring entity under paragraph (2) shall be given within a reasonable time so as to enable the supplier to make a timely submission of its application to pre-qualify and a response to any request shall, without identifying the source of the request, be communicated to all suppliers to which the procuring entity provided the pre-qualification documents.

42. Confirmation of qualification information

(1) Prior to the award of the procurement contract, the procuring entity may require the bidder submitting the bid that has been found to be the successful bid to demonstrate again its qualifications and the criteria and procedures to be used for such further demonstration shall be the same as those set forth in the pre-qualification documents.

(2) If the bidder submitting the successful bid is requested to demonstrate again its qualifications in accordance with paragraph (1) but fails to do so, the procuring entity shall reject that bid and shall select a successful bidder, in accordance with the criteria set forth in the bidding documents, from among the remaining bids, subject to the right of the procuring entity, in accordance with section 23 of the Act, to reject all remaining bids.

Division III—Database and Classification of Suppliers

43. Registration and classification of suppliers

(1) Bidders seeking inclusion in the database or lists of qualified suppliers that may be established by procuring entities or other entities in Malawi may be required to provide the following—

- (a) completed registration application;
- (b) copy of the currently valid licence and commercial registration for the activity practiced;
- (c) copy of currently valid registration certificate from the bidder's chamber of trade and commerce or equivalent body;
- (d) copies of contracts relating to agency, brokering and distribution arrangements; and
- (e) copy of last approved annual statement of accounts and budget.

(2) Requests to be entered in the database or list shall be receivable at any time from any interested bidder and shall be acted upon within fourteen days.

(3) Entry in the database or list shall be subject to no qualification or eligibility criterion more stringent than those set forth in regulation 33 (1) and (2).

(4) The existence of the database or list, the conditions to be satisfied by bidders to be entered in the database or list, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of an entry in the database or list and the procedures for entry and for renewal of the entry shall be generally and regularly publicized in a manner to bring them to the attention of bidders.

(5) The classification of the suppliers in the various types of works shall be made within the classes or grades according to the administrative technical and financial qualifications, equipment and experience in the execution of works pursuant to the instructions issued by the National Construction Industry Council of Malawi which define the classification requirements, conditions and classes.

(6) The sole absence of an application for entry in the registry or classification system is not ground for exclusion of a bidder from participation in procurement proceedings, but registration may be required as a condition for award of a contract.

(7) Inscription in the database or list shall be available at any time and shall be subject to periodic renewal after one year, and prompt notice shall be given to a bidder of his inscription on or removal from the database or list.

PART V

PROCUREMENT METHODS

Division I—General Provisions

44. Notice of procurement method to be used

The procuring entity shall include in the invitation to tender or to apply for pre-qualification, or in any other document used to solicit an offer, proposal or quotation, an indication of the procurement method being used in the procurement proceeding.

45. Price of bidding documents

The price that the procuring entity may charge for the bidding documents shall reflect only administrative costs, namely, the cost of printing and providing them to bidders.

46. Clarification and modification of bidding documents

(1) A bidder may request a clarification of the bidding documents from the procuring entity, and the procuring entity shall respond to any request by a bidder for clarification of the bidding documents that is received by the procuring entity at least fourteen days prior to the deadline for submission of bids.

(2) The procuring entity shall respond to a request under paragraph (1) so as to enable the bidder to make a timely submission of its bid and shall, without identifying the source of the

request, communicate the clarification to all bidders to which the procuring entity has provided the bidding documents.

(3) At any time prior to the deadline for submission of bids, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the bidding documents by issuing an addendum, and the addendum shall be communicated promptly to all bidders to which the procuring entity has provided the procuring entity documents and shall be binding on those bidders.

47. Deadline for submission of bids

(1) All time-limits for the receipt of bids and requests to participate fixed by the procuring entities shall be at least twenty-eight days to give interested parties reasonable time appropriate to the contract to draw up and submit their bids, and when fixing the time-limits, procuring entities shall take particular account of the complexity of the contract and the time required for drawing up bids.

(2) Subject to paragraph (3), deadlines for submission of bids shall be set in accordance with the following minimum periods—

(a) in the case of international competitive bidding, not less than forty-five days from the date of publication of the invitation to tender;

(b) in the case of national competitive bidding, not less than thirty days from the date of publication of the invitation to tender;

(c) in the case of local shopping (request for quotations) not less than five days from the date of delivery of the letter of solicitation for quotations;

(d) in the case of restricted tendering, not less than twenty-one days from the dispatch of the invitation to tender; and

(e) in the case of emergency procurement, not less than twenty-four hours from the time of dispatch of the invitation letter.

(3) Factors to be considered in determining the period of time to be allowed for preparation of bids include—

(a) the nature and complexity of the object of the procurement;

(b) whether the item to be procured is readily available commercially or must be produced to the unique specifications of the procuring entity;

(c) the time period when the procuring entity needs to have its requirement fulfilled;

(d) whether it is anticipated that foreign bidders will participate; and

(e) the amount of time required for distribution of invitations to tender and bidding documents.

(4) The procuring entity may extend the deadline for submission of bids if, following a clarification or modification of the bidding documents, or the late issuance of minutes of a conference of bidders or a site visit, such an extension is necessary to allow bidders sufficient time to take the clarification, modification or other added information into account in preparing their bids, and notice of any extension of the deadline shall be given promptly to each bidder to which the procuring entity provided the bidding documents.

48. Reception and security of bids

(1) The procuring entity shall ensure that all bids it receives are kept in a secure manner that does not permit the bids to be open or viewed.

(2) For the purpose of paragraph (1), the procuring entity shall maintain a securely-locked tender box into which bidders may deposit their bids, and if the offer envelopes are so big which makes it impossible to place them in the box, they shall be handed over to the Internal Procurement Committee's Secretary, who should ensure that the bids are kept in a safe, in secure area and manner, and handed over to the Internal Procurement Committee at the bid opening.

(3) In addition to direct deposit in the tender box, bids may be submitted by registered mail, courier or any other means that may be permitted by the bidding documents, and bids received in such a manner shall be promptly placed in the tender box.

(4) Any sample bids that are submitted should be handled in a confidential and secure manner that does not lead to the disclosure of their characteristics prior to the opening of bids.

49. Rejection of late bids

(1) A bid received by the procuring entity after the deadline for the submission of bids shall not be opened and shall be returned to the bidder that submitted it.

(2) The date and time of arrival of a late bid shall be noted in the record of the procurement proceedings.

50. Bid validity period

(1) The bidding documents shall set a bid validity period that is of a sufficient length to enable the procuring entity to complete the evaluation and comparison of bids and to obtain all the necessary approvals so that the procurement contract can be awarded within that period.

(2) If, prior to the expiry of the validity period of bids, the procuring entity requests bidders to extend the validity period of their bids, it should only address such a request to those bidders that in the judgment of the procuring entity have a reasonable chance of being selected.

(3) A refusal to extend the bid-validity period shall not result in forfeiture of the bid security; extension of the bid-validity period shall, however, be subject to extension of the bid security if security was required in the first place and without such an extension of the bid security, a bid shall be deemed not extended.

51. Evaluation of bids in different currencies

When bid prices are expressed in two or more currencies, the bid prices of all bids shall be converted to the same currency, and according to the rate specified in the bidding documents, for the purpose of evaluating and comparing bids.

52. Prompt payment discounts

A prompt payment discount included in a bid shall become a term of the procurement contract if that bid is accepted, and shall be utilized by the procuring entity if payment is made in accordance with the terms of the discount, but so however that prompt payment discount shall not be considered in the evaluation and comparison of bids.

53. Unrealistically low bids

(1) If, for a given contract, bids appear to be unrealistically low in relation to the goods, works or services, the procuring entity shall, before it may reject those bids, request in writing details of the constituent elements of the bid which it considers relevant and shall verify, after due hearing of the parties, those constituent elements taking account of the explanations received.

(2) The procuring entity shall take into consideration explanations relating to—

- (a) the economics of the manufacturing process, of the services provided or of the construction method;
- (b) the technical solutions chosen and the exceptionally favourable conditions available to the bidder for the supply of the goods or services, or the execution of the work; and
- (c) the originality of the supplies, services or work proposed by the bidder.

54. Confidentiality of bid evaluation

Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted, except as provided in the Act and these Regulations.

55. Rejection of bids

The procuring entity shall not accept a bid—

- (a) if the bidder that submitted the bid is not qualified, including bidders that are debarred or suspended;
- (b) if the bidder that submitted the bid has submitted, or participated in, another bid for the procurement in question, in which case both bids shall be rejected;
- (c) if the bidder that submitted the bid does not accept a correction of an arithmetical error made pursuant to regulation 79;
- (d) if the bid is not responsive;

(e) for which a bid security was not provided, if such a security was required by the bidding documents; or

(f) in the circumstances referred to in section 18 (4) (a) of the Act.

56. Notice requirement for rejection of all bids; cancellation of procurement proceedings

Notice of the rejection of all bids, or of cancellation of the procurement proceedings, shall be given promptly to all bidders that submitted bids, and the notice shall state the grounds for the rejection of all bids, or for the cancellation of the procurement proceedings.

57. Notice to other bidders

Upon the entry into force of the procurement contract and, if required, the provision by the supplier of a security for the performance of the contract, notice of the procurement contract shall be given to other suppliers, specifying the name and address of the supplier that has entered into the contract and the contract price.

58. Return of samples

(1) Any required samples that have not been destroyed in testing shall be returned to the respective bidders at their written request and expense; and in all cases, the bidder loses the right of claiming return of samples sixty days following the date of notification of the award.

(2) The samples approved in relation to the successful tender shall, after being signed by the Internal Procurement Committee, be kept by the procuring entity for the purpose of comparison with the delivered supplies.

Division II—Procedures for Tendering Proceedings

59. Contents of invitation to tender and invitation to pre-qualify

(1) An invitation to tender shall contain, at a minimum, the following information—

(a) the address of the procuring entity;

(b) the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where the services are to be provided;

(c) the desired or required time for the supply of the goods or for the completion of the works;

(d) the criteria and procedures to be used for evaluating the qualifications and eligibility of bidders in conformity with sections 13 and 14 of the Act;

(e) the means of obtaining the bidding documents and the place from which they may be obtained;

(f) the price, if any, charged by the procuring entity for the bidding documents;

- (g) the currency and means of payment for the bidding documents;
- (h) the language or languages in which the bidding documents are available; and
- (i) the place and deadline for the submission of bids.

(2) An invitation to pre-qualify shall contain, at a minimum, the information referred to in paragraph (1), as well as the following—

- (a) the means of obtaining the pre-qualification documents and the place from which they may be obtained;
 - (b) the price, if any, charged by the procuring entity for the pre-qualification documents;
 - (c) the currency and terms of payment for the pre-qualification documents;
 - (d) the language or languages in which the pre-qualification documents are available;
- and
- (e) the place and deadline for the submission of applications to pre-qualify.

60. Publication of invitation to tender

(1) An invitation to tender or to apply for pre-qualification shall be published at a minimum in the Gazette.

(2) In the case of solicitation of international participation, publication shall, in addition to publication in the Gazette, be made in publications of wide international circulation, specialized trade journals, or international newspapers, and using other appropriate media such as the internet and; pursuant to section 30 (6) (a) of the Act, international participation shall be solicited when the estimated value of the procurement exceeds the thresholds set by the Director of Public Procurement.

(3) The invitations referred to in paragraph (1), shall be published within seven days of receipt by the Government Press.

(4) The procuring entity shall not publish an invitation to tender or to pre-qualify for a procurement proceeding in a newspaper or other media prior to publication of the announcement in the Gazette.

(5) In no case shall a publication of an announcement in the public media be deemed a substitute for publication of the announcement in the Gazette and minimum periods of time shall be counted from the date of publication in the Gazette.

(6) Every chairman of an Internal Procurement Committee shall, prior to the issuance of an invitation to tender of any tender, ascertain the following—

(a) compliance with the requirements in the Act and these Regulations; and the chairman of the Committee shall request the rectification of any errors or omissions and the concerned procurement unit shall do so; and

(b) availability of a sufficient number of copies of the bidding documents.

61. Provision of bidding documents

(1) Where procuring entities do not offer free direct access to the entire bidding documents and any supporting documents by electronic means, and where, in restricted tendering procedures the invitation to tender is not accompanied by such documents, the bidding documents shall be sent to bidders within five days of receipt of the request to participate, provided that the request is made in good time before the deadline for submission of bids.

(2) Bidders interested in the tendering proceedings may preview the bidding documents at the office of the procuring entity indicated in the invitation to tender.

62. Preparation of bidding documents

Preparation of the bidding documents is the responsibility of the Procurement Unit, if one has been established, in consultation with the requisitioning unit that seeks to submit a requisition for procurement, and the bidding documents should be prepared in English.

63. Contents of bidding documents

The bidding documents shall include, at a minimum, the following information—

(a) instructions for preparing bids, including—

(i) any descriptive literature bidders are required to submit with their bids;

(ii) any requirement that bidders provide samples, and the number and type of such samples;

(iii) any requirement that bidders view samples to which supplies must conform, and the circumstances under which such requirements would be waived;

(iv) any requirement that bidders submit a table of spare parts recommended by the manufacturer along with the manufacturer's stock number for each item, the quantity, unit price, and an indication of any escalation of prices for spare parts after the contractually guaranteed period for spare parts prices;

(v) any requirement that the bidder should state in the bid the country of origin of the supplies, the name of the manufacturer, the brand name, model and catalogue number;

(b) the criteria and procedures, in conformity with section 13 (3) of the Act and Part IV of these Regulations, relative to the evaluation of these qualifications of bidders and relative to the further demonstration of qualifications pursuant to regulation

(c) the requirements as to documentary evidence or other information that must be submitted by bidders to demonstrate their qualifications;

(d) the nature and required technical and quality characteristics, in conformity with section 15 of the Act, of the goods, works or services to be procured, including, but not limited to—

(i) technical specifications, plans, drawings and designs as appropriate; and the quantity of the goods;

(ii) any incidental services to be performed;

(iii) the location where the works are to be effected or the services are to be provided, and the desired or required time, if any, when the goods are to be delivered, the works are to be effected or the services are to be provided;

(iv) any warranty and maintenance requirements;

(v) the tests, standards and methods to be employed to judge the conformity of goods or works with technical specifications provided in solicitation documents; and

(vi) any requirement that supplies, materials, spare parts should be brand new and original;

(e) the criteria to be used by the procuring entity in determining the successful bidder, including any margin of preference and any criteria other than price to be used pursuant to regulations 64, 78 and 80 and the relative weight of such criteria;

(f) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

(g) if alternatives to the characteristics of the goods, works, services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;

(h) if bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;

(i) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes; and whether the prices are fixed or adjustable and, if so, the formula thereof;

(j) the currency or currencies in which the bid price is to be formulated and expressed; in respect of local bids, the price shall be expressed in Malawi Kwacha and any convertible currency for international bids;

(k) the language or languages in which bids are to be prepared;

(l) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any bid security to be provided by bidders submitting bids; and any such requirements for any security for the performance of the procurement contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and materials bonds;

(m) when a bid security is required, an indication that withdrawal or modification of the bid following the deadline for submission of bids will result in forfeiture of the bid security amount; and that a bidder may withdraw its bid prior to the deadline for the submission of bids without forfeiting its bid security;

(n) the manner, place and deadline for the submission of bids, in conformity with regulation 47;

(o) the means by which, pursuant to section 31 (6) of the Act and regulation 46, bidders may seek clarifications of the bidding documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of bidders;

(p) the period of time during which bids shall be valid, in conformity with regulation 50;

(q) the place, date and time for the opening of bids, in conformity with section 31 (11) of the Act;

(r) the procedures to be followed for opening and examining bids;

(s) the currency that will be used for the purpose of evaluating and comparing bids pursuant to regulation 51 and either the exchange rate that will be used for the conversion of bids into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;

(t) references to the Act, these Regulations and other laws and regulations directly pertinent to the procurement proceedings; but so however, that the omission of any such reference shall not constitute grounds for review under section 37 of the Act or give rise to liability on the part of the procuring entity;

(u) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from bidders in connexion with the procurement proceedings, without the intervention of an intermediary;

(v) any commitments such as the transfer of technology to be made by the bidder under the procurement contract;

(w) notice of the right provided under section 37 of the Act to seek review of an unlawful act or decision of, or procedure followed by, the procuring entity in relation to the procurement proceedings;

(x) a statement to the effect that the procuring entity reserves the right to reject all bids pursuant to section 23 of the Act;

(y) any formalities that will be required once a bid has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to regulation 123; and

(z) any other requirements established by the procuring entity in conformity with the Act and these Regulations relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

64. Formulation of technical evaluation criteria

(1) The criteria used to assess the technical merit of bids shall be formulated in as clear, precise, and objective a manner as possible.

(2) Technical bid evaluation criteria, other than price, which should be quantified in monetary terms in that the criteria shall be applied in the comparison of bids with respect to various performance factors by way of deductions from or additions to bid prices; such deductions and additions shall be only for the purposes of comparison of bids, and shall not affect actual bid prices; and evaluation criteria may also be expressed in the form of pass or fail requirements.

(3) Bid evaluation criteria may identify an acceptable range of performance and an acceptable range of delivery and payment terms.

(4) Bid evaluation criteria shall be formulated in such a manner that does not permit the procuring entity to award the procurement contract to a bidder whose bid exceeds the requirements referred to in paragraph (2), unless that bidder also has the bid price evaluated lowest in accordance with the evaluation criteria set forth in the bidding documents.

65. Technical specifications for procurement of goods

Technical specifications for procurement of goods may, among others, contain the following elements and descriptions of requirements—

(a) listing of the goods to be procured, including the required performance characteristics, quantity, delivery times and incidental services, such as operating or descriptive manuals, training of procuring entity's personnel, installation, supplier's on-site personnel required, after sale service;

(b) required availability of spare parts and service during life of goods;

(c) descriptive literature or samples to be provided with the bid;

(d) description of any required performance or quality guarantee;

(e) technical configurations;

(f) inspection and quality testing to be conducted, including pre-shipment testing and pre-shipment inspection;

(g) environmental impact and safety standards to be met by the goods; and

(h) criteria and performance tests or inspections for final acceptance.

66. Technical specifications for procurement of works

Elements to be addressed in technical specifications for procurement of works may contain the following elements and descriptions of requirements—

- (a) general description of the scope and purpose of the works;
- (b) precise description of scope of work to be carried out, including, elements such as design, construction, erection, any manufacturing, installation of equipment;
- (c) physical nature and conditions of construction site;
- (d) detailed listing of any equipment and components to be supplied;
- (e) detailed design and drawings of work to be performed, to the extent that those are to be supplied by the procuring entity under the contracting arrangement in question;
- (f) description of the works in terms of design details or performance characteristics, including specific technical descriptions and standards as to items such as plumbing, and electrical installations;
- (g) environmental impact and safety standards to be met;
- (h) description of performance and quality guarantees required;
- (i) inspection and testing to be conducted at various stages of construction;
- (j) completion tests;
- (k) technical documentation, drawings, operating manuals to be provided by suppliers;
- (l) type and quantity of training and supervision to be provided by suppliers, to the extent applicable;
- (m) inspection and performance tests to be passed for acceptance; and
- (n) a schedule for starting and completion of construction time.

67. Bills of quantities and activity schedules

(1) Bidding documents for unit-priced works contract shall require bidders to quote their prices for the items listed on the bill of quantities included in the bidding documents, and the bills of quantities shall set forth the procuring entity's estimate of the quantities of materials, labour and the other inputs required to be provided by the supplier in order to carry out the works.

(2) Bidding documents for lump-sum-priced contracts shall require bidders to submit a priced activity schedule, on which the bidder breaks down the lump-sum price according to the main activities involved in the progressive implementation of the procurement contract.

68. Technical specifications for procurement of services other than consultants' services

Technical specifications for procurement of services, other than consultants' services, shall contain the following elements and description of requirements—

- (a) general description of the scope and purpose of the service;
- (b) description of the service to be supplied and the tasks to be performed by the supplier, as much as possible as performance requirements;
- (c) conditions under which the service is to be performed;
- (d) descriptive literature or samples to be provided with the bid;
- (e) inspection and quality testing to be conducted;
- (f) criteria and methods by which the procuring entity intends to judge the performed services;
- (g) description of performance and quality guarantees required; and
- (h) type and quality of training and supervision to be provided by supplier.

69. Pre-bid conference

(1) The procuring entity may organize a conference for the purpose of briefing bidders and taking their questions on the bidding documents, including the technical specifications and other requirements; and any such conference should take place at an early point following the distribution of the bidding documents, so as to allow bidders to take the information they obtain at the conference into account in preparing their bids; clarification at the conference of defects or ambiguities in the bidding documents does not relieve the procuring entity in such cases of the obligation to amend the bidding documents.

(2) If the procuring entity convenes a meeting of bidders, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the bidding documents, and its responses to those requests, without identifying the sources of the requests; and the minutes shall be provided promptly to all bidders to which the procuring entity provided the bidding documents, so as to enable those bidders to take the minutes into account in preparing their bids.

70. Site visits

The procuring entity shall arrange for site visits during or after the pre-bid conference, where such site visits would facilitate the submission of bids that are responsive to the needs of the procuring entity.

71. Submission of signed bid in single envelope

(1) A bidder shall submit the bid signed, in the required number of copies and in a tightly closed and sealed envelope; and a copy marked as the "original" shall be amongst them.

(2) The procuring entity shall, on request, provide to the bidder a receipt showing the date and time when its bid was received and proceed in accordance with regulation 48.

(3) A bidder shall be required to submit its bid in a single sealed envelope.

72. Requirements applicable to bid securities

(1) As a general guideline, bid securities shall be required in the following types of cases—

(a) procurement whose value exceeds the amount prescribed, from time to time, by the Director of Public Procurement;

(b) procurement of technologically complex equipment or works;

(c) procurement where time is of the essence; and

(d) procurement in which a performance or other type of security is required to support fulfilment of the resultant procurement contract.

(2) Taking due account of the factors in paragraph (1), the procuring entity may waive a bid security requirement in the interest of economy and efficiency and with a view to reducing obstacles to participation by small- and medium-sized enterprises, and any such waiver shall be noted in the record of the procurement proceedings.

(3) The amount of the bid security should be set in the bidding documents, at between 1 per cent and 3 per cent of the estimated value of the procurement; and the required amount of the security shall be stated as an amount rather than as a percentage of the bid price of each bidder.

(4) Where the procuring entity requires bidders submitting bids to provide a bid security the requirement shall apply to all such bidders.

(5) Prior to submitting a bid, a bidder may request the procuring entity to confirm the acceptability of a proposed issuer of a bid security, or of a proposed confirmer, if required; and the procuring entity shall respond promptly to such a request.

(6) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer pursuant to paragraph (5) does not preclude the procuring entity from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness.

(7) A bid security shall be subject to a demand for payment in the following cases—

(a) withdrawal or modification of the bid after the deadline for submission of bid;

(b) failure to sign the procurement contract if required by the procuring entity to do so;
and

(c) failure to provide a required security for the performance of the contract after the bid has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the bidding documents.

(8) The procuring entity shall make no claim to the amount of the bid security, and shall promptly return, or procure the return of, the bid security document, after whichever of the following that occurs earliest—

- (a) the expiry of validity period of the bid security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents;
- (c) the termination of the tendering proceedings without the entry into force of a procurement contract; and
- (d) the withdrawal of the bid prior to the deadline for the submission of bids, unless the bidding documents stipulate that no such withdrawal is permitted.

73. Required validity period of bid security

(1) The bidding documents shall require that the bid securities provided by bidders should have a validity period extending for a period of four weeks beyond the expiry of the validity period of bids, in order to allow the procuring entity sufficient time to make a demand for payment under the bid security in accordance with regulation 72 (7).

(2) Bid securities shall be returned to unsuccessful bidders once it is determined that their bids will not be selected.

74. Modification or withdrawal of bids

A modification or notice of withdrawal of a bid is effective and not subject to forfeiture of the tender security only if it is received by the procuring entity prior to the deadline for the submission of bids.

75. Opening of bids

(1) Bids shall be opened in a session open to the public, including bidders or their representatives, at the time and place indicated in the bidding documents; and the time of bid opening shall coincide with the deadline for submission of bids.

(2) The name and address of each bidder whose bid is opened and the bid price, and the price of any alternative bids if they have been solicited or permitted, shall be announced to those persons present at the opening of bids, communicated on request to bidders that have submitted bids but that are not present or represented at the opening of bids, and recorded immediately in the record of the tendering proceedings required by section 27 of the Act.

76. Timeframe for evaluation of bids

The process of evaluation of bids shall be carried out in an efficient manner, taking particular account of the validity period of the bids; and the actual period of time required may vary depending on the nature or urgency of the tendering proceeding.

77. Purpose and scope of preliminary screening

(1) After the initial opening of bids in accordance with section 31 (11) of the Act, a preliminary screening of bids shall be carried out to determine whether bids comply with the procuring entity's requirements as to the bids themselves and the accompanying documents, and this involves examining—

(a) whether all the required documents, including any standard forms supplied with the bidding documents, have been submitted fully completed;

(b) whether the bidder has met the eligibility requirements, including the requirements applicable by virtue of the involvement of a financing institution;

(c) whether the bid complies with bid validity period requirements set form in the bidding documents;

(d) whether the bid substantially conforms with the contractual terms and technical requirements set out in the invitation to tender and instructions to bidders such as with respect to scope of work, delivery schedule, lack of a price quotation for a substantial portion of the work, or non-compliance with key technical requirements;

(e) whether the bid is conditional, thus compromising the bidder's ability to accept an award;

(f) whether the bid has been signed by an authorized representative of the bidder; and

(g) whether a bid security, if required, has been provided.

(2) At the preliminary screening, bids shall be checked for arithmetical errors or clerical errors that may appear on their face, and bidders that have submitted bids that appear to contain such errors shall be contacted and given an opportunity to correct them, or to accept a correction made by the procuring entity in accordance with regulations 55 (c) and 79.

(3) At the stage of preliminary screening, bids may be classified according to whether they contain deviations from the technical specifications and contractual terms set forth in the bidding documents in the following categories—

(a) those bids that do not contain deviations or reservations;

(b) those bids that contain material deviations or reservations or qualifications and are therefore to be rejected as non-responsive in accordance with regulation 55 (d); and

(c) those bids that contain minor deviations or reservations, but that may be considered responsive, provided that the deviations or reservations are quantified and taken into account in the detailed evaluation and comparison of bids.

78. Detailed evaluation of bids

(1) Following the preliminary screening of bids, the procuring entity shall proceed to the detailed evaluation and comparison of the bids that have not been rejected in the preliminary screening.

(2) In the detailed evaluation of bids, the procuring entity shall examine and compare bids in detail with respect to the following—

- (a) commercial terms, including aspects such as—
 - (i) validity period and amount of bid securities;
 - (ii) payment terms;
 - (iii) liquidated damages,

and any minor deviations with respect to commercial terms shall be identified and listed and any financial adjustments to bids that necessitated as a result of minor deviations shall be identified;

- (b) technical requirements, including aspects such as—
 - (i) scope of supply of goods or of works;
 - (ii) delivery or work schedule;
 - (iii) major technical specifications for all key items being procured (e.g. technical capacity of plant) and operating and performance characteristics such as fuel utilization;
 - (iv) duration of warranty period,

and any minor deviations with respect to technical requirements shall be identified and listed and any financial adjustments to bids that are necessitated as a result of minor deviations shall be identified;

- (c) financial evaluation of bids which involves—
 - (i) adjustment of bid prices to reflect permissible deviations with respect to commercial terms of bids which affect the prices of bids, including in particular, payment terms, delivery or completion schedules;
 - (ii) adjustment of bid prices with respect to minor deviations from technical requirements which affect the prices of bids, including in particular, the completeness of the scope of the goods, works or services, compliance with technical requirements;
 - (iii) adjustment of bid prices with respect to technical evaluation criteria, to the extent of those identified in the bidding documents as relevant to the evaluation and comparison of bids, such as life-cycle operating costs, performance factors; and
 - (iv) adjustment of bid prices with respect to cost of inland transportation to project site or delivery point and cost of local handling if required to be in, but omitted from, bid prices.

(3) The detailed evaluation of bids for civil works shall be conducted in general along the lines mentioned in paragraph (2) with particular attention being paid to the aspects specific to the civil works context, including—

(a) consistency of work plans and schedules with the requirements in the bidding documents, including with respect to aspects such as timing of mobilization and construction methodology;

(b) examination and analysis of reasonableness and reliability of unit rates quoted for items listed in the bill of quantities; and

(c) identification of unbalanced bids, in which unusually high prices are quoted for items of works to be performed at an early stage in the implementation of the contract ("frontloading"), or for items that the contractor believes were underestimated in the bill of quantities.

79. Correction of errors on face of bids

(1) The Internal Procurement Committee shall correct any arithmetical errors appearing on the face of the bid, and inform the bidder in question of the correction, and the bid shall be rejected if the bidder refuses the correction, and the bid security is thereby subject to forfeiture.

(2) If there is a discrepancy between the unit price and the total price or the line item total, that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring entity there is an obviously gross misplacement of the decimal point in the unit rate or a similarly obvious gross mathematical error, in which case the line item total, or total price, as the case may be, as quoted will govern and the unit rate will be corrected.

(3) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

(4) Where there is a discrepancy in the information contained in the submitted copies of the bid, the copy marked as the "original" shall prevail.

80. Application of evaluation criteria

(1) The procuring entity shall evaluate and compare the bids that have been received in order to ascertain the successful bid, in accordance with paragraph (3) and the procedures and criteria set forth in the bidding documents, and no criterion shall be used that has not been set forth, in the bidding documents;

(2) The successful bid shall be the lowest evaluated bid responsive to the requirements set forth in the bidding documents, determined on the basis of the criteria set forth in the bidding documents.

(3) In determining the lowest evaluated bid in accordance with paragraph (2), the procuring entity may consider only the following—

(a) the bid price, subject to any margin of preference applied pursuant to paragraph (4);

(b) any other criteria stipulated in the bidding documents, which shall, to the extent practicable, be objective and quantified in monetary terms, so as to enable the application of

adjustments to bid prices for the purposes of detailed evaluation and comparison of bids in accordance with regulation 78, and only criteria such as the following may be utilized—

(i) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services; and

(ii) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in goods, works or services being offered by suppliers, the transfer of technology and the development of managerial, scientific and operational skills.

(4) In evaluating and comparing bids the procuring entity may grant a margin of preference for the benefit of bids for works by domestic suppliers or for the benefit of bids for domestically produced goods or for the benefit of domestic suppliers, and the margin of preference may be applied in such cases and in accordance with procedures described in regulations 82 to 84; and this shall be reflected in the record of the procurement proceedings.

81. Assessing responsiveness of bids

The procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents, or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender, and any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of bids, by way of adjustments to bid prices that are for purposes only of comparing bids and that are not to be reflected in the price of the procurement contract.

82. When domestic price preference may be applied

(1) A domestic price preference may be accorded in the following cases—

(a) if the bidder establishes to the satisfaction of the procuring entity that—

(i) labour, raw material and components from within Malawi will account for more than thirty per cent of the ex-works price offered; and

(ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the time of bids submission;

(b) as regards construction services by local suppliers if they provide as part of data for qualification, such information, including details of ownership, as shall be required to determine whether a particular supplier or group of suppliers qualifies for domestic preference,

and the bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.

(2) For purposes of evaluation and comparison of bids, a domestic price preference as prescribed by the Director of Public Procurement shall apply to prices of bids received from qualifying domestic bidders, provided that the required level of quality is assured.

83. Procedure for application price preference for domestically manufactured goods

(1) If the procuring entity intends to grant a margin of preference in the evaluation of bids in tendering proceedings to bids offering certain goods manufactured in Malawi, the bidding documents shall clearly indicate any preference to be granted to domestically manufactured goods and the information required to establish the eligibility of a bid for such preference; the nationality of the manufacturer or supplier is not a condition for such eligibility; and the methods and stages set forth in the bidding documents shall be followed in the evaluation and comparison of bids.

(2) For the purposes of comparison, responsive bids received pursuant to paragraph (1) shall be classified in one of the following three groups—

(a) Group A, namely, bids offering goods manufactured in Malawi if the bidder establishes to the satisfaction of the procuring entity that—

(i) labour, raw material and components from within Malawi will account for more than thirty per cent of the ex-works price of the product offered; and

(ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the time of bid submission;

(b) Group B, namely, all other bids offering goods from within Malawi; and

(c) Group C, namely, bids offering the goods from abroad and to be directly imported.

(3) The ex-works price quoted by a Group A bidder shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported.

(4) Prices quoted by Group B bidders shall include all duties and taxes on components and raw materials.

(5) The price quoted by a Groups A and B bidder shall exclude the sales and similar taxes on the finished product.

(6) The price quoted by a Group C bidder shall be on Cost Freight and Insurance (CIF) or Carriage and Insurance Paid (CIP) to border point or other destination, exclusive of customs duties and other import taxes.

(7) In the first step, all evaluated bids in each group shall be compared to determine the lowest evaluated bid in each, and such lowest evaluated bids shall then be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.

(8) If, as a result of the comparison under paragraph (7), the lowest evaluated bid is a bid from Group C, all Group C bids shall be further compared with the lowest evaluated bid from Group

A after adding to the evaluated bid price of the imported goods offered in each Group C bid, for the purpose of this further comparison only, an amount equal to—

(a) the amount of duties and other related import charges which a non-exempt importer would have to pay for the importation of the goods offered in such Group C bid; or

(b) twenty per cent of the CIF or CIP bid price of such goods if said duties and charges exceed twenty per cent of such price.

(9) If the Group A bid in such further comparison mentioned in paragraph (8) is the lowest, it shall be selected for the award; if not, the lowest evaluated bid from Group C, as determined from the comparison under paragraph (7), shall be selected.

(10) In the case of single responsibility supply and installation or turnkey contracts in which a number of discrete items of equipment is grouped into one contract package (and if customs duties are excluded from the bid prices, and the price of imported goods quoted is on a CIF or CIP basis), the preference margin shall not be applied to the whole package, but only to the locally-manufactured equipment within the package; and equipment offered from abroad shall be quoted CIF or CIP and equipment offered locally ex-works (free of sales and similar taxes); all other components, such as design, works, installation, and supervision, shall be quoted separately.

(11) Where the provisions of paragraph (1) apply, bids should not be classified into groups A, B, or C and in the comparison of bids, only the CIF or CIP price in each bid of the equipment offered from outside Malawi shall be increased by the applicable duty and other taxes payable by a non-exempt importer or twenty per cent whichever is less; if duties vary from item to item within a package, the appropriate tariff for each piece of equipment shall apply and no preference shall be applied for any associated services or works included in the package.

84. Price preference for domestic suppliers of works

(1) For contracts for works to be awarded on the basis of tendering, procuring entities may grant a margin of preference of up to ten per cent to domestic suppliers of works, in accordance with, and subject to, the following provisions—

(a) suppliers of works applying for such preference shall be required to provide, as part of the data for qualification at the pre-qualification stage or at the bidding stage, such information, including details of ownership, as shall be required to determine whether a particular supplier or group of suppliers qualifies for a domestic preference, and the bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference; and suitable recognition in the preference scheme shall be given to joint ventures between foreign and domestic suppliers;

(b) after bids have been received and reviewed by the procuring entity, responsive bids shall be classified into the following groups—

(i) Group A, namely, bids offered by domestic suppliers eligible for the preference; and

(ii) Group B, namely, bids offered by other suppliers.

(2) For the purpose of evaluation and comparison of bids received pursuant to paragraph (1), an amount equal to ten per cent of the bid amount shall be added to bids received from suppliers in Group B.

85. Conditions for use of tendering for commodities

Where tendering is used for procurement of raw materials and other commodities whose prices are quoted in established commodity markets, the following conditions shall apply if set forth in the bidding documents—

- (a) bidders shall be invited to quote prices linked to the market price at the time of, or prior to, the shipment;
- (b) bid validity periods shall be kept as short as possible; and
- (c) the bidding documents may permit faxed or telexed bids, if there is no requirement for a bid security or if standing bid securities valid over a specified period of time have been provided by pre-qualified bidders.

86. Procedures for restricted tendering

(1) Where the restricted form of tendering is to be utilized on the grounds referred to in section 30 (3) (a) of the Act, the procuring entity shall publish in the Gazette and local press and, at the discretion of the Director of Public Procurement, in internationally recognized papers in the English language and in other media of wide international circulation, including the internet, a notice concerning the upcoming restricted tendering proceeding.

(2) The notice referred to in paragraph (1) shall indicate the grounds for the limited solicitation, identify the suppliers intended to be invited, and invite any interested suppliers to express their interest in participating, and if all suppliers that respond to the notice will not necessarily be permitted to submit bids, the notice shall state the criteria to be utilized for establishing the short list, and the information to be provided by bidders to demonstrate that they meet those criteria.

(3) As a general guideline, restricted tendering shall not be utilized on the grounds referred to in section 30 (3) (b) of the Act, when the estimated value of the procurement exceeds the threshold set and issued by the Director of Public Procurement.

(4) When the limited form of tendering is utilized on the grounds referred to in section 30 (3) (b) of the Act, the procuring entity shall invite a sufficient number of suppliers to ensure effective competition, but at least three.

(5) Regulations 59 to 85 shall apply to limited tendering proceedings, except to the extent derogated from in this regulation.

87. Procedure for two-stage tendering

(1) During any negotiation, which may take place in the first stage in accordance with section 33 (2) of the Act, the procuring entity shall ensure equality of treatment among all suppliers; and in

particular, the procuring entity shall not provide information in a discriminatory manner which may give some suppliers an advantage over others.

(2) The procuring entity may not reveal to the other participants solutions proposed or other confidential information communicated by a supplier participating in the dialogue without the agreement of that supplier.

(3) In the first stage, the procuring entity shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.

(4) Regulations 59 to 85 shall apply to two-stage tendering proceedings, except to the extent derogated from in this regulation.

Division III—Procedures for Procurement of Consultants' Services

88. Minimum quality rating

The procuring entity shall set, and disclose in the request for proposals, the minimum quality rating that proposals must attain in order to be considered for award for consultancy services.

89. Preparation of short list

(1) The procuring entity shall seek expressions of interest for consultancy services in accordance with section 34 (2) of the Act for the purposes of creating the short list in the following cases—

(a) when the procuring entity does not have information in its possession concerning a sufficient number of consultants in order to provide effective competition for the procurement contract and, at a minimum, to comply with the requirement in section 34 (1) of the Act; and

(b) when the assignment for which the consultant is sought is complex or its estimated value exceeds the threshold set by the Director of Public Procurement.

(2) The information requested pursuant to paragraph (1) shall be the minimum required to make a judgment on the firm's suitability, and not be so complex as to discourage consultants from expressing interest.

(3) The notice seeking expressions of interest pursuant to paragraph (1) shall include the following information—

(a) identification and general description of the assignment or project in question, including any project identification codes;

(b) date of issuance of the notice, and closing date for submission of expressions of interest;

(c) the funding source;

(d) location where the services are to be performed;

(e) the projected time period for implementation and completion of the assignment;

- (f) the qualification criteria to be met by short-listed consultants;
- (g) an invitation to interested consultants to submit expressions of interest;
- (h) in order to determine the capability and experience of consulting firms seeking to be short-listed, the information submitted shall include the following—
 - (i) a profile of the company, its organization and staffing; and in the case of associations between two or more firms, or the name, address and profile of the participating firm(s), and the lead firm must be clearly identified;
 - (ii) details of experience or similar assignments undertaken in the previous five years, including their locations; focus on the firms' role in similar assignments in the region or elsewhere;
 - (iii) curriculum vitae of staff who could be available to work on the assignment;
- (i) in the case of individual consultants, the information referred to in subparagraph (h) (ii) and a curriculum vitae shall be solicited;
- (j) a statement that short-listed consultants will be invited to submit proposals; and
- (k) the number of copies of the requested information to be submitted, and the address to which submission is to be made, and from which additional information may be obtained.

(4) Sufficient time, not less than fourteen days from the date of publication of the notice, shall be provided for responses, before preparation of the short list.

(5) Bidders that expressed interest, as well as any member of the general public that specifically so requests, shall be provided the final short list of firms.

90. Issuance of request for proposals

The procuring entity shall provide the request for proposals to a short list of consultants containing at least three, but not more than six bidders, in accordance with section 34 (1) of the Act.

91. Avoidance of conflict of interest

(1) Consultants shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

(2) Consultants shall not be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the procuring entity; for example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets shall not purchase, nor advise purchasers of, such assets.

(3) Without limitation on the generality of the provisions of paragraphs (2) and (3), consultants shall not be hired under the circumstances set forth below—

(a) a firm which has been engaged by the procuring entity to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;

(b) conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.

(4) This regulation does not apply to the various firms (consultants, contractors, or suppliers) that together are performing the supplier's obligations under a turnkey or design-and-build contract.

92. Contents of request for proposals for services

The request for proposals for consultancy services, which is to be provided to consultants on the short list, shall include—

(a) the terms of reference, including the following information—

(i) the objectives, goals, and scope of the assignment and providing background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals;

(ii) outline of any transfer of knowledge or training that is required, including details of number of staff to be trained;

(iii) the services and surveys necessary to carry out the assignment and the expected outputs such as reports, data, maps, surveys;

(iv) the location where the services are to be provided and the desired or required time, if any, when the services are to be provided, and the anticipated date on which the selected bidder shall be expected to commence the assignment; and

(v) details of the services, facilities, equipment, and staff to be provided by the procuring entity;

(b) an indication that bidders may propose their own methodology and staffing, and may comment on the terms of reference in their proposals;

(c) details of the selection procedure to be followed, including—

(i) in the case of a quality and cost-based selection procedure, a description of the two-stage process;

- (ii) where applicable, the details of the financial evaluation, including the relative weights for quality and cost; the weight for cost shall normally be in the range of ten per cent to twenty per cent, but in no case shall exceed 30 per cent out of a total score of 100;
 - (iii) the minimum pass score for quality; and
 - (iv) where applicable, the details on the public opening of financial proposals;
- (d) an estimate of the level of key staff inputs (in staff-months) required of the consultants;
- (e) requirement that bidders identify the proposed key personnel that will carry out the assignment and that bidders provide the curriculum vitae of each proposed key person, which must be accurate, complete, and signed by an authorized official of the bidder and the individual proposed;
- (f) an indication of minimum experience, academic achievement, expected of key staff;
- (g) standard formats for the technical and, if applicable, financial proposals;
- (h) the manner in which the proposal shall be submitted, including, in the case of quality and cost-based selection, the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (i) a request that the invited firm—
- (i) acknowledges receipt of the request for proposals; and
 - (ii) informs the procuring entity whether or not it will be submitting a proposal;
- (j) the short list of bidders being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (k) the period for which the bidders' proposals shall be held valid (normally 60–90 days) and during which the bidders shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and, in the case of quality and cost-based selection, the total price proposed; and in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the procuring entity's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) a statement indicating whether or not the consultant's contract and personnel shall be tax-free or not; and if not, what the likely tax burden will be or where this information can be obtained; and a statement requiring that the consultant should include in its financial proposal a separate amount clearly identified to cover taxes;

(n) phasing of the assignment if appropriate, and the likelihood of follow-up assignments; and

(o) any conditions for subcontracting part of the assignment.

93. Choice of selection procedures

(1) The procuring entity shall use one of the following procedures for selection of the winning proposal for consultancy services, in accordance with the notice provided to bidders in the request for proposals—

(a) Quality and Cost-Based Selection, which takes into account both the quality and the cost aspects in selecting the winning proposal;

(b) Quality-Based Selection, which focuses primarily on quality in selecting the winning proposal; and

(c) Least Cost Selection, in which the contract is awarded to the lowest priced proposal among those that have attained the minimum technical score.

(2) Subject to regulation 92 (o) the Quality and Cost-Based Selection method shall be utilized.

(3) Use of the Quality and Cost-Based Selection method is appropriate for the following types of assignments—

(a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals such as country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms;

(b) assignments that have a high downstream impact and in which the objective is to have the best experts such as feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies; and

(c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable such as management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis.

(4) Use of the Least Cost Selection method is more appropriate for selection of consultants for assignments of a standard or routine nature such as audits, engineering design of non-complex works, and so forth, where well-established practices and standards exist and in which the contract amount is small.

(5) The procuring entity shall include in the record required under section 27 of the Act a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure pursuant to this regulation.

94. Submission of proposals

(1) In the case of Quality and Cost-Based Selection—

(a) the technical and financial proposals shall be submitted at the same time, in separate sealed envelopes; and

(b) the technical envelopes shall be opened in the first stage and the financial proposals shall remain sealed until the first stage is completed.

(2) In the case of Quality-Based Selection, bidders may be required to submit technical and financial proposals at the same time, in separate sealed envelopes or, at the option of the procuring entity, bidders may be requested to submit at the outset of the proceedings, only technical proposals.

(3) In the case of Least Cost Selection, bidders shall be required to submit technical and financial proposals at the same time.

(4) The procuring entity shall set the deadline for submission of proposals not less than thirty days from the date of the issuance of the request for proposals.

95. Evaluation and selection

(1) Any award for consultancy services by the procuring entity shall be made to the bidder whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposals.

(2) A record of the evaluation of each proposal and the comparison between them shall be maintained by the procuring entity.

96. Evaluation of proposals in quality-and-cost-based selection

(1) The evaluation of the proposals in Quality and Cost-Based Selection shall be carried out in two stages; the first stage of the evaluation shall concern only the quality and technical aspects of proposals; and evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded.

(2) Financial proposals shall be opened after the evaluation of technical proposals and the evaluation shall be carried out in full conformity with the provisions of the request for proposals.

97. Criteria for evaluation of quality

(1) Each technical proposal shall be evaluated using the following criteria—

(a) the bidder's relevant experience for the assignment;

(b) the quality of the methodology proposed;

(c) the qualifications of the key staff proposed;

- (d) transfer of knowledge; and
- (e) the extent of participation by nationals among key staff in the performance of the assignment.

(2) Each of the criteria shall be assigned a weight, and the following weights are indicative, and may be adjusted for specific circumstances; the proposed weights shall be disclosed in the request for proposals, and shall be formulated taking into account the following general guidelines—

Consultant's specific experience 0 to 10 per cent of score

Methodology 20 to 50 per cent of score

Key personnel 30 to 60 per cent of score

Transfer of knowledge 0 to 10 per cent of score

Participation by nationals 20 to 25 per cent of score

TOTAL 100 per cent of score

(3) The criteria and sub-criteria referred to in this regulation are indicative only and must be formulated taking into account the specific circumstances of each particular procurement of consultants' services.

(4) Use of sub-criteria of the general criteria in this regulation should be limited to what is essential to conduct the evaluation.

98. Relative weighing of criteria

(1) The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the bidder.

(2) More weight shall be given to the methodology in the case of more complex assignments such as multidisciplinary feasibility or management studies.

(3) More weight shall be assigned to the qualifications and experience of key personnel if the proposed assignment is complex.

(4) When the assignment depends critically on the performance of key staff such as a project manager in a large team of specified individuals, it may be desirable to conduct interviews.

99. Sub-criteria for evaluation of key personnel

The key personnel of the bidders shall be rated according to the following sub-criteria, as relevant to the task—

(a) general qualifications, including general education and training, length of experience, positions held, time with the consulting firm as staff, and experience in developing countries;

(b) adequacy for the assignment, including education, training, and experience in the specific sector, field, subject, relevant to the particular assignment; and

(c) experience in the region, knowledge of the local language, culture, administrative system, government organization.

100. Technical and quality rating of proposals

After conducting the technical and quality evaluation of the proposals in accordance with the criteria, other than price, and their relative weight as set out in the request for proposals, the procuring entity shall rate each proposal and identify those proposals that meet or surpass the minimum quality and technical threshold set forth in the request for proposals.

101. Rejection of unresponsive proposals

Following evaluation and rating of proposals, the procuring entity shall reject proposals that are unresponsive to important aspects of the terms of reference or that fail to achieve the minimum threshold score as specified in the request for proposals.

102. Notification of results of first stage quality evaluation

(1) After the evaluation of quality is completed, the procuring entity shall notify those bidders whose proposals did not attain the minimum qualifying score or were considered non-responsive, indicating that their financial proposals will be returned unopened after completion of the selection process.

(2) The procuring entity shall simultaneously notify the bidders that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals; and the opening date shall not be sooner than fourteen days after the notification date.

103. Quality evaluation report and retention of evaluation records

(1) The procuring entity shall prepare an evaluation report on the quality of the proposals, and the report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals.

(2) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit, subject to the requirements of regulations 172 and 173.

104. Opening of financial proposals

(1) The financial proposals shall be opened publicly in the presence of representatives of the bidders who choose to attend.

(2) The name of the bidder, the quality scores, and the proposed prices shall be read aloud and recorded when the financial proposals are opened.

(3) The procuring entity shall prepare the minutes of the public opening, which shall form part of the record of the procurement proceedings.

105. Evaluation of financial proposals

(1) For the purpose of evaluation of financial proposals, "cost" shall include Malawian taxes, unless otherwise specified, and shall also include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

(2) The proposal with the lowest cost may be given a financial score of one hundred and other proposals given financial scores that are inversely proportional to their prices; alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost; and the methodology to be used shall be described in the request for proposals.

106. Selection of successful financial proposals

Following the evaluation of the quality and the financial proposals, the successful proposal shall be determined on the basis of the selection procedure indicated in the request for proposals.

107. Combined quality and financial evaluation

(1) If the successful proposal is selected on the basis of a combined evaluation of quality and price aspects, the total score shall be obtained by weighing the quality and cost scores and adding them; and award shall be made to the proposal with the best combined score, in accordance with the criteria and weighing disclosed in the request for proposals.

(2) The weight for the cost shall be chosen taking into account the complexity of the assignment and the relative importance of quality, and level at which the minimum quality threshold is set in accordance with regulation 88.

(3) The weight for cost shall normally be in the range of ten to twenty per cent, but in no case shall exceed thirty per cent out of a total score of one hundred.

(4) Only the weighing disclosed to bidders in the request for proposals may be used.

108. Negotiations and award of contract

(1) The bidder submitting the proposal determined to be successful in accordance with regulation 106 shall be invited for technical discussions aimed at finalization of the contract.

(2) The negotiations may include discussions of the terms of reference, the methodology, staffing, the procuring entity's inputs, and special conditions of the contract, but the discussions shall not substantially alter the original terms of reference or the terms of the contract.

(3) Financial negotiations may include clarification of the consultants' tax liability, if any, and how this tax liability has been or would be reflected in the contract.

(4) Proposed unit rates for staff-months and reimbursables shall not be negotiated, so as not to alter the cost structure that has resulted in the ranking of the proposals and major reductions in work inputs shall not be made solely to meet the budget.

(5) The final terms of reference and the agreed methodology shall form part of the contract.

(6) The selected bidder shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment; if this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the bidder may be disqualified and the process continued with the next ranked bidder.

(7) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

(8) Financial negotiations shall include clarification of the bidder's tax liability in Malawi, if any, and how this tax liability has been or would be reflected in the contract; and when the selection method includes price as a component (Quality and Cost-Based Selection or Least Cost Selection) proposed unit rates for staff-months and reimbursables shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons, for example staff rates offered are much higher than rates typically charged by consultants for similar contracts.

109. Failure to reach agreement with successful bidder

(1) If the discussions with the first selected bidder fail to result in an acceptable contract, the procuring entity shall by letter addressed to that bidder, terminate the discussions and invite the next ranked firm for discussions.

(2) The bidder with whom discussions are being terminated shall be informed of the reasons for the termination; and once discussions are commenced with the next ranked firm, the procuring entity shall not reopen the earlier discussions.

(3) After discussions are successfully completed, the procuring entity shall promptly notify other bidders on the short list that they were unsuccessful.

110. Rejection of all proposals

Without prejudice to the right of the procuring entity to cancel the procurement proceedings in accordance with regulations 6 and 7, the procuring entity will be justified in rejecting all proposals only if all proposals are non-responsive and unsuitable either because they present major deficiencies in complying with the terms of reference, or because they involve costs substantially higher than the original estimate.

111. Selection procedure based on quality

(1) Where the procuring entity, in accordance with section 34 (7) of the Act, uses the selection procedure based on quality, it shall engage in negotiations with bidders in accordance with the following procedure—

(a) establish a threshold in accordance with regulation 88;

(b) invite for negotiations on the price of its proposal the bidder that has attained the best rating in accordance with regulation 100;

(c) inform the bidders that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the bidders with better ratings do not result in a procurement contract;

(d) inform the other bidders that they did not attain the required threshold; and

(e) if it becomes apparent to the procuring entity that the negotiations with the bidder invited pursuant to paragraph (b) will not result in a procurement contract, inform that bidder that it is terminating the negotiations, and the procuring entity shall then invite for negotiations the bidder that attained the second best rating; if the negotiations with that bidder do not result in a procurement contract, the procuring entity shall invite the other bidders for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

(2) The selection process under paragraph (1) shall be identical to that applied in the quality and cost-based selection procedure, except as otherwise specified in this regulation; if, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in accordance with regulation 96, to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

112. Selection based on least-cost

If, in accordance with the request for proposals, the Least-Cost Selection method is to be used for determining the successful proposals—

(a) the envelopes containing the technical and administrative bids are opened and evaluated, and the proposals meeting the minimum technical score are identified; and

(b) the envelopes containing the financial bids of the bidders that have attained the minimum technical score are opened, and the bidder whose financial bid is the lowest is invited for technical and cost clarifications and negotiations with a view to conclusion of a procurement contract.

113. Design contests

(1) In appropriate cases, such as the procurement of architectural designs or urban planning designs, the procuring entity may conduct a design contest for the purposes of selecting a design.

(2) The procedures to be followed in conducting a design contest are set forth in Schedule B. Schedule B

114. Procedures for award of public service concessions and contracts for procurement of infrastructure on basis of private investment

(1) Contracts for privately financed infrastructure projects, and related forms of private sector involvement in providing public services, including concessions, shall be awarded on a competitive basis.

(2) Contracts for the procurement of public infrastructure on the basis of private investment, and concessions for the operation of public infrastructure, and for the provision of public services shall be awarded in accordance with the principles and objectives of the Act, including competition and transparency.

(3) Procedures for the implementation of paragraphs (1) and (2) are set out in Schedule C. Schedule C

(4) The procedures referred to in paragraph (3) shall—

(a) include pre-qualification of prospective providers as a precondition for participation in procedures leading to award of contracts referred to in paragraphs (1) and (2);

(b) accommodate the participation of consortia;

(c) provided special procedures for solicitation of proposals, including a choice between single and two-stage solicitation procedures;

(d) identify special technical and financial evaluation criteria tailored to the contexts referred to in paragraphs (1) and (2);

(e) establish procedures and parameters designed to promote transparency when negotiations are utilized in the award procedure;

(f) identify the exceptional situations in which contracts may be awarded without competition; and

(g) establish procedures for dealing with unsolicited proposals, so as to encourage private initiative, while safeguarding competition and transparency.

Division IV—Request for Quotations Procedure

115. Conditions for use of request for quotations procedure

(1) In procurement of goods, works, and services whose estimated threshold shall be set and issued by the Director of Public Procurement, from time to time, the request for quotations procedure referred to in section 35 of the Act may be applied.

(2) The request for quotations shall indicate—

(a) specific aspects of any special requirements, such as installation;

(b) all the required components of the price, including the required shipping terms;

(c) that the quoted rates are to remain applicable for the duration of the contract;

(d) the required validity period of the quotation;

(e) where more than one type of item is being procured, whether a quotation referring to more than one item is to be evaluated for all the items together, or separately for each item;

(f) that if applicable, the estimated cost of inland transportation and insurance, if any, will be added to the bid price;

(g) that for the purposes of price comparison, prices will be converted to local currency at the exchange rate prevailing on the date of opening of quotations;

(h) the deadline for submission of quotations; and

(i) the requirement that the quotations should be properly signed.

116. Quotation acceptance procedures

(1) The procuring entity's purchase order constitutes an acceptance of the winning bidder's quotation and forms a legally binding contract; and the successful bidder shall confirm the purchase order within three days of receipt of the order.

(2) Any terms or conditions in the bidder's confirmation of a purchase order which change or alter the terms of the order shall be valid only if approved in writing by the procuring entity.

Division V—Single-source Procurement

117. General policy of diligence

(1) Prior to awarding the procurement contract on single-source procurement basis, the procuring entity shall ascertain that—

(a) the provider possesses the qualifications required to perform the procurement contract;

(b) that the quality and technical aspects of the provider's proposal meet the procuring entity's requirements; and

(c) the price to be paid to the provider is reasonable.

(2) When single-source procurement is employed, the procuring entity shall conduct price analysis so as to ensure that the price to be paid is fair and reasonable, and the analysis shall—

(a) to the extent practicable, be based on market price supported by market research, including a comparison of the proposed price with satisfactory prices paid in previous procurement, prices for similar items, and independent cost estimates; and

(b) be performed with respect to prices appearing in catalogues, advertisements and price lists.

118. Low-value procurement without competition

(1) The monetary limit on the use of single-source procurement on the grounds of very low value, referred to in section 30 (10) (a) of the Act shall be per transaction, and shall set and issued by the Director of Public Procurement, from time to time.

(2) The Director of Public Procurement may establish a threshold on procurement on the grounds of section 30 (10) (a) of the Act.

(3) Low-value items procured on a recurrent basis, or items that are likely to be required on short notice shall to the extent feasible be procured through framework agreements awarded on a competitive basis in accordance with the Act and these Regulations.

(4) Procurement using imprest funds is subject to the applicable Treasury Instructions.

119. Procurement of functionally equivalent goods

Single-source procurement may not be justified on the grounds that only one bidder has the capacity or the exclusive right to manufacture or deliver goods, works or services if functionally equivalent goods, works or services from other bidders would meet the needs of the procuring entity.

120. Single-source procurement on the grounds of urgency

(1) Emergency procurement shall be conducted by the Internal Procurement Committee in the concerned Ministry, in accordance with procedures set forth in the Act and these Regulations.

(2) In the case of single-source procurement on the grounds of urgency referred to in section 30 (10) (c) of the Act, the procuring entity shall limit the procurement to the quantity and duration needed to deal with the urgent circumstances.

(3) Procurement on the grounds of emergency does not relieve the procuring entity from seeking competition to the extent practicable, negotiating a fair and reasonable price and documenting the procurement in accordance with section 27 of the Act.

121. Documentation of single-source procurement

(1) In accordance with section 36 (1) of the Act, single-source procurement shall be initiated on the basis of the preparation by the procuring entity of a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery.

(2) Notwithstanding paragraph (1), in case of single-source procurement on grounds of urgency, in accordance with section 30 (10) (c) of the Act, an initial oral solicitation may be utilized when the processing and use of a written solicitation would cause an unacceptable delay in the procurement process to the detriment of the public interest, but the oral solicitation shall be followed promptly by a written confirmation in accordance with paragraph (1).

(3) In case of single-source procurement on grounds of urgency, in accordance with section 30 (10) (c) of the Act, the procuring entity may enter into a "letter" contract, namely, a written preliminary contractual instrument, when the public interest demands that the fulfillment of a

procurement requirement start immediately and negotiating a definitive contract is not possible in sufficient time to meet this demand.

(4) Procuring entities shall comply with section 27 of the Act, and regulation 168 with respect to the preparation of a record of the procurement proceeding, to the extent applicable.

(5) The procuring entity shall, within 72 hours, place in the contract file a written justification for conducting single-source procurement on grounds of urgency including the following information—

- (a) the specific threat to the public health, safety, or welfare;
- (b) the unforeseen nature of the threat;
- (c) the basis for the need for immediate action, as opposed to filling the requirement through normal procedures; and
- (d) the steps taken to obtain competition on the procurement even with the emergency situation in existence.

122. Publication of prior notice

(1) Publication in the Gazette of a notice of the holding of single-source procurement proceedings is required when the procuring entity intended to carry out a single-source procurement on the grounds referred to in section 30 (10) (b) of the Act, and the notice shall describe the nature of the procurement and identify the supplier to whom it proposes to award the procurement contract and shall state the grounds for the proposed single-source procurement.

(2) The requirement in paragraph (1) shall not apply to single-source procurement conducted on the grounds of urgency, in accordance with section 30 (10) (c) of the Act.

PART IV

CONTRACT FORMATION

123. Acceptance and entry into force of contract

(1) Notice of acceptance of a bid shall be given promptly to the bidder submitting the successful bid, and the notice of acceptance shall not be sent until all the necessary approvals have been obtained.

(2) Unless the bidding documents indicate that a procurement contract is required to be signed, a procurement contract in accordance with the terms and conditions of the accepted bid enters into force when that notice is dispatched to the bidder that submitted the winning bid, provided that it is dispatched while the bid is still valid, and for purpose of this paragraph the notice is dispatched when it is properly addressed or otherwise directed and transmitted to the bidder.

(3) When a procurement contract is required to be signed, the bidder shall do so within a reasonable period of time after the notice referred to in paragraph (1) is dispatched to the bidder; and between the time when the notice referred to in paragraph (1) is dispatched to the bidder and

the entry into force of the procurement contract, neither the procuring entity nor the bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(4) In the event of a failure of the bidder whose bid has been accepted to sign a written procurement contract in accordance with the bidding documents, if required to do so, or to provide any required security for the performance of the contract, the procuring entity shall select a successful bid in accordance with the evaluation criteria set forth in the bidding documents from among the remaining bids that are in force.

(5) Procuring entities shall not request or require the successful bidder to sign a contract at variance with the terms and conditions set forth in the bidding documents.

124. Security for performance of the contract

If required to do so by the bidding documents, the successful bidder must submit the performance guarantee within time following the date of the notification of acceptance of the bid.

125. Form of performance security

(1) Procuring entities may solicit and accept as security for the performance of the procurement contract such arrangements as guarantees, surety bonds, stand-by letters of credit, cheques on which, a bank is primarily liable, cash deposits, promissory notes and bills of exchange, or conditional performance securities such as surety or performance bonds.

(2) When the performance security takes the form of an independent guarantee or stand-by letter, the amount shall be set at a minimum of ten per cent of the value of the procurement contract, or, in the case of an indefinite quantity contract, ten per cent of the value estimated by the procuring entity.

126. Validity period of performance security

Unless otherwise stipulated in the procurement contract, the validity period of the performance security shall extend at least one month beyond the latest of the time of delivery, or handing over, or beyond the warranty or defects liability period, as the case may be, under the procurement contract.

PART VII

CONTRACT ADMINISTRATION

127. Support operations for contract administration

(1) Procuring entities shall make available for contract administration the support operations and staffing necessary for effective contract administration which shall include, but are not necessarily limited to, the following—

(a) engineering and design services, providing design and monitoring functions for preparation and implementation of procurement contracts;

(b) financial control and payment services;

(c) management information systems for coordinated processing and communication of and access to relevant information by all parties involved in contract administration, including document control services, for establishing and maintaining filing systems for correspondence and other paperwork and records relating to procurement contracts; and

(d) legal services.

(2) The main elements of contract administration include—

(a) holding post-award conferences with the successful bidder, and devising a specific contract administration plan;

(b) where appropriate, composing a contract administration team;

(c) development of contract implementation work plan and schedule;

(d) monitoring progress in implementation of the procurement contract, including determination of extent of performance accomplished periodically according to the work plan, and inspection and testing of quality aspects;

(e) management of variation orders, contract suspension and termination, price revisions, application of contract remedies, and dispute settlement procedures;

(f) management of financial aspects of contract implementation, including payments to suppliers, and budgetary and cost accounting aspects; and

(g) organization and management of documentation files related to contract implementation, and preparing periodic reports on the implementation of contracts.

(3) Procuring entities shall make available to the Director of Public Procurement, the Auditor General, and other authorized organs documentation, reports, and other information required by those bodies for the purposes of monitoring contract administration.

(4) Without prejudice to the rights of the parties under the procurement contract, the procuring entity, and any supervising party that it involves in the implementation of the procurement contract, shall comply with the execution of works according to the layouts, specifications and conditions set forth in the bidding documents; and any provision providing for any work in any document constituting the bid shall be considered sufficient to prove the necessity of executing such work.

128. Contents of procurement contract

The following items shall be addressed in the procurement contract, subject to the standard forms of contract that procuring entities may be required to utilize pursuant to section 5 (2) (c) of the Act and to the circumstances of the particular procurement proceeding—

(a) complete name and address of the parties to the contract;

- (b) the listing by order of priority of contract documents;
- (c) specifications of the goods, works or services;
- (d) quantity or number of the goods or amount of the works or services;
- (e) the price of the goods, works or services, or how the price will be determined, and the payment method;
- (f) the procuring entity's right of inspection;
- (g) the location, conditions of delivery, delivery schedule and acceptance procedures;
- (h) required securities or bank guarantee, if applicable;
- (i) methods for termination of the contract;
- (j) other issues describing the obligations of the parties and clarifying the transaction, including price revision, if applicable, warranties, contract modification, subcontracting, insurance obligations, remedies for delay and non-performance, and acceptance;
- (k) the unforeseen events (force majeure) with respect to responsibilities for delay in fulfilling the obligations or termination of the contract; and
- (l) dispute settlement clause.

129. Basic pricing approaches

(1) The price of a procurement contract shall set either, on the basis of a unit price applied to the quantities actually delivered, or services or work actually performed, or on a lump-sum basis, applied to the entirety or to a part of the contract, irrespective of the actual quantity delivered.

(2) Use of a unit-price contract is appropriate when there is uncertainty at the time of conclusion of the contract as to the extent of the deliveries required or work or services to be performed.

(3) Use of a lump-sum contract is appropriate when it is feasible to make accurate estimates of costs and time of performance, and the supplier or contractor is willing to assume the risk that the price quoted in the bid may turn out to have underestimated the bidder's actual costs in fulfilling the contract.

(4) Procurement contracts shall be concluded on the basis of an initial definite price, but in exceptional circumstances, to be noted in the record of the procurement proceeding, a procurement contract may be concluded on the basis of a provisional price.

(5) Procurement contracts may include incentive clauses linked to delivery periods, improved quality, and production-cost reduction.

130. Unit-price works contracts

(1) A works contract based on unit price is awarded based on unit prices in the winning bid for estimated quantities of defined items of works and materials that are required in order to carry out the works, and total payment is based on the units of works actually done and measured in the field.

(2) Bidders must consider the following points for the type of contract mentioned in paragraph (1)—

(a) list of the quantities of labour and other inputs listed in the bill of quantities in the bidding documents, for which bidders give their unit prices in their bids; and

(b) list of quantities of works with total prices.

131. Lump-sum works contracts

(1) In lump-sum contracts, the contractor agrees to perform the specified work for a fixed sum of money and it is the contractor's responsibility and risk to remain on budget, since the procuring entity is liable only for the lump-sum price of the contract, subject to changes ordered by the procuring entity.

(2) Lump-sum pricing shall be used in preference to unit pricing except when—

(a) large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(b) quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(c) estimated quantities of work required may change significantly during construction;
or

(d) bidders would have to expend unusual effort to develop adequate estimates.

132. Price adjustment

(1) Unless otherwise provided in the procurement contract, the price of a procurement contract is considered to be a fixed price when the price may not be modified in response to changes in economic or commercial conditions.

(2) The procurement contract may provide for the possibility of price adjustment to take into account changes in economic circumstances, but price adjustment may only be made if provided for in the procurement contract.

(3) If the procurement contract provides for the possibility of price adjustment, it shall stipulate the conditions, such as increases in the cost of materials, labour, and energy, in which price adjustment would be permitted, the formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase, the frequency with which price adjustments may be implemented, and the procedures to be followed.

133. Shipment terms

In the import procurement of goods, transfer of title, and allocation of responsibility with regard to risk of loss, delivery, transport-related insurance, and export and import formalities shall be addressed in the procurement contract, making appropriate reference to internationally recognized trade terms.

134. After-sale services

Unless technical or commercial factors dictate otherwise, the bidding documents should require a supplier to provide workshops and spare parts for supplies that require such after-sale services and the period of the supplier's commitment in this regard should correspond to the average operating life of the supplies in question.

135. Insurance requirements

(1) The bidding documents used to solicit bids, proposals, offers or quotations and the procurement contract shall indicate the amount and essential terms of the insurance that the successful bidder may be required to obtain, depending upon the nature of the contract, including insurance of goods in transit, professional liability insurance of consultants, accident insurance for construction sites, vehicle insurance for supplier's or consultants' vehicles used for implementation of the contract.

(2) The procurement contract may require the bidder to cause any of its subcontractors to take out and maintain insurance in accordance with the requirements of the procurement contract.

(3) The procuring entity reserves the right to reject insurance coverage that is not in the public interest.

136. Return of performance security

Where a procurement contract in respect of which a performance security was given has been satisfactorily performed, or terminated for a reason that is not attributable to any fault of the bidder, and the procuring entity has no claim against the supplier arising out of the contract or relating in any manner whatsoever to the contract, the performance security shall be returned to the bidder.

137. Maintenance guarantee

(1) The procurement contract may require the supplier to provide a maintenance guarantee in the form of a bank guarantee, or other form stipulated in the contract, and the value of the guarantee shall be not less than ten per cent of the value of the guaranteed performance; if the supplier fails to provide the required maintenance, the procuring entity should be entitled to confiscate the warranty value and conduct the maintenance at the cost of the supplier.

(2) The validity period of the maintenance warranty guarantee shall extend at least ninety days beyond the expiry of the warranty period.

(3) In supply and installation contracts, unless otherwise provided by contract, the maintenance period shall, in the event that the procuring entity has not requested installation to be started at an earlier time, be deemed to be one hundred and twenty days after the receipt of the equipment or machinery.

138. Manufacturer's warranty

The procurement contract shall set forth the supplier's warranty obligations, and normally the supplier shall be obligated, during a warranty period of at least one year, to replace, at its own expense, defective goods within a specified period of time; and in the event of a breach of warranty, the procuring entity shall be entitled to claim the entire value of the warranted goods and additional charge of fifteen per cent of the value of the defective goods.

139. Subcontracting

The acceptance of each subcontractor and the agreement of the procuring entity to the conditions of payment should be requested in the following manner—

(a) when the request for subcontracting arises at the time of bid submission, the bidder should state in the bid—

(i) the nature of the goods, works or services for which subcontracting is envisaged;

(ii) the name and address of the proposed subcontractor;

(iii) the amounts expected to be paid directly to the subcontractor;

(iv) the manner of payment;

(v) the conditions of payment foreseen in the draft subcontract and, if applicable, price revision; and

(vi) a declaration to the effect that the proposed subcontractor is not barred from participating in procurement proceedings pursuant to section 13 of the Act;

(b) when the request for subcontracting is submitted after the conclusion of the procurement contract, the supplier shall submit the request, containing the information mentioned in paragraph (a), to the procuring entity in a manner that provides a record of the submission and receipt of the request;

(c) when the request for subcontracting is presented in the bid, the notice of acceptance of the bid shall include the acceptance of the subcontractor and of the conditions of payment.

140. Administration of subcontracts

The prime supplier is responsible for administering its subcontractors, and the procuring entity's review of subcontracts is normally limited to evaluating the prime supplier's management of the subcontracts, unless—

- (a) the procuring entity would otherwise incur undue cost;
- (b) the successful completion of the prime contract is threatened; and
- (c) certain high risk or critical subsystems in major systems acquisition require special surveillance.

141. Quality assurance, inspection, and testing

(1) The procuring entity shall take such steps as are deemed necessary to ascertain or verify that goods, services or works items procured conform to the technical requirements set forth in the procurement contracts, and in performing that duty, the procuring entity may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

(2) The Director of Public Procurement may allocate authority for inspection and testing as may be deemed appropriate.

142. Stipulation of inspection requirements

The inspection requirements and procedures to be applied in the implementation of the procurement contract shall be stipulated in the bidding documents as well as in the procurement contract.

143. Inspection of goods

(1) The procuring entity is entitled to carry out acceptance inspections and to observe and inspect the manufacture of the goods, and observe the supplier's own quality assurance procedures, at the supplier's premises during regular working hours.

(2) The supplier shall at its own expense place at the procuring entity's disposal any premises, facilities and personnel needed for normal inspections, and the supplier and the procuring entity shall each bear the expenses for the attendance of their respective representatives at the inspection.

(3) Any deficiencies and omissions detected during inspection of goods shall be remedied by and at the expense of the supplier.

(4) The procuring entity has no obligation to pay for any goods or accessories that have become unserviceable or lost value in the course of a normal inspection.

(5) If an item or consignment of goods inspected does not meet the requirements set for it, the supplier shall bear all the expenses that renewed inspection, handling or transport may involve.

(6) The observation and inspection of the manufacture of the goods effected by the procuring entity shall not in any way limit the supplier's responsibilities and liabilities.

(7) If the supplier has been permitted to employ the services of a subcontractor, he shall in his contract with the subcontractor reserve to the procuring entity the rights referred to in this regulation.

144. Pre-shipment inspection services

(1) The Director of Public Procurement may appoint a procuring entity to engage an external agent for the purposes of conducting pre-shipment inspection of goods being purchased by procuring entities.

(2) Contracts with firms to conduct pre-shipment inspection of goods shall be awarded by way of competitive procedures pursuant to the Act and these Regulations.

145. Examination and receipt of goods

(1) The procuring entity shall establish appropriate procedures and mechanisms for inspecting and examining supplied goods and shall determine the precise form and designate the officials or bodies to be involved, in accordance with applicable regulations and instructions.

(2) The inspecting official or organ shall inspect and examine the supplied items comparing them with the stamped and approved samples and other specialities, putting aside the rejected goods to be returned to the supplier and shall examine varying percentages to be determined depending on the importance of the item.

(3) The inspecting official or organ shall prepare an examination report indicating acceptance or rejection of the goods, and the examination report shall indicate the percentage which the inspecting official or organ has examined, the names, specifications, results of testing, and shall be included in the record of the procurement proceeding.

(4) In the event of a dispute between the supplier and the inspecting official or organ, the matter shall be submitted to dispute settlement procedures under the procurement contract.

146. Receiving report

(1) Acceptance by the procuring entity of the performance of a procurement contract shall be properly documented, and a receiving report shall be prepared containing the following information—

- (a) contract reference number;
- (b) description of the item or service received;
- (c) date(s) of delivery and acceptance; and

(d) signature in written form, or in electronic form when that form is acceptable to the procuring entity and provides the requisite security, subject to compliance with guidelines that may be issued by the Director of Public Procurement.

(2) With a view to preventing delays in payment, the receiving report shall be transmitted promptly to the appropriate disbursement authorities, in accordance with applicable procedures.

147. Remedies for breach of contract

The procurement contract shall specify remedies available to the procuring entity in the event of breach of the procurement contract by the supplier, and such remedies include, but are not limited to—

- (a) rejection of defective performance;
- (b) prompt removal and replacement of defective goods;
- (c) liquidated damages for delay, in accordance with a rate set for each week or other unit of time, or part thereof, of delay;
- (d) termination of the contract and purchase of replacement performance, at the expense of the defaulting party; and
- (e) such other remedies as may be available pursuant to the contract or to applicable law.

148. Rejection of goods

(1) In the event it is decided to reject goods provided under the procurement contract, the procuring entity shall notify the supplier, by registered mail or courier with a return receipt, of the rejection and its reasons in order to cause the supplier to withdraw those materials from the stores and supply replacements of the rejected goods within the specified duration.

(2) In case the supplier refuses to take delivery of the rejected goods, he shall be liable for storage and other related expenses at the rate to be specified in the procurement contract, beyond that, the procuring entity is entitled to sell the goods by public auction and recover all expenses and fines from the sale value, and the balance remaining shall be returned to the supplier.

149. Payment on submission of invoice

(1) Subject to the terms of the procurement contract, payment to the supplier shall be made on the basis of the submission of a proper invoice, and to be considered proper, an invoice shall set forth the following information—

- (a) date of invoice;
- (b) identification of the supplier;
- (c) reference to the underlying contract;
- (d) description of the goods, works or services provided, and its quantity and price;
- (e) shipment and payment terms;
- (f) supporting documentation required by the procurement contract to be submitted with the invoice; and
- (g) payment instructions, including contact information for the payee.

(2) Upon receipt of an invoice, the procuring entity shall notify the supplier within seven days in the event that the invoice is not deemed proper, stating the grounds for that determination.

(3) The procurement contract shall define the manner and timing of payment.

(4) In the case of procurement of goods, the invoice shall be accompanied by any shipping or other required documents, in the prescribed form which may be obtained from the procuring entity, in accordance with the instructions given in the purchase order, letter of acceptance of tender or procurement contract, as the case may be; and in the procurement of goods, payment shall normally not be effected before receipt of the goods.

(5) Prior to effecting payment, the officer responsible for payment shall establish the availability of the appropriate supporting documents, including payment vouchers attached to relevant invoices, local purchase orders, and cross-references to local purchase order or tender numbers.

150. Prompt payment

Payments that become due to the supplier shall be made in accordance with the deadlines set forth in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract.

151. Retention

Notwithstanding regulation 149 (1), where progress payments are made, the procurement contract may provide that a percentage of amounts due to the bidder may be withheld until performance of the procurement contract is completed.

152. Advance payments

(1) The procurement contract may provide for advance payments to the bidder.

(2) The total amount of advance payment made under the procurement contract shall not exceed the percentage of the initial contract price as indicated in the applicable standard bidding documents promulgated pursuant to section 27 (3) (c) of the Act, and any advance payment in excess of fifty per cent of the value of goods, works or services to be supplied shall be approved by the Director of Public Procurement.

(3) Unless otherwise stipulated in the procurement contract, an advance payment shall not be made unless and until the bidder furnishes an advance payment guarantee covering the amount of the advance payment.

(4) Unless otherwise authorized by the procuring entity or its representative, the supplier, and any of its subcontractors, shall utilize materials, equipment and personnel that are the subject of advance payment only for supply of goods, completion of works, or provision of services related to the procurement contract and where a works contract is involved, the supplier shall commit such materials, equipment and personnel exclusively to sites related to the works covered by the procurement contract.

(5) Advance payments are not in the nature of final payments, but are subject to final accounting and deduction from progress or other payments that may become due to the supplier.

153. Progress payments

(1) The procurement contract may provide for the making of progress payments, based on progress in the fulfillment of the procurement contract, measured as a percentage of the performance due under the contract that has been completed, or in accordance with performance milestones identified in the contract and having been achieved.

(2) Progress payments may be issued to the supplier in accordance with the progress of performance of the procurement contract, upon presentation and acceptance of such documentation as required by the procurement contract to evidence the progress in performance.

154. Final payment

(1) Final payment shall be implemented once performance of the procurement contract has been completed and accepted by the procuring entity.

(2) The procurement contract may mandate that the supplier provide to the procuring entity a release from claims related to the contract as a condition for final payment, subject to exceptions including—

- (a) specified claims;
- (b) supplier's liability to third parties stemming from performance of the procurement;
- (c) claims for reimbursement of costs based on liability incurred to third parties in performance of the procurement contract, provided the claims are not known to the supplier as at the date of signature of the release; and
- (d) costs related to indemnification of the procuring entity against patent liability.

155. Contract modifications

(1) An increase in quantities which exceeds the maximum variations allowed in the procurement contract requires a formal modification of the contract.

(2) Contract modifications shall not result in an alteration of the basic nature or scope of the contract.

(3) An increase in quantities which exceeds fifteen per cent of the contract sum requires either a new procurement proceeding or justification, if appropriate, as a single-source procurement in accordance with section 36 of the Act.

156. Agreement to submit disputes to arbitration

The parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit disputes arising under the procurement contract to settlement by arbitration.

157. Liquidated damages for delay

(1) The procurement contract may provide that the supplier is liable for payment of an agreed sum for delay in the performance due under the contract.

(2) If a clause of the type referred to in paragraph (1) is included in the procurement contract, it shall specify—

- (a) the agreed sum to be paid per time-unit of delay (day, week or month);
- (b) the maximum amount due under the liquidated damages clause;
- (c) that the supplier is not relieved of its liability for performance of the procurement contract by virtue of payment under the liquidated damages clause;
- (d) that if the procuring entity terminates the contract for default, the supplier will be liable for liquidated damages accruing until the procuring entity reasonably obtains delivery or performance of similar services, and that those liquidated damages are in addition to liability for the excess costs of re-procurement; and
- (e) that the supplier will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the contractor.

158. Contract termination

The procurement contract shall refer to grounds on which the procurement contract, in accordance with its provisions, may be terminated, and such grounds shall include, in particular—

- (a) termination by the procuring entity on the grounds of default of the supplier in the performance of the contract;
- (b) termination by the procuring entity for convenience, when that is determined by the procuring entity to be in the public interest;
- (c) termination pursuant to the force majeure clause in the contract; and
- (d) termination for the convenience of the procuring entity.

159. Termination for convenience

(1) If the contract is terminated for convenience, the procuring entity shall authorize payment for the value of the work done, materials ordered, or goods or services supplied, the reasonable cost of removal of equipment, repatriation of the supplier's personnel employed solely on the works, and the supplier's costs of protecting and securing the works, if applicable, and less advance payments received up to the date of the certificate; and no payment shall be made of unearned profits.

(2) Notwithstanding paragraph (1), goods that are complete and ready for shipment within forty days after the supplier's receipt of notice of termination shall be accepted by the procuring

entity at the contract terms and prices, and for the remaining goods, the procuring entity may elect—

- (a) to have any portion completed and delivered at the contract terms and prices; or
- (b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

PART VIII

INFORMATION AND COMMUNICATIONS TECHNOLOGY FOR PUBLIC PROCUREMENT

160. Use of electronic media in the procurement process

The use of electronic media, including acceptance of electronic signatures, may be authorized consistent with the applicable statutory, regulatory or other rules for use of such media, so long as such rules provide for—

- (a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

161. Introduction of information and communications technology

(1) The use of information and communications technology shall be introduced in a gradual but steady manner, as the readiness of procuring entities to apply such measures progresses.

(2) Pursuant to the mandate set forth in section 17 of the Act, the Director of Public Procurement shall examine and recommend ways of introducing in public procurement, at appropriate stages, the use of information and communications technology, and other technical innovations.

(3) Procuring entities are encouraged to devise and implement measures aimed at employing information and communications technology in the procurement process and proposals shall be submitted to the Director of Public Procurement for approval prior to implementation; and issuance of approvals by the Director of Public Procurement shall be predicated on a finding that the proposed measure promotes the objectives of economy and efficiency, competition and openness of the procurement system to wider participation, transparency, and accountability.

(4) The guiding principles for identifying and developing applications of information and communications technology to procurement shall include—

- (a) communication and information exchange shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of bids and of all information supplied by economic operators are preserved, and that the procuring entities only examine the content of bids after the time-limit set for submitting them has expired;

(b) if bids are submitted by electronic means, bidders shall undertake to submit the documents, certificates, attestations and declarations relating to qualifications that may still have to be transmitted in paper form by any appropriate means by the day before the opening of bids; and

(c) standardization and inter-operability of key aspects of information and communications systems for procurement throughout public administration, so as to facilitate internal sharing of information, and participation by bidders throughout the procurement market.

(5) Possible elements to be explored for a procurement system utilizing information and communications technology in the procurement process include—

(a) easy access to standard bidding documents and use of standard formats;

(b) establishment of a website dedicated to procurement activities and systems in Malawi, containing information such as—

(i) information relevant to the standard procurement specifications for goods and services;

(ii) information concerning procurement opportunities;

(iii) direct access to bidding documents;

(iv) information about vendors, including information from the centralized master bidders list and vendor performance information;

(v) information about products, including product testing results;

(vi) historical purchasing information, qualified purchase lists, and trends;

(vii) information about the availability of surplus property;

(c) automated linkages between acquisition systems and other relevant systems, in particular supply and materials management systems and payment systems;

(d) bidder registration systems for the purposes of electronic procurement procedures;

(e) where appropriate, the development of special electronic procurement methods for conducting purchasing activity electronically such as use of purchase cards for small purchases, catalogue shopping for standard goods;

(f) electronic payment, involving, for example, electronic issuance of invoices, if invoices are necessary, or the automatic generation of payment upon report of the receipt of the procured object;

(g) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and

(h) accurate retrieval or conversion of electronic forms of information into a medium which permits inspection and copying.

PART IX

PARTICIPATION BY SMALL-ENTERPRISES

162. Definition of terms

For purposes of this Part—

(a) "small-enterprise" means an enterprise, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small-enterprise under the criteria and size standards in the relevant instruments of the National Construction Industry Council of Malawi and the Ministry of Commerce and Industry, and an enterprise is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged; and

(b) "set-aside" means the reserving of an acquisition exclusively for participation by small-enterprises.

163. General policy regarding small- and medium-sized enterprises

The Director of Public Procurement, in consultation and cooperation with concerned Ministries, other organs of Government and representative bodies of small enterprise, shall devise programmes and measures to promote and to facilitate the participation of small- and medium-sized enterprises in public procurement.

164. Measures to promote small- and medium-sized enterprise participation

The Director of Public Procurement shall issue guidelines concerning implementation of the regulation 163 and measures to promote and facilitate participation by small- and medium-sized enterprises in procurement may include—

- (a) simplification and transparency in procurement rules;
- (b) promoting clarity in bidding documents, contract clauses, and in performance standards;
- (c) use of a commercial approach to technical requirements, which widens the possibility of competition and participation by more small- and medium-sized enterprises;
- (d) promptness in payment of invoices, including progress payments and undisputed change orders, and introduction of electronic payment;
- (e) facilitating access to financing of Government receivables;
- (f) facilitating access to third party security instruments such as bank guarantees, stand-by letters of credit, surety bonds;
- (g) access to technical data that the Government is entitled to release for re-procurement purposes;

- (h) encouraging small-business subcontracting opportunities;
- (i) where feasible, and in accordance with section 28 (2) of the Act, dividing proposed acquisitions into reasonably small lots to permit offers on quantities less than the total requirement;
- (j) establishing small-enterprise set-asides which are total, partial, or limited to a particular region;
- (k) in the event of equal low bids, making awards first to small- and medium-sized enterprises;
- (l) allowing the maximum amount of time practicable for the submission of offer;
- (m) training of public procurement officials in facilitating participation by small- and medium-sized enterprises, and training of both public and private sectors in application of procurement procedures, including use of various payment mechanisms, and use of contractual instruments such as INCOTERMS;
- (n) avoiding excessive regulatory burdens;
- (o) in collection and reporting of data, accurately measuring the extent of small business participation in procurement;
- (p) publication of indicative notices of planned procurement;
- (q) development of more effective means of disseminating information about procurement opportunities, in particular in rural areas, such as by publication of notices of procurement proceedings in publications of associations of small- and medium-sized enterprises; and
- (r) holding regular consultations with representatives of small- and medium-sized enterprises.

165. Small- enterprises set-asides

(1) The purpose of small-enterprise set-asides is to award certain acquisitions exclusively to small-enterprises.

(2) A small-enterprise set-aside may be open to all small-enterprises.

(3) A small-enterprise set-aside of a single acquisition or a class of acquisitions may be total or partial.

(4) Eligibility of enterprises for designation as small-enterprises, so as to be eligible for set-asides, shall be determined in accordance with rules issued by the concerned organs of Government in Malawi, and referred to in an instruction from the Director of Public Procurement.

(5) The Director of Public Procurement shall determine and recommend to the Government the types of contracts, and their maximum monetary value, that shall be subject to set-aside for

small-enterprises, and in the event that the procuring entity finds in a given case that the set-aside is inappropriate, it shall document its finding and forward it to the Director of Public Procurement.

166. Representations by small- enterprises

(1) To be eligible for award as a small-enterprise, a bidder must represent by way of information that is in line with the applicable eligibility requirements that it is a small-enterprise at the time of its written representation.

(2) A bidder may represent that it is a small-enterprise in connexion with a specific solicitation if it meets the definition of a small-enterprise applicable to the solicitation and has not been determined by the Director of Public Procurement, or other authority designated by the Government, to be other than a small-enterprise.

(3) The procuring entity shall accept a bidder's representation in a specific bid or proposal that it is a small-enterprise unless—

(a) another bidder or interested party challenges the concern's small-enterprise representation; or

(b) the procuring entity has a reason to question the representation.

(4) Challenges of and questions concerning a specific representation shall be referred to the Director of Public Procurement, not later than five business days after bid opening.

(5) The Director of Public Procurement shall promptly furnish to the enterprise whose representation is being protested a copy of the protest.

(6) Within three business days after receiving a copy of the protest, the challenged bidder must file with the Director of Public Procurement a statement answering the allegations in the protest, and furnish evidence to support its position.

(7) Within ten business days after receiving a protest, the challenged bidder's response, and other pertinent information, the Director of Public Procurement shall determine the size status of the challenged concern and notify the procuring entity, the protester and the challenged bidder of its decision by certified mail, return receipt requested.

(8) The procuring entity may, any time after bids are opened, question the small-enterprise's representation of any bidder in a specific offer.

167. Requisitioning unit and community participation

When the participation of the procurement requisitioning unit or beneficiary community may result in enhancing the economy, quality or sustainability of the services to be procured, such requisitioning unit or community may participate in the delivery of services under procedures to be defined by the Director of Public Procurement.

PART X

ACCOUNTABILITY AND TRANSPARENCY IN PUBLIC PROCUREMENT

Division I—Measures to Promote Transparency

168. Record of public procurement proceedings

The record of the procurement proceedings, required pursuant to section 27 of the Act, shall contain the following information—

- (a) a brief description of the goods, works or services to be procured, or of the procurement need for which the procuring entity requested proposals or offers;
- (b) the names and titles of the members of the Internal Procurement Committee;
- (c) the names and addresses of bidders that submitted bids and the name and address of the supplier with whom the procurement contract is entered into and the contract price, and the date and time of arrival of each late bid;
- (d) the share of the contract that the successful bidder intends to subcontract if that is known;
- (e) information relative to the qualifications, or lack thereof, of suppliers that submitted bids;
- (f) the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each bid and of the procurement contract, where the procurement proceedings have resulted in a procurement contract; and a copy of the procurement contract resulting from the procurement proceedings;
- (g) a summary of the evaluation and comparison of bids, including the application of any margin of preference pursuant to regulations 82 to 84;
- (h) if all bids were rejected or the procurement proceedings were cancelled pursuant to section 23 of the Act, a statement to that effect and the grounds thereof;
- (i) if a bid was rejected in the circumstances referred to in section 18 (4) (a) of the Act, information concerning the episode in question; information on conflict of interest declarations and requests for members of the Internal Procurement Committee, employees or consultants of the procuring entity to be recused from the procurement proceedings pursuant to section 19 (1) of the Act and regulation 176; and information on contingent fee arrangements, disclosed pursuant to regulation 179;
- (j) in procurement proceedings involving the use of a procurement method pursuant to section 30 (3), (4), (8), or (10) of the Act, the statement of the grounds and circumstances on which the procuring entity relied to justify the selection of the method of procurement used;
- (k) in the procurement of services by means of request for proposals for services, a statement of the grounds and circumstances on which the procuring entity relied to justify the selection procedure used;

(l) in procurement proceedings in which the procuring entity, limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation;

(m) a summary of any requests for clarification of the pre-qualification or bidding documents, the responses thereto, as well as a summary of any modification of those documents; and

(n) if a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the grounds thereof.

169. Disclosure

In disclosure of the record of the procurement proceedings, and in debriefing of bidders, and in other contexts, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose—

(a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition; and

(b) information relating to the examination, evaluation and comparison of bids other than the summary referred to in regulation 168 (g).

170. Availability of record for oversight organs

The record of the procurement proceeding, as well as all other documents generated in planning and conducting procurement proceedings, and implementing procurement contracts, shall be made available for inspection upon demand by the Director of Public Procurement, the Auditor General, and other oversight organs authorized pursuant to any written law.

171. Record keeping and reporting requirements

(1) Each Internal Procurement Committee shall prepare an annual register of the procurement proceedings that have been issued for every year in serial numbers.

(2) Each Internal Procurement Committee shall open a special file for every procurement proceeding and all the information and documentation relating to the proceeding such as the invitation to tender, decision of award, work take-over certificate and any other information on the method of the supplier's completion of his commitment shall be kept in the file.

172. Retention of documentation

(1) The procuring entity shall retain all documents and records generated in conducting procurement proceedings in accordance with section 27 (1) of the Act.

(2) Each procuring entity shall open a special file for every procurement proceeding and in accordance with section 27 (1) of the Act, all the documentation relating to the procurement proceeding, including the tender invitation, decision of award, work take-over certificate and any

other information on the method of the contractor's completion of his commitment shall be kept in the file; and a contract file index shall be established for each contract file.

(3) Contract files shall include, at a minimum, the following documentation—

- (a) contract file index;
- (b) invitation to bid;
- (c) invitation to apply for pre-qualification, if applicable;
- (d) bidding documents;
- (e) requests for clarification and responses thereto, and record of circulation of responses to all participating bidders;
- (f) qualification assessment reports for each bidder whose qualifications were assessed in the course of the procurement proceeding;
- (g) list of pre-qualified bidders;
- (h) minutes of pre-bid meeting with bidders, if applicable;
- (i) minutes of bid opening;
- (j) originals of bids;
- (k) documentation of requests for and responses to clarifications of bids;
- (l) minutes of any negotiations;
- (m) copies of notice of acceptance sent to winning bidder;
- (n) copy of notice sent to unsuccessful bidders;
- (o) copy of published notice of contract award;
- (p) procurement contract;
- (q) documentation related to contract implementation, including progress reports, invoices and other documents such as inspection reports and any supporting documentation;
- (r) documentation related to change orders and contract modification;
- (s) documentation related to inspections, acceptance and receiving, including any exercise of the procuring entity's right to reject defective performance;
- (t) copies of all correspondence with the supplier; and
- (u) requests to subcontract and responses thereto; evaluation reports; and the record of the procurement proceedings, as well as all of the documentation referred to therein.

173. Notice of procurement contract award

(1) In the case of procurement contracts of goods, works and services whose threshold values shall be set and issued by the Director of Public Procurement, the procuring entity shall cause a notice of the procurement contract to be published in the Gazette within seven days of the award.

(2) The notice referred to in paragraph (1) shall refer to the announcement of the procurement published in the Gazette at the commencement of the procurement proceedings pursuant to section 31 (1) of the Act, the subject matter of the procurement, the name and address of the successful bidder and the contract price.

Division II—Accountability

174. Liability for defective design

Damage caused by unsuitable designing are the responsibility of the designer who must compensate that.

175. Declaration and disclosure requirements; restrictions on bidding by public officials

(1) All members of an Internal Procurement Committee shall, prior to commencing evaluation and comparison of bids, sign a declaration to the effect that they have no relationship with bidders of the following types—

(a) a marital or direct birth relationship with a bidder participating in the procurement proceedings, with its legal practitioner or with its officers;

(b) during last three years has been employee or officer of a bidder participating in the procurement proceedings, or has held a financial interest in a bidder; and

(c) is negotiating or has an arrangement concerning prospective employment in a bidder involved in the procurement proceedings.

(2) A member of an Internal Procurement Committee, and any employee or consultant of the procuring entity who becomes aware that it has a relationship with a bidder referred to in paragraph (1), shall immediately report that fact to the head of the procuring entity and request exclusion from the procurement proceeding, including from any activities referred to in regulation 176, and any such report and request for exclusion shall be made a part of the record of the procurement proceedings.

(3) Public officials are forbidden to bid or to participate in bids for procurement contracts with respect to procurement proceedings of the entities by which they are employed.

176. Identification of activities on behalf of the procuring entity subject to conflict of interest restrictions

Procurement-related activities on behalf of the procuring entity that are subject to the conflict of interest restrictions referred to in section 18 (1) (c) of the Act include the following—

(a) procurement planning, including preparation, review or approval of specifications or a statement of work for particular procurement proceedings;

- (b) assessment of requirements to be fulfilled by a procurement action;
- (c) preparation of procurement documents, including for solicitation of participation in procurement proceedings;
- (d) evaluation and comparison of bids, proposals, offers or quotations, including membership in Internal Procurement Committees;
- (e) conduct of technical discussions or negotiations;
- (f) selection or approval of selection of bidder; and
- (g) administration of the procurement contract.

177. Post-employment restrictions on public procurement officials

(1) Individuals who served as procurement officers or who exercised some other authority referred to in regulation 176 with respect to a procurement shall not—

(a) participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement; or

(b) participate personally or substantially on behalf of a supplier in the performance of such contract.

(2) The restriction referred to in paragraph (1) shall remain in effect for the duration of the procurement proceedings and contract, if any, in question.

178. Contingent fee arrangements

(1) Activities prohibited pursuant to section 18 of the Act also include the retention of any person, including former public employees, on a contingent fee basis for the purposes of influencing the selection process in procurement proceedings, except when that person is acting as a bona fide commercial selling agent for the purpose of securing business.

(2) The bidding documents shall require bidders to disclose any contingent fee arrangements entered into for the purposes of securing the procurement contract, and such information shall be made a part of the record of the procurement proceedings.

179. Conspicuous notice of prohibitions

Notice shall be given conspicuously in the bidding and contract documents that bidders are not permitted to—

(a) enter into contingent fee arrangements prohibited by regulation 178;

(b) directly or indirectly offer, give or agree to give inducements of the type referred to in section 18 (2) (a) of the Act,

and that rejection of the tender, offer or quotation results from a violation of that rule.

180. Prohibition of solicitation of improper inducements

It is strictly forbidden to solicit any improper inducement of the type referred to in section 18 (2) (a) of the Act.

181. Disclosure of offer of inducement

Any public official who is offered an inducement in contravention of section 18 (2) (a) of the Act shall report such offer to the head of the procuring entity, to the Director of Public Procurement and to the relevant law enforcement authority.

182. Prohibition of award to consultant-affiliated bidder

The procuring entity shall not sign a procurement of contract with a bidder associated as a parent company or branch, with a consultant who is responsible for preparing the specifications or bidding documents for the procurement contract or supervising the execution of the procurement contract; but so however that this provision shall not apply to the various firms (consultants, contractors or suppliers), which together are performing the supplier's obligations under a turnkey or design and build contract.

183. Confidentiality of procurement information

(1) Subject to applicable oversight, auditing or other laws, or to the order of a competent court, public officials are not permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of their involvement in, or contact with officials involved in procurement proceedings or the planning of procurement.

(2) All information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in regulation 168 (g).

184. Confidentiality obligations of third parties

(1) The requirement of confidentiality, imposed on procuring entities by section 18 (5) of the Act and by regulation 183, extends also to those acting on behalf of procuring entities in procurement proceedings.

(2) The requirement of confidentiality referred to in paragraph (1) is subject to the provisions in the Act, applicable legislation and these Regulations relating to oversight and auditing of the activities of procuring entities.

185. Dissemination of applicable conflict of interest and conduct rules to public employees

(1) The Director of Public Procurement and the heads of all public authorities shall ensure that each public employee is provided with a copy of the portions of the Act and these Regulations dealing with conflicts of interest, including specific notice of the prohibitions and requirements set forth in section 18 of the Act and in Part X, Division II of these Regulations.

(2) After having been furnished with the text of the provisions referred to in paragraph (1), each public employee shall be required to take note of its contents through a circular to be issued by the Secretary for Human Resource Management and Development, and all members of the Internal Procurement Committees shall sign on that form to the effect that they are familiar with its content.

186. Remedies against breach of conduct standards by public officials

(1) In addition to any other applicable civil and administrative remedies, and sanctions under the penal law, the Director of Public Procurement may recommend to the relevant authorities the imposition of one or more of the following sanctions for breach of conduct standards—

- (a) written warnings or reprimands;
- (b) suspension or interdiction with or without pay for specified periods of time;
- (c) withdrawal of procurement-officer certification; and
- (d) termination of employment.

(2) All procedures under this regulation shall be in accordance with due process requirements and existing law including notice and opportunity for a hearing prior to imposition of any suspension or interdiction or other sanction.

187. Recovery in case of breach of conduct standards

The value of anything transferred or received in breach of the standards of conduct set forth in the Act or in regulations promulgated hereunder, and any additional costs to the procuring entity, resulting from the breach, may be recovered both from any public employees and non-employees involved.

188. Supervision and checking

(1) All staff involved in purchasing shall be subject to supervision to ensure that staff are performing to meet standards and in accordance with procedures and guidelines in force.

(2) All transactions relating to public procurement shall be checked from time to time by the Director of Public Procurement and checking officers shall be alert to any indication that public procurement procedures have been breached or fraud committed.

189. Reporting of violations by procuring entities

(1) In the event of violation or circumvention of the Act or these Regulations, especially when it has financial consequences, the Director of Public Procurement shall report the matter to the Secretary to Treasury who may, in accordance with his powers as provided by the Public Finance Management Act, 2003, take appropriate action on the procuring entity that does not apply specific procedures, or that engages in procurement in circumvention of the Act or these Regulations, or recommend other appropriate administrative action.

(2) Where any misconduct involving an officer in a procuring entity is criminal in nature the Director of Public Procurement shall, in liaison with the Controlling Officer, report the matter to

Police and Treasury with a copy to Auditor General, and in the event of official misconduct, or breach of official duties, the Director shall recommend possible disciplinary action or other administrative, civil or criminal action to the relevant authorities.

Division III—Debarment of Suppliers and Bidders

190. Authority to debar suppliers and bidders

(1) The Director of Public Procurement may, after reasonable notice to the supplier or bidder involved, reasonable opportunity for that supplier or bidder to be heard, and consultation with the affected procuring entities, exclude a supplier or bidder from participation in public procurement.

(2) A decision to exclude a supplier or bidder from participation in public procurement may be taken only on the grounds referred to in regulation 191 and in accordance with the procedures set forth in regulation 192, but such decision may be preceded by a suspension of the right to participate in public procurement proceedings.

191. Grounds for exclusion

(1) A supplier or bidder may be excluded from participation in public procurement on the following grounds—

(a) refusal by a successful bidder to sign a procurement contract in accordance with the terms of the bidding documents if required to do so, or to furnish a performance security in accordance with the terms of the bidding documents, for a maximum period of two years;

(b) false information supplied in the process of submitting a bid, for a maximum period of two years;

(c) collusion between the bidder and a public official concerning the formulation of terms of reference or the bidding documents, or connivance to interfere with the participation of competing bidders in a site visit, for a maximum period of two years;

(d) misconduct relating to the submission of bids, such as corruption, collusion, price fixing, a pattern-of under-pricing of bids (with a view to recouping costs and profit by way of variations), and breach of confidentiality, for a maximum period of two years;

(e) breach of contractual obligations under a procurement contract deemed serious enough to warrant debarment, provided that the breach was not due to circumstances beyond the control of the supplier for a maximum, period of one year;

(f) conviction of a criminal offence related to obtaining or attempting to obtain a contract or subcontract; for a maximum period of two years; and

(g) conviction for an economic crime for a maximum period of two years.

192. Procedure for exclusion from participation in public procurement

(1) A decision by the Director of Public Procurement to exclude a supplier from participation in procurement proceedings may only be taken after written notice to the supplier or bidder of the

proposed exclusion and of the grounds therefor, and a copy of the notice shall be provided by the Director of Public Procurement to the procuring entity or other entity or official that brought the exclusion petition to the Director of Public Procurement.

(2) The notice referred to in paragraph (1) shall inform the supplier or bidder of its right to a hearing prior to any decision to exclude and the time and place of the hearing, provided that the request for a hearing is received by the procuring entity within ten days of receipt of the notice.

(3) The exclusion hearing shall be placed before a three-member committee whose members shall be appointed by the Director of Public Procurement, drawing from the standing Review Committee established pursuant to section 38 (6) of the Act, which shall reach a decision on the petition.

(4) The following procedures shall apply to hearings under this regulation—

- (a) the supplier or bidder has the right to be represented by a legal practitioner;
- (b) the hearing shall be recorded and all evidence presented shall be preserved; and
- (c) witnesses must testify under oath and may be cross-examined.

(5) The notice referred to in paragraph (1) shall also inform the supplier or bidder if a determination has been made to suspend the supplier or bidder for the period of time that it takes to complete an investigation into possible exclusion.

(6) The supplier or bidder has a right to a hearing to challenge the suspension and a hearing shall be held promptly in accordance with the procedures referred to in paragraph (4).

(7) A suspension under this regulation takes effect upon issuance of a written decision to suspend after the supplier or bidder has had an opportunity to request and obtain the hearing referred to in paragraph (2), and during the suspension, bids, proposals or quotations shall not be solicited from the supplier or bidder.

(8) A suspension under this regulation ends upon the expiry of two years of the issuance of an exclusion decision, or upon notice from the procuring entity, whichever comes first.

(9) An exclusion decision takes effect upon issuance of the written decision, and stays in effect until overturned on appeal to the Minister or by a court, or until the expiry date of the exclusion period.

(10) The three-member committee shall promptly notify its decision to the concerned supplier or bidder, the Director of Public Procurement and the procuring entity or other entity or official that brought the petition.

(11) A supplier or bidder that has been excluded from public procurement may appeal to the Minister.

(12) The Director of Public Procurement shall maintain and circulate to procuring entities a list of excluded suppliers and bidders.

Division IV—Review Procedures

193. Review procedures relating to award of procurement contract

(1) A document is filed on a particular day when it is received by the procuring entity or by the Director of Public Procurement, as the case may be, by close of business on that day.

(2) A document may be filed by hand delivery, mail, or commercial carrier; and parties may use facsimile transmission or other electronic means.

194. Compensation for aggrieved bidder

Any damages payable pursuant to the right of review under these Regulations shall be limited to the cost of preparing and submitting a tender, and shall not include loss of profit, and may only be awarded to a bidder that would have been awarded the contract but for the complained of action or omission.

195. Recording of dispositions

Any decision by the procuring entity, the Review Committee or by the court pursuant to section 37 of the Act and the grounds and circumstances therefor shall be made part of the record of the procurement proceedings.

196. Detailed review procedures

Further details of the review procedure are provided in Schedule D. Schedule D

SCHEDULE A reg. 8

Types of defence-related items eligible for special treatment in accordance with sections 27 (5) and 30 (2) of the Act.

1. Ammunitions
2. Rifles
3. Riot equipment
4. Armed public order vehicles
5. Military hardware and equipment
6. Police dogs
7. Police uniform
8. Military uniform
9. Petrol bomb equipment
10. Bomb X-ray machines
11. Military version vehicles

12. Forensic science equipment
13. Construction of magazine houses
14. Communication equipment
15. Finger print identification equipment.

SCHEDULE B reg. 113

PROCEDURES FOR DESIGN CONTESTS

PART I

GENERAL PROVISIONS

1. Scope and purpose

(1) This Annex provides detailed rules and procedures related to the conduct of design contests, with a view to fulfilling the objectives and implementing the provisions of the Act.

(2) For the purposes of this Annex “design contests” means those procedures that enable the procuring entity to acquire, mainly in the fields of area planning, town planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

(3) In accordance with regulations, procuring entities may conduct design contests, with or without prizes, to acquire the required plans and projects relating to architecture, landscaping, engineering, urban design projects, urban and regional planning, and fine arts.

(4) The rules and procedures for the organization of a design contest shall be in conformity with the requirements of this Annex and shall be consistent with the Act.

2. Valuation of design contests

For the purposes of valuation of design contests and the application to design contests of monetary thresholds referred to in the Act and these Regulations—

(a) in the case of design contests organized as part of a procedure leading to the award of a contract for consultant’s services, the estimated value net of surtax of the services shall be used; and

(b) in the case of design contests with prizes, all contest awards and other amounts payable to the participants in the design contest shall be used.

PART II

DESIGN CONTEST JURY

3. Establishment of jury

(1) The designs submitted by contestants shall be evaluated by a jury composed exclusively of members who are natural persons and are independent from the participants in the contest.

(2) The jury shall be established prior to the opening of the contest.

(3) The members of the jury shall be appointed and dismissed by the procuring entity.

4. Composition of jury

If certain professional qualifications are required from participants in a design contest, at least one-third of the members of the jury of the contest must have the same or similar qualifications.

5. Jury procedures

(1) At its first meeting, the jury shall elect a chairperson and a rapporteur.

(2) The decisions of the jury shall be taken by a majority vote, with a separate vote on each design, and if the vote is equally divided, the chairperson shall have the decisive vote, and all decisions of the jury shall be final.

(3) A report of the meetings, including explanations of the decisions of the jury with respect to each plan or design submitted, shall be drawn up by the rapporteur and signed by the chairperson and all members of the jury.

(4) The report of the jury shall be made public.

PART III

PARTICIPATION IN DESIGN CONTESTS

6. Contest notice

(1) Procuring entities who wish to carry out a design contest shall make known their intention by means of a contest notice.

(2) In addition to publication in the Gazette and local press, the notice shall be published in technical journals and reviews relevant to the subject matter of the design contest.

(3) Notices of design contests shall be published not less than thirty days prior to the date for the receipt of designs.

7. Contents of contest notice

The design contest notice shall contain at least the following information—

(a) the name, address, fax number and electronic address of the procuring entity and, if different, of the service from which additional information may be obtained;

(b) project description, including the subject and characteristics of the design contest;

- (c) the requirements for participation in the design contest, including any qualification criteria and proof of compliance therewith to be submitted by participants;
- (d) nature of the contest, namely, open or restricted;
- (e) in the case of open contests, the final date for receipt of plans or designs;
- (f) in the case of restricted contests—
 - (i) the number of participants envisaged;
 - (ii) where applicable, names of participants already selected;
 - (iii) criteria for the selection of participants; and
 - (iv) final date for receipt of requests to participate;
- (g) where applicable, indication of whether participation is reserved to a particular profession;
- (h) criteria to be applied in the evaluation of plans and designs;
- (i) the place from which and the manner in which candidates may obtain the contest documents, including the deposit, if any, to be paid for the documents;
- (j) the names of the members of the jury;
- (k) indication of whether the prize winners are permitted any follow-up contracts;
- (l) where applicable, the number and value of prizes;
- (m) where applicable, details of payments to all participants; and
- (n) date of publication of the notice.

8. Extent of participation

(1) Where design contests are restricted to a limited number of participants, the procuring entity shall state in the notice clear and non-discriminatory selection criteria, and the procuring entity may restrict participation only on the basis of those criteria.

(2) In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

9. Subvention of participation

(1) In restricted competitions, provision may be made for payment of a certain sum to each of the participants invited to take part, without prejudice to the regular award of prizes.

(2) In contests consisting of two stages, a reasonable sum may be paid to all participants admitted to the final contest, and such sum is distinct from the prizes awarded upon the conclusion of the final contest.

10. Non-discrimination

The conditions and contest documents of a contest shall be identical for all participants.

PART IV

CONTEST DOCUMENTS

11. Provision of contest documents

The procuring entity shall supply participants with all the documentation necessary for drawing up their designs, and if there is a deposit to be paid for the documentation, the deposit shall be refunded to the candidates that in fact participate in the contest.

12. Contents of contest documents

(1) In addition to restating the information contained in the design contest notice referred to in paragraph 7 of this Schedule, the contest documents shall contain the following—

- (a) the detailed nature of the problem;
- (b) the actual conditions to be fulfilled in the preparation of the design;
- (c) the number, nature, scale and dimensions of the documents or models required in two or three dimensions;
- (d) the conditions of receipt, acceptance and return of such documents or models;
- (e) the requirements as to data to be supplied by participants so as to enable the costs of execution of designs to be estimated in accordance with uniform standards;
- (f) the method of allocation of prizes;
- (g) whether the prize is to be the sole remuneration received by the prize-winner;
- (h) the exact use to which the procuring entity intends to put the prize-winning design;
- (i) the point in time when execution of the design is slated to commence;
- (j) the date of the public exhibition of the designs submitted in the contest; and
- (k) the name, functional title, address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from participants in connexion with the procurement proceedings, without the intervention of an intermediary.

(2) A clear distinction shall be made in the contest documents, between conditions that are compulsory and those that leave participants freedom in interpretation, which should be as wide as possible.

(3) The contest documents shall indicate that, in principle, the procuring entity shall use the meter as the scale for designs and plans; in cases where this is not done, a metric equivalent shall be given in the contest documents.

(4) The procuring entity shall endeavour to reduce to a minimum, in all cases, the number and size of the documents and drawings required to be submitted.

(5) The procuring entity shall give, on an equal basis, to all participants in the second stage of a two-stage contest all of the supplementary information necessary for drawing up designs and plans to be submitted in the second stage.

13. Registration and admission of participants

Upon obtaining the contest documents, candidates intending to participate in the contest shall register that intent with the procuring entity, and registration implies acceptance of the conditions of the competition.

PART V

SUBMISSION AND EVALUATION OF DESIGNS AND PLANS

14. Submission of designs and plans

The designs and plans submitted by participants for consideration by the jury shall be presented to the procuring entity for transmission to the jury in such a manner as to ensure their anonymity before and during the evaluation, comparison and award stages.

15. One or two stage contests

(1) Contests may be held in one or two stages.

(2) In contests that consist of two stages, only those competitors who are successful in the first part shall be admitted to the final contest.

(3) Designs and plans submitted in the first stage shall be kept confidential until the results of the second stage have been announced.

(4) The list of participants admitted to the final contest shall be drawn up and published in alphabetical order.

(5) Participants admitted to the second stage of contests shall receive from the procuring entity all the supplementary information necessary for drawing up designs and plans to be entered in the final contest.

16. Evaluation and comparison of designs

(1) Decisions and opinions concerning the designs and plans shall be made only on the basis of the criteria and conditions set forth in the notice announcing the design contest and in the contest documents.

(2) All drawings, photographs, models or documents, other than those specified in the programme, shall be excluded from consideration, and shall be eliminated before examination of the plan.

(3) The jury shall disqualify any plan not in conformity with the conditions set forth in the contest documents.

17. Selection of the winning design

The winning design or plan shall be selected exclusively on the basis of criteria and conditions set forth in the contest notice and documents.

18. Notice of results

(1) Procuring entities who have held a design contest shall send a notice of the results of the award procedure and must be able to prove the date of dispatch.

(2) The notice referred to in paragraph (1) shall contain the following information—

- (a) name, address, fax number and electronic address of the procuring entity;
- (b) project description;
- (c) number of participants, including the number of foreign participants;
- (d) winner(s) of the contest;
- (e) where applicable, the prizes;
- (f) reference number of the design contest notice; and
- (g) date of dispatch of the notice.

(3) The notice shall be published in the same publications utilized for publication of the design contest notice.

PART VI

ALLOCATION OF PRIZES, AWARDS AND COMPENSATION

19. Amount of prizes

The amount of the prizes shall be proportional to the size of the project, the work involved and the expenses incurred by participants.

20. Distribution of prizes

Prizes shall be distributed within ten days of the announcement of the results of the contest.

21. Use of designs

(1) The winning design may not be put to any use other than that expressly stated in the contest documents.

(2) No other design, whether or not it is awarded a prize, may be used in whole or in part by the procuring entity except by special agreement with the respective participant.

(3) In cases where the procuring entity wishes to use a prize-winning design for other purposes, or to modify it, a fresh agreement to that effect shall be concluded between the procuring entity and the author of the design or plan.

22. Copyright and ownership issues

(1) The author of any design shall retain the artistic copyright in his work; and no alterations may be made without his formal consent.

(2) The design winning the first prize shall become the property of the procuring entity.

(3) Unless otherwise specified in the contest documents, the procuring entity's ownership in the winning design shall cover only one execution thereof.

(4) Unless otherwise specified in the contest documents, the author of any design shall retain the right of reproduction.

PART VII

MISCELLANEOUS PROVISIONS

23. Exhibition of designs

(1) Following the conclusion of the deliberations of the jury, the designs submitted in the contest shall be publicly exhibited, and in addition to the designs themselves, all documents and drawings, as well as the report and decisions of the jury bearing the signatures of the chairman and of all members shall be exhibited.

(2) The procuring entity shall notify the participants at least seven days prior to the date of the exhibit of the date and place of the exhibition, and the procuring entity shall also arrange for the publication of the date and place of the exhibition in the Gazette and local press and in the technical journals and reviews in which the design contest notice was published.

24. Standards of conduct

(1) The members of the jury shall undertake not to be guided in their work by any consideration other than their own conscience, the interests of the contest and the public interest.

(2) No member of the jury shall take part, either directly or indirectly, in the contest, nor be entrusted, either directly or indirectly, with work connected with the execution of the winning design.

(3) The communication and information exchange involved in design contests shall be carried out in such a way as to ensure that the integrity and confidentiality of all information supplied by participants are preserved, and that the content of plans and designs may only be examined, by the jury, after the time-limit set for submitting those has expired.

(4) In their conduct, the members of the jury and participants in the contest are subject to the conduct and ethics principles set forth in the Act and in these Regulations.

25. Cancellation of contest

(1) The procuring entity retains the right to cancel the contest at any stage prior to the announcement of a winning design, and in the event of a cancellation, the procuring entity shall refrain from the utilization of any designs that may have been submitted.

(2) In the event of the cancellation of a contest for which participants have been officially registered, the procuring entity shall compensate the participants for work actually carried out in connexion therewith, in accordance with conditions set forth in the contest documents.

26. Record of the contest

The procuring entity shall prepare a record of the design contest containing at least the following information—

- (a) the name, address and other details of the procuring entity;
- (b) the subject and characteristics of the design contest;
- (c) the names and addresses of the participants in the design contest;
- (d) the name and address of the person who submitted the award-winning project;
- (e) information concerning the qualifications required of the participants in the design contest or confirming the lack thereof;
- (f) the total value of the design contest awards and other amounts payable to the participants in the contest;
- (g) a summary of the evaluation and comparison of the designs or plans; and
- (h) the report of the jury, signed by the chairperson and the members, summarizing and explaining the deliberations and decisions of the jury with respect to the evaluation and comparison of the designs submitted in the contest, and stating the grounds for the selection of the winning design.

27. Review

Part V of the Act and Division II of Part X of these Regulations shall apply to the resolution of complaints from participants concerning the conduct of design contests.

SCHEDULE C reg. 114 (3)

Procedures for award of public service concession and contracts for procurement of infrastructure on basis of private investment.

A. RULES GOVERNING THE PROCUREMENT PROCEEDINGS

The selection of the supplier shall be conducted in accordance with the Act and these Regulations, subject to sections B to F of this Annex.

B. PRE-QUALIFICATION OF BIDDERS

1. Purpose and procedure of pre-qualification

(1) The procuring entity shall engage in pre-qualification proceedings with a view to identifying bidders that are suitably qualified to implement the envisaged project, and the invitation to participate in the pre-qualification proceedings shall be published in accordance with section 31 (1) of the Act.

(2) The invitation to participate in the pre-qualification proceedings shall include at least the following—

- (a) a description of the infrastructure facility;
- (b) an indication of other essential elements of the project, such as the services to be delivered by the supplier, the financial arrangements envisaged by the procuring entity such as whether the project will be entirely financed by user fees or tariffs or whether public funds such as direct payments, loans or guarantees may be provided to the supplier;
- (c) where already known, a summary of the main required terms of the contract to be entered into;
- (d) the manner and place for the submission of applications for pre-qualification and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their applications; and
- (e) the manner and place for obtaining the pre-qualification documents.

(3) To the extent not already required by regulation, the pre-qualification documents shall include at least the following information—

- (a) the pre-qualification criteria in accordance with paragraph 2;
- (b) whether the procuring entity intends to waive the limitations on the participation of consortia set forth in paragraph 3;
- (c) whether the procuring entity intends to request only a limited number of pre-qualified bidders to submit proposals upon completion of the pre-qualification proceedings in accordance with paragraph 4, and if applicable, the manner in which this selection will be carried out; and
- (d) whether the procuring entity intends to require the successful bidder to establish an independent legal entity established and incorporated under the laws of Malawi.

2. Pre-qualification criteria

In order to be pre-qualified, interested bidders must meet objectively justifiable criteria that the procuring entity considers appropriate in the particular proceedings, as stated in the pre-qualification documents; and the criteria shall be confined to the types of criteria referred to in section 13 (3) of the Act, and shall encompass the following—

(a) adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;

(b) sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements;

(c) appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.

3. Participation of consortia

(1) The procuring entity, when first inviting the participation of bidders in the procurement proceedings, shall allow them to form bidding consortia, and the information required from members of bidding consortia to demonstrate their qualifications in accordance with paragraph 2 shall relate to the consortium as a whole as well as to its individual participants.

(2) Unless otherwise stated in the pre-qualification documents, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time; contravention of this requirement shall cause the disqualification of the consortium and of the individual members.

(3) When considering the qualifications of bidding consortia, the procuring entity shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

4. Short list

If the procuring entity reserves in the pre-qualification documents the right to request proposals upon completion of the pre-qualification proceedings only from a limited number of bidders that best meet the pre-qualification criteria, the procuring entity shall rate the bidders that meet the pre-qualification criteria on the basis of the criteria applied to assess their qualifications and draw up the list of bidders that will be invited to submit proposals upon completion of the pre-qualification proceedings, and in drawing up the list, the procuring entity shall apply only the manner of rating that is set forth in the pre-qualification documents.

C. PROCEDURE FOR REQUESTING PROPOSALS

1. Single-stage and two-stage procedures for requesting proposals

(1) The procuring entity shall provide a set of the request for proposals and related documents issued in accordance with paragraph 2 to each pre-qualified bidder that pays the price, if any, charged for those documents.

(2) Notwithstanding paragraph (1), the procuring entity may use a two-stage procedure to request proposals from pre-qualified bidders when the procuring entity does not deem it to be feasible to describe in the request for proposals the characteristics of the project such as project specifications, performance indicators, financial arrangements or contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.

(3) Where a two-stage procedure is used, the following provisions apply—

(a) the initial request for proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as to the main contractual terms proposed by the procuring entity;

(b) the procuring entity may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for proposals or the initial proposals and accompanying documents submitted by the bidders, and the procuring entity shall prepare minutes of any such meeting or discussion containing the questions raised and the clarifications provided by the procuring entity;

(c) following examination of the proposals received, the procuring entity may review and, as appropriate, revise the initial request for proposals by deleting or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms, and any criterion for evaluating and comparing proposals and for ascertaining the successful bidder, as set forth in the initial request for proposals, as well as by adding characteristics or criteria to it, and the procuring entity shall indicate in the record of the procurement proceedings to be kept pursuant to section 27 of the Act, the justification for any revision to the request for proposals; any such revision, modification or addition shall be communicated in the invitation to submit final proposals; and

(d) in the second stage of the proceedings, the procuring entity shall invite the bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with paragraphs 2 to 6.

2. Content of the request for proposals

To the extent not already required by regulation 92, the request for proposals shall include at least the following information—

(a) general information as may be required by the bidders in order to prepare and submit their proposals;

(b) project specifications and performance indicators, as appropriate, including the procuring entity's requirements regarding safety and security standards and environmental protection;

(c) the contractual terms proposed by the procuring entity, including an indication of which terms are deemed to be non-negotiable; and

(d) the criteria for evaluating proposals and the thresholds, if any, set by the procuring entity for identifying non-responsive proposals; the relative weight to be accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

3. Bid securities

(1) The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of any required bid security.

(2) A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases referred to in regulation 72 (7), and in case of—

(a) failure to enter into final negotiations with the procuring entity pursuant to paragraph 6 (1);

(b) failure to submit its best and final offer within the time limit prescribed by the procuring entity pursuant to paragraph 6 (2); and

(c) failure to provide required security for the fulfilment of the contract after the proposal has been accepted or to comply with any other condition prior to signing the contract specified in the request for proposals.

4. Evaluation criteria

(1) The criteria for the evaluation and comparison of the technical proposals shall include at least the following—

(a) technical soundness;

(b) compliance with environmental standards;

(c) operational feasibility; and

(d) quality of services and measures to ensure their continuity.

(2) The criteria for the evaluation and comparison of the financial and commercial proposals shall include, as appropriate—

(a) the present value of the proposed tolls, unit prices and other charges over the operational period;

(b) the present value of the proposed direct payments by the procuring entity, if any;

(c) the costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;

(d) the extent of financial support, if any, expected from a public authority of Malawi;

(e) soundness of the proposed financial arrangements;

(f) the extent of acceptance of the negotiable contractual terms proposed by the procuring entity in the request for proposals; and

(g) the social and economic development potential offered by the proposals.

5. Comparison and evaluation of proposals

(1) The procuring entity shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set forth in the request for proposals.

(2) For the purposes of paragraph (1), the procuring entity may establish thresholds with respect to quality, technical, financial and commercial aspects, and proposals that fail to achieve the thresholds shall be regarded as non-responsive and rejected from the procurement proceeding.

6. Final negotiations

(1) The procuring entity shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the procurement contract the bidder that has attained the best rating; and final negotiations shall not concern those contractual terms, if any, that were stated as non-negotiable in the final request for proposals.

(2) If it becomes apparent to the procuring entity that the negotiations with the bidder invited will not result in a contract, the procuring entity shall inform the bidder of its intention to terminate the negotiations and give the bidder reasonable time to formulate its best and final offer.

(3) If the procuring entity does not find that proposal acceptable, it shall terminate the negotiations with the bidder concerned, and the procuring entity shall then invite for negotiations the other bidders in the order of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

(4) The procuring entity shall not resume negotiations with a bidder with which negotiations have been terminated pursuant to this paragraph.

D. NEGOTIATION OF CONTRACTS WITHOUT COMPETITIVE PROCEDURES

1. Circumstances authorizing award without competitive procedures

(1) Subject to approval by the Director of Public Procurement, the procuring entity is authorized to negotiate a procurement contract without using the procedure set forth in sections B and C in the following cases—

(a) when there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set forth in sections B and C would be impractical: Provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

(b) where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;

(c) in cases of unsolicited proposals falling under section E 4 of this Schedule; and

(d) when an invitation to the pre-qualification proceedings or a request for proposals has been issued but no applications or proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals and if, in the judgment of the procuring entity, issuing a new invitation to the pre-qualification proceedings and a new request for proposals would be unlikely to result in a project award within a required time frame.

(2) The procedure for the request for proposals shall be as follows—

(a) requests for proposals shall be addressed to as many suppliers or contractors as practicable, but to at least three, if possible;

(b) the procuring entity shall publish in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international circulation a notice seeking expressions of interest in submitting a proposal, unless for reasons of economy or efficiency the procuring entity considers it undesirable to publish such a notice; the notice shall not confer any rights on suppliers or contractors, including any right to have a proposal evaluated;

(c) the procuring entity shall establish the criteria for evaluating the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of the proposals; and the criteria shall concern—

(i) the relative managerial and technical competence of the supplier or contractor;

(ii) the effectiveness of the proposal submitted by the supplier or contractor in meeting the needs of the procuring entity; and

(iii) the price submitted by the supplier or contractor for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods or construction.

(3) A request for proposals issued by a procuring entity shall include at least the following information—

(a) the name and address of the procuring entity;

(b) a description of the procurement need, including the technical and other parameters to which the proposal must conform, as well as, in the case of procurement of construction, the location of any construction to be effected and, in the case of services, the location where they are to be provided;

(c) the criteria for evaluating the proposal, expressed in monetary terms to the extent practicable, the relative weight to be given to each such criterion and the manner in which they will be applied in the evaluation of the proposal; and

(d) the desired format and any instructions, including any relevant timetables applicable in respect of the proposal.

(4) Any modification or clarification of the request for proposals, including modification of the criteria for evaluating proposals referred to in paragraph (2), shall be communicated to all suppliers or contractors participating in the request-for-proposals proceedings.

(5) The procuring entity shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing suppliers or contractors.

(6) The procuring entity may engage in negotiations with suppliers or contractors with respect to their proposals and may seek or permit revisions of such proposals; provided that the following conditions are satisfied—

(a) any negotiations between the procuring entity and a supplier or contractor shall be confidential;

(b) subject to regulation 170, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party; and

(c) the opportunity to participate in negotiations is extended to all suppliers or contractors that have submitted proposals and whose proposals have not been rejected.

(7) Following completion of negotiations, the procuring entity shall request all suppliers or contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals.

(8) The procuring entity shall employ the following procedures in the evaluation of proposals—

(a) only the criteria referred to in paragraph (2) as set forth in the request for proposals shall be considered;

(b) the effectiveness of a proposal in meeting the needs of the procuring entity shall be evaluated separately from the price; and

(c) the price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

(9) Any award by the procuring entity shall be made to the supplier or contractor whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals set forth in the request for proposals, as well as with the relative weight and manner of application of those criteria indicated in the request for proposals.

2. Procedures for negotiation of a contract

Where a procurement contract is negotiated without using the procedures set forth in sections B and C of this Schedule, the procuring entity shall cause a notice of its intention to commence negotiations in respect of a contract to be published in the Gazette.

E. UNSOLICITED PROPOSALS

1. Admissibility of unsolicited proposals

Subject to approval by the Director of Public Procurement, the procuring entity is authorized to consider unsolicited proposals pursuant to the procedures set forth in paragraphs 2 to 4:

Provided that such proposals do not relate to a project for which selection procedures have been initiated or announced.

2. Procedures for determining the admissibility of unsolicited proposals

(1) Following receipt and preliminary examination of an unsolicited proposal, the procuring entity shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest, taking into account factors including appropriateness of the contractual arrangements and the reasonableness of the proposed project risks.

(2) If the project is considered to be potentially in the public interest under paragraph (1), the procuring entity shall invite the proponent to submit as much information on the proposed project as is feasible at this stage to allow the procuring entity to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the procuring entity, and for this purpose, the proponent shall submit a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.

(3) In considering an unsolicited proposal, the procuring entity shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. The procuring entity shall not make use of information provided by or on behalf of the proponent in connexion with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the procuring entity shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.

3. Unsolicited proposals that do not involve intellectual property, trade secrets or other exclusive rights

(1) Except in the circumstances set forth in section D 1, the procuring entity shall, if it decides to implement the project, initiate a procurement proceeding in accordance with sections B and C if the procuring entity considers that—

(a) the envisaged output of the project can be achieved without the use of intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and

(b) the proposed concept or technology is not truly unique or new.

(2) The proponent shall be invited to participate in the procurement proceedings initiated by the procuring entity pursuant to paragraph (1) and may be given an incentive or a similar benefit in a manner described by the procuring entity in the request for proposals in consideration for the development and submission of the proposal.

4. Unsolicited proposals involving intellectual property, trade secrets or other exclusive rights

(1) If the procuring entity determines that the conditions of paragraph 3 (1) are not met, it shall not be required to carry out a procurement procedure pursuant to sections B and C. However, the procuring entity may still seek to obtain elements of comparison for the unsolicited proposal in accordance with the provisions set out in paragraphs (2) to (4).

(2) Where the procuring entity intends to obtain elements of comparison for the unsolicited proposal, the procuring entity shall publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit proposals within fourteen days.

(3) If no proposals in response to an invitation issued pursuant to paragraph (2) are received within fourteen days, the procuring entity may engage in negotiations with the original proponent.

(4) If the procuring entity receives proposals in response to an invitation issued pursuant to paragraph (2), the procuring entity shall invite the proponents to negotiations in accordance with the provisions set forth in section D 2. In the event that the procuring entity receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the procuring entity shall request the submission of proposals pursuant to section C, subject to any incentive or other benefit that may be given to the person who submitted the unsolicited proposal in accordance with paragraph 3 (2).

F. MISCELLANEOUS PROVISIONS

1. Confidentiality

The procuring entity shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders. Any discussions, communications and negotiations between the procuring entity and a bidder pursuant to sections C

1 (3) and 6, D 1 and 2, and E 4 (3) and (4) shall be confidential in accordance with section 18 (5) of the Act. Unless required by law or by a court order or permitted by the request for proposals, no party to the negotiations shall disclose to any other person any technical, price or other information in relation to discussions, communications and negotiations pursuant to the aforementioned provisions without the consent of the other party.

2. Notice of contract award

The procuring entity shall cause a notice of the contract award to be published in accordance with section 26 of the Act.

SCHEDULE D reg. 196

REVIEW PROCEDURES

1. Required contents of application for review

(1) An application for review under Part VI of the Act shall be in writing and signed by the applicant or its representative and shall—

- (a) include the name, address, and telephone and facsimile numbers of the applicant;
- (b) identify the procuring entity and the solicitation or contract number;
- (c) set forth a detailed statement of the legal and factual grounds of the application for review including copies of relevant documents;
- (d) set forth all information establishing that the applicant is, for the purpose of filing an application for review, an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract;
- (e) set forth all information establishing the timeliness of the application for review; and
- (f) specifically request a ruling and state the form of relief requested.

(2) An application for review under Part VI of the Act may, in addition—

- (a) request special measures for handling proprietary commercial or other confidential information;
- (b) request specific documents, explaining the relevance of the documents to the grounds underlying the application for review; and
- (c) request a hearing, explaining the reasons that a hearing is needed to resolve the application for review.

(3) In the event that the application for review is filed in the first instance with the Director of Public Procurement, the applicant shall furnish a complete copy of the application for review, including all attachments, to the procuring entity not later than one day after the application for review is filed.

(4) If the applicant believes that the application for review contains information which should be withheld from the public, a statement advising of this fact must be on the front page of the submission, and wherever the information appears, the applicant shall file a redacted copy of the application for review which omits the information with the procuring entity within one day after the filing of its application for review.

2. Time periods and deciding applications for review

(1) An application for review based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening.

(2) Applications for review other than those covered by paragraph (1) shall be filed within ten days after the basis of application for review is known or should have been known, whichever is earlier.

(3) If a timely application for review was previously filed, any subsequent application for review filed within seven days of actual or constructive knowledge of initial adverse action by the head of the procuring entity shall be considered.

(4) The head of the procuring entity shall render a decision within fourteen days of the submission of the application for review.

3. Review by the Standing Review Committee

An application for review may be submitted to the Director of Public Procurement, for disposition in by an ad hoc Review Committee constituted from among the members of the standing Review Committee in accordance with section 38 (4) and (5) of the Act.

4. Notice of application for review

(1) The procuring entity shall immediately give notice of the application for review to all bidders with the nature of the allegations set forth in the application for review.

(2) In the event of the filing with the Director of Public Procurement of an application for review by an ad hoc Review Committee constituted from among the members of the standing Review Committee, that office shall notify the procuring entity by telephone within one day after the filing of an application and, unless the application for review is dismissed, shall promptly send a written confirmation to the procuring entity and an acknowledgement to the applicant.

5. Dismissal of application for review

An application for review may be dismissed for—

(a) failure to comply with any of the requirements set out in this Schedule, except for the provisions of paragraph 1 (2) and (3), and paragraph 2 where the procuring entity has actual knowledge of the basis of the application for review, or the procuring entity is not prejudiced by the protester's non-compliance;

(b) setting forth only allegations that do not state a valid basis for an application for review, or that do not set forth a detailed legal and factual statement;

(c) having been filed in an untimely manner;

(d) not being properly submitted before the procuring entity or an ad hoc Review Committee;

(e) concerning contract administration rather than contract award; and

(f) challenging an affirmative determination of qualifications.

6. Comments by procuring entity on application for review by the standing Review Committee

(1) When an application is filed with the Director of Public Procurement for review by the standing Review Committee, the procuring entity, in consultation with the Internal Procurement Committee, shall provide comments on the application within seven days after the telephone notice of the filing of the application for review with the Director of Public Procurement. The comments of the procuring entity shall include a statement of the relevant facts, including a best estimate of the

contract value, an assessment of the allegations in the application for review memorandum of law, and a list of all documents relevant to the procurement proceedings.

(2) The procuring entity, if it feels that there are grounds thereof, may file a request for dismissal before filing a report required under paragraph (1).

(3) Subject to special measures issued in the application for review, the procuring entity shall simultaneously furnish a copy of its comments on the application for review to the applicant and any intervenors within one day of the submission of the comments to the ad hoc Review Committee.

(4) The applicant shall be given an opportunity to comment on the comments of the procuring organization on the application for review by the ad hoc Review Committee.

(5) The applicant for review may submit to the ad hoc Review Committee comments on the procuring entity's comments on the application for review within two days after receipt by the applicant of the procuring entity's comments, with a copy provided to the procuring entity and other participating parties.

7. Disclosure by procuring entity

(1) The procuring entity shall promptly make available to the ad hoc Review Committee any information and documentation that the ad hoc Review Committee may request, including but limited to—

- (a) the bid submitted by the applicant;
- (b) the bid of the bidder that is being considered for award, or whose bid or proposal is being reviewed;
- (c) all qualification assessment and bid evaluation documents;
- (d) the solicitation, including the specifications;
- (e) the abstract of bids or offers;
- (f) requests for clarification of the bidding documents and responses thereto; and
- (g) any other relevant documents.

(2) In appropriate cases, the procuring entity may request that the applicant produce relevant documents, or portions of documents, that are not in the procuring entity's possession.

(3) Upon receipt of the procuring entity's comments, the applicant may request the procuring entity to provide documents required by the applicant effectively to prosecute its application for review.

(4) Where, under a special measure to protect confidential information pursuant to paragraph 1 (2) (a), or pursuant to the obligation of the procuring entity to protect the confidential information of competing bidders, documents are withheld from the applicant in accordance with

these Regulations, the procuring entity shall provide documents adequate to inform the applicant of the basis of the procuring entity's position.

(5) The procuring entity shall respond promptly to a request pursuant to paragraph (2) and shall provide a list of the documents that the procuring entity has released to the applicant, and of the documents that the procuring organization intends to withhold from the applicant and the reasons for the proposed withholding and a copy of that list shall be provided promptly to the applicant; any objection to the scope of the procuring entity's proposed disclosure or non-disclosure of documents must be filed within two days of receipt of the list.

(6) Upon the request of the applicant, the ad hoc Review Committee shall decide whether the procuring entity must provide any withheld documents, or portions of documents, and whether this should be done under a special measure to protect confidentiality.

(7) The ad hoc Review Committee may request or permit the submission of additional statements by the parties and by other parties not participating in the application for review as may be necessary for the fair resolution of the application for review.

8. Expeditious delivery of communications

All communications related to the application for review communications shall be sent by means reasonably calculated to effect expeditious delivery.

9. Special measures for confidentiality

(1) At the request of a party or on its own initiative, the ad hoc Review Committee may apply special measures controlling the treatment of proprietary, confidential, or other information the release of which could result in a competitive advantage to one or more firms. It is the responsibility of applicant's legal practitioner to request that a special measure be applied and to apply in a timely fashion for access to information in a controlled fashion under the special measures.

(2) If no special measures have been applied, the procuring entity may withhold from the parties those portions of its report which would ordinarily be subject to special measures. The ad hoc Review Committee shall review in camera all information not released to the parties.

(3) Any violation of the terms of a special measure may result in the imposition of such sanctions as the ad hoc Review Committee deems appropriate, including referral to appropriate professional disciplinary bodies.

10. Hearings

(1) At the request of a party or on its own initiative, the ad hoc Review Committee may conduct a hearing in connexion with an application for review.

(2) Hearings generally will be conducted as soon as practicable after receipt by the parties of the procuring organization comments and relevant documents.

(3) All parties participating in the application for review shall be invited to attend the hearing.

(4) Hearings shall normally be recorded or transcribed. If a recording or transcript is made, any party may obtain copies at its own expense.

11. Remedies

In determining the appropriate remedies pursuant to section 38 (8) of the Act, the ad hoc Review Committee shall consider all circumstances surrounding the procurement or proposed procurement, including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the remedies on the procuring entity's mission.

12. Notice to the Director of Public Procurement of action taken

The procuring entity shall promptly notify the Director of Public Procurement of the action taken by the procuring organization in response to the decision of the ad hoc Review Committee.

13. Distribution of decisions

(1) Unless it contains information subject to special measures, a copy of a decision by the ad hoc Review Committee shall be provided to the applicant, any intervenors, and the head and to the senior procurement officer of the procuring entity.

(2) A copy of a decision containing information subject to special measures shall be provided only to the procuring entity and to individuals granted access to the information pursuant to the special measures.

(3) A public version of the decision omitting the information subject to special measures shall be prepared wherever possible.

(4) Decisions shall be made available from the Director of Public Procurement.

[Chap3801]CHAPTER 38:01

GOVERNMENT SECURITIES

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Application of Act
3. Provision for payment of money due to stockholder
4. Certificate of paying agent

5. Certain legislation to be agreed with the United Kingdom Government

25 of 1964

An Act to make a further and better provision to facilitate the Investment of Trust and other Funds, held in the United Kingdom, in Malawi Government Securities

[6TH JULY 1964]

[Ch3801s1]1. Short title

This Act may be cited as the Government Securities Act.

[Ch3801s2]2. Application of Act

This Act shall apply to all securities heretofore or hereafter created or issued in the United Kingdom on behalf of the Government of Malawi—

(a) in which a trustee might at any time have invested by virtue of section 2 of the Colonial Stock Act, 1900; or 63 and 64 Vict. c. 62

(b) by the conditions of issue of which it is provided that this Act shall apply to them, each and all of which securities are hereinafter referred to as “Malawi Government Securities”.

[Ch3801s3]3. Provision for payment of money due to stockholder

(1) Whenever, by the final judgment, decree, rule or order of any court of competent jurisdiction in the United Kingdom, any sum of money is adjudged or declared to be payable by the Government of Malawi in respect of any Malawi Government Securities, that sum shall, without further appropriation than this Act, be charged upon and paid out of the Consolidated Fund, and adequate funds (as and when required) shall be made available in the United Kingdom by the Government of Malawi to meet any such final judgment, decree, rule or order.

(2) For the purpose of this section, “final judgment, decree, rule or order” means, in case of appeal, the final judgment, decree, rule or order of the ultimate court hearing the appeal.

[Ch3801s4]4. Certificate of paying agent

A certificate specifying the sum paid under order of any such court as aforesaid to satisfy any such final judgment, decree, rule or order and issued by the agent in the United Kingdom of the Government of Malawi authorized to make such payment shall be sufficient authority to the Auditor General or other officer having the auditing of accounts of such agent for passing such sum without further appropriation.

[Ch3801s5]5. Certain legislation to be agreed with the United Kingdom Government

Legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting Malawi Government Securities to the injury of the holders thereof, or to involve a departure from the original contract in regard to those Securities, shall not become law save after

agreement with the Government of the United Kingdom, and if attention is drawn to such legislation after the passing thereof, the Government of Malawi will take the necessary steps to ensure such amendment thereto as may be requested by the Government of the United Kingdom.

[Chap3902]CHAPTER 39:02

CAPITAL CITY DEVELOPMENT CORPORATION

ARRANGEMENT OF SECTIONS

SECTION

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10 of 1968

30 of 1969

28 of 1971

8 of 1980

An Act to provide for the establishment, development and Administration of a Capital City at Lilongwe and for the establishment of a Capital City Development Corporation and to define the functions of that Corporation and for purposes connected therewith and incidental thereto

[23RD AUGUST 1968]

PART I

PRELIMINARY

[Ch3902s1]1. Short title

This Act may be cited as the Capital City Development Corporation Act.

[Ch3902s2]2. Interpretation

In this Act, except where the context otherwise requires—

“Capital City” means the area of land designated by the President under section 9 as the Capital City of Lilongwe;

“Chairman” means the Chairman of the Corporation designated under section 4 and any person acting as such;

“Corporation” means the Capital City Development Corporation established under this Act;

“development” includes redevelopment;

30 of 1969“financial year” means such year or other period as the Minister may from time to time, by notice published in the Gazette, determine to be the financial year of the Corporation.

PART II

ESTABLISHMENT AND CONDUCT OF CORPORATION

[Ch3902s3]3. Establishment of the Corporation

There is hereby established the Capital City Development Corporation which shall be a body corporate by that name with perpetual succession and a common seal, with the power to alter and change the same from time to time and which shall, subject to this Act, be capable in law of suing

and being sued, of acquiring, holding, letting and otherwise disposing of land, and of doing and performing such acts and things as bodies corporate may by law do and perform.

[Ch3902s4]4. Membership of Corporation

28 of 1971(1) The Corporation shall consist of not less than six and not more than ten members, none of whom shall be a Minister or a member of the Parliament of Malawi.

(2) Members of the Corporation shall be appointed by the Minister who shall designate one member to be the Chairman and another member to be the Deputy Chairman.

(3) No person shall be appointed a member if he—

(a) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has made a composition with his creditors and has not paid his debts in full;

(b) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Malawi;

(c) is under sentence of death imposed on him in a court in Malawi or is under sentence of imprisonment (by whatever name called) imposed on him by such court or substituted by competent authority for some other sentence imposed on him by such court.

(4) A member shall hold office for two years from the date of his appointment unless he sooner resigns or his appointment is terminated by the Minister under section 5.

(5) The Chairman, Deputy Chairman and all other members shall be eligible for re-appointment at the conclusion of their respective terms of office.

(6) No member shall participate in the consideration or discussion of or vote on any decision of the Corporation in respect of any matter in which he has a direct or indirect pecuniary interest.

[Ch3902s5]5. Resignation and vacation

(1) A member may at any time by writing, under his hand addressed and delivered to the Minister, resign his membership.

(2) A member shall vacate his membership if—

(a) any circumstance has arisen which if such person were not a member of the Corporation would cause him to be disqualified for appointment under section 4;

(b) such member has been absent from three consecutive meetings of the Corporation without permission of the Chairman; or

(c) such member is in the opinion of the Minister unable or unfit to discharge the functions and duties of a member,

and such member has been instructed by the Minister to vacate his membership.

(3) When the Minister has terminated the appointment of any member under subsection (2) or when the Minister has received written resignation under subsection (1), the Minister shall declare the office of that member to be vacant and may fill such office by a new appointment. A person appointed under this subsection shall serve as a member for the unexpired portion of the term of the former member in whose place he has been appointed.

[Ch3902s6]6. Remuneration

There shall be payable to a member out of the funds of the Corporation such remuneration and allowances, if any, in respect of his services as the Minister may from time to time determine.

[Ch3902s7]7. Meetings

(1) When the Chairman is temporarily absent from Malawi or is absent on leave within Malawi or is temporarily incapacitated from performing the functions of his office, all the powers and duties of the Chairman shall devolve upon the Deputy Chairman during such period of absence or incapacity and the Minister may appoint another member to be Deputy Chairman during such period.

(2) When a member is temporarily incapacitated from performing his functions as a member by reason of his absence from Malawi or any other cause, the Minister may appoint a person to be a member during such period of incapacity and during such period all the powers and duties of the member so temporarily incapacitated shall devolve upon the member so temporarily appointed.

(3) The Chairman shall, at any meeting of the Corporation, have an original vote and, where the votes are equally divided, a casting vote, in addition to his original vote.

(4) Where upon any special occasion the Corporation desires to obtain the advice of any person on any particular matter, the Corporation may co-opt such a person to be a member of such meeting or meetings as may be required and such person while so co-opted shall have all the rights and privileges of a member save that he shall not be entitled to vote on any question.

(5) Unless otherwise provided in standing orders made under section 8, a quorum at a meeting of the Corporation shall be the Chairman and three members.

(6) The Corporation shall meet at least quarterly and at such other times as may be required by standing orders made under section 8.

(7) Any four members may by notice in writing signed by them request the Chairman to call a special meeting of the Corporation for the purpose set out in such notice. On receipt of any such notice the Chairman shall call a special meeting. Such special meeting shall be called for a day that is not less than seven nor more than thirty days from the date on which the notice was received.

[Ch3902s8]8. Standing orders

Subject to this Act, the Corporation may with the approval of the Minister from time to time make standing orders providing for—

- (a) the proper conduct of the business and meetings of the Corporation;

(b) the method of entering into contracts and other legal transactions and the execution of documents connected therewith;

(c) the signing of cheques and other similar instruments;

(d) the execution of documents by an agent;

(e) the procedure of any committee; and

(f) the management and administration of the Corporation generally.

PART III

DESIGNATION OF CAPITAL CITY ETC.

[Ch3902s9]9. Designation of Capital City and vesting of land

(1) The President may, from time to time, by order designate any land to form part of the Capital City of Lilongwe.

(2) The land so designated shall form part of the Capital City but such designation shall, subject to the Land Act, in no way affect the title of any person to any part of such land or any right of occupation thereof. Cap. 57:01

(3) The President may, by order, vest in the Corporation such public land within the Capital City as is specified in the order and the reversion to any lease, issued by the Government or its predecessors in title, of any land in the Capital City specified in the order.

(4) All land vested in the Corporation under subsection (3) shall remain subject to the overall authority of the Minister provided for in sections 10, 11 and 24.

(5) When the reversion to any lease granted under the Land Act is or has been vested in the Corporation under subsection (3), the provisions of section 6 and of Part IV of that Act shall, to such extent as the circumstances shall admit, continue to apply to such lease subject to the following modifications— Cap. 57:01

(a) the rights, duties and powers of the Minister under such provisions (other than those under section 15 (a) and (b)) shall from the time of such vesting be enjoyed, performed or exercised, as the case may be, by the Corporation;

(b) section 13 shall not apply in relation to any implied covenants prescribed after the date of such vesting;

(c) section 23 shall apply as if there were substituted for the words “addressed to him by prepaid registered post at the Central Government Offices, Zomba” the words “addressed by prepaid registered post to the Chairman of the Corporation at its principal office in Malawi”; and

(d) section 24 shall cease to apply.

PART IV

PURPOSES AND POWERS

[Ch3902s10]10. Purposes of Corporation

(1) The purposes of the Corporation are, as agent of the Government and subject to the general and special directions of the Minister—

(a) to administer and supervise the orderly construction, development and maintenance of the Capital City, including buildings for the Government and for industrial, commercial and other purposes, the construction, maintenance, repair and renewal of dwelling-houses, factories, stores and other buildings, roads, transport facilities, water supplies, surface drains, sewage disposal works and services of any other description and the provision of community centres, theatres, libraries, halls, gardens, swimming pools and amenities of every description;

(b) to promote and develop commercial and industrial activities in any area of the District of Lilongwe specified from time to time by the Minister and for any such purpose to acquire land, erect buildings thereon and otherwise develop such land;

(c) initiate, carry on, manage and dispose of any business, trade, industry, service, amenity or other enterprise approved by the Minister;

(d) with the prior approval of the Minister to acquire, hold, sell, let, donate or otherwise dispose of any land, building, enterprise or other property of the Corporation;

(e) to investigate and formulate schemes for any of the foregoing purposes and to do all manner of other things conducive or incidental to such purposes;

(f) to do such other things as the Minister may from time to time direct.

(2) The Corporation shall not exercise its power to acquire, sell, let, donate or otherwise dispose of land or buildings except with the written approval of the Minister.

(3) The Corporation may, with the approval of the Minister, do any of the things specified in subsection (1) either alone or in association with or as agent of any person.

[Ch3902s11]11. Powers of Corporation

For any of the purposes specified in section 10 the Corporation shall have power to—

(a) purchase or sell any materials, stores, plant or equipment;

(b) employ consultants;

(c) undertake surveys and the preparation of plans and drawings;

(d) charge fees;

(e) do such other things as may be provided for under this Act or as are conducive or incidental to any of the purposes or powers of the Corporation.

PART V

FINANCIAL PROVISIONS

[Ch3902s12]12. Conduct of financial affairs

(1) Subject to the Finance and Audit Act and with the prior approval of the Minister, the Corporation may enter into agreements for the borrowing of money to enable the Corporation to fulfil its functions under this Act and it shall be the duty of the Corporation so to manage the exercise of its powers as to ensure that its revenues are not less than sufficient to enable the Corporation to repay such loans and the interest thereon when such repayments fall due. Cap. 37:01

(2) For the purposes of fulfilling the duty specified in subsection (1), the Corporation shall charge to its revenue account in every year all expenses and charges which, in the normal conduct of a commercial business, are regarded as proper to be made to a revenue account, including, in particular, proper provision for depreciation or diminution of value of assets and for the redemption of loans at due times and all charges and expenses incurred in connexion with any loans and for transfers to the general reserve fund and such other reserves as may be approved by the Minister.

(3) The sums transferred to the general reserve fund under subsection (2) may be used for the proper carrying out of the purposes of the Corporation, including the development of its undertakings.

[Ch3902s13]13. Revenue of the Corporation

(1) The revenues of the Corporation shall include—

(a) the rents derived from all leases of land and buildings in the Capital City and in the District of Lilongwe the immediate reversion to which is vested in the Corporation or in the Government;

(b) all moneys derived from facilities, services and amenities provided by the Corporation and from any business or other enterprise carried on by the Corporation;

(c) such moneys as may be provided by the Government for revenue purposes;

(d) such other sources of revenue as may be approved from time to time by the Minister.

(2) The Corporation may provide to any lender, with the prior approval of the Minister, a first or other charge upon the revenues of the Corporation to secure the repayment of a loan and the interest thereon.

[Ch3902s14]14. Annual estimates

(1) The Corporation shall, before the beginning of each financial year, submit to the Minister estimates of capital and revenue expenditure and the financing thereof in such form as the Minister may approve.

(2) The Corporation shall, whenever required to do so, furnish to the Minister such further information in relation to its receipts and expenditure as the Minister may require.

(3) The Corporation shall not incur expenditure otherwise than in accordance with estimates approved by the Minister except with his approval in writing.

[Ch3902s15]15. Keeping of accounts

(1) The Corporation shall cause a true account to be kept of all its financial transactions during each financial year.

(2) The Corporation 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 Corporation shall be open to inspection by any member.

[Ch3902s16]16. Bank accounts

All moneys received by the Corporation shall, unless the Minister otherwise permits, be paid into an account of the Corporation with a bank registered under the Banking Act. Cap. 44:01

[Ch3902s17]17. Investments

The Corporation may invest all or any of its moneys not immediately required for the purposes of the Corporation—

- (a) in the purchase of any security issued by the Government of Malawi;
- (b) in deposits in any bank or building society authorized to carry on business as such under any law for the time being in force in Malawi;
- (c) in such other manner as may be approved in writing by the Minister.

[Ch3902s18]18. Security for loans

Loans made to the Corporation may be secured on the property and revenues of the Corporation.

[Ch3902s19]19. Audit

(1) The accounts of the Corporation shall be audited forthwith at the end of every one of the Corporation's financial years by an auditor approved by the Minister in accordance with such rules as may be made by the Minister.

(2) The Corporation shall pay in respect of any audit held under this Part such fees, costs and expenses as may be approved from time to time by the Minister.

(3) The auditor may by writing under his hand require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Corporation which he may deem necessary for the purpose of the audit. He may summon in writing all such persons as he may think proper to appear before him personally, at the offices of the Corporation at a time to be fixed in such summons for examination in connexion with any documents or matter relating to the audit.

(4) Any person who, without just cause, fails or refuses to produce any document the production of which has been duly required by the auditor, or who, having been so summoned—

- (a) without just cause neglects or refuses to comply with the summons;
- (b) having appeared before the auditor, without just cause refuses to be examined; or
- (c) without just causes refuses to answer such questions pertaining to the audit as are put to him,

shall be liable, for every such refusal or neglect incurred, to a fine of £50 and imprisonment for three months:

Provided that conviction under this section shall not exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

[Ch3902s20]20. Report of auditor

(1) After the completion of the audit of the accounts of the Corporation, the auditor shall report thereon in writing to the Corporation about the audit generally and on such specific matters in relation thereto as the Minister may direct. The Corporation shall take the report into consideration within two months after the date of the receipt thereof, and thereupon a copy of such report, together with the Corporation's comments thereon, shall be sent by the Corporation to the Minister.

(2) The Minister shall forthwith lay before the National Assembly a copy of the accounts of the Corporation for each financial year, together with the auditor's report thereon.

PART VI

STAFF AND AGENTS

[Ch3902s21]21. Employment of officers and staff

30 of 1969(1) The Minister may appoint and may terminate the appointment of a General Manager of the Corporation who may be the chief executive officer.

(2) The Corporation may, with the approval of the Minister, appoint and terminate the appointment of any such other officers and servants as may be necessary for the due and proper carrying out of its purposes or the appropriate exercise of its powers.

(3) The Corporation shall, with the approval of the Minister, regulate the duties, terms and conditions of service for all its officers.

(4) No officer or servant of the Corporation shall have the right to bind the Corporation to the terms of any contract without the general or special authority of the Minister.

(5) Any contract entered into in violation of subsection (4) shall be null and void.

(6) Any member, officer, agent or servant of the Corporation shall, if so required by the Minister, take and subscribe before a commissioner for oaths such oath of fidelity or secrecy as the Minister may prescribe.

[Ch3902s22]22. Pensions and provident funds

(1) The Corporation may, with the approval of the Minister, establish and maintain pension, superannuation, provident and other funds as it may consider desirable for the provision of payments or other allowances on death, sickness, injury, superannuation, resignation or retirement or discharge of its officers and servants.

(2) The Corporation may, with the approval of the Minister, make rules providing for the payment of moneys out of the revenue of the Corporation to such funds and providing for the contribution of moneys to such funds by the officers and servants of the Corporation, and contract with insurance companies and other bodies for the maintenance of such funds.

[Ch3902s23]23. Agents

(1) The Corporation may, with the consent of the Minister, entrust to and confer upon any person as agent of the Corporation any of the powers exercisable by the Corporation upon such terms and conditions as the Corporation may, with the approval of the Minister, think fit, but only collaterally with and not to the exclusion of the Corporation's own powers. The Corporation may from time to time revoke, withdraw, alter or vary any or all of such powers.

(2) Any such agent shall receive such remuneration (whether by way of salary, fee, commission or participation in profits or partly in one way and partly in another) as may, subject to the approval of the Minister, be agreed between the agent and the Corporation.

PART VII

GENERAL

[Ch3902s24]24. Regulations

(1) The Minister may, from time to time, make regulations for any of the purposes of this Act and to give effect to the provisions thereof.

(2) Such regulations may require any person to comply with reasonable and proper requirements or directions of the Corporation of a nature similar to the requirements or directions of the by-laws of a local authority and may impose a penalty not exceeding a fine of £100 and imprisonment for six months, and may also impose a fine of £1 for every day during which an offence continues.

(3) Such regulations may also provide for the recovery by the Corporation of its expenses arising out of any act or omission constituting an offence under the regulations.

[Ch3902s25]25. Power of court to cancel licence or permit

Where any person is convicted of contravening or failing to comply with any condition subject to which a licence or permit has been granted to him under any regulation made under

section 24, the court which convicted him may, in addition to or in substitution for any penalty prescribed in such regulation, cancel the licence or permit in respect of which the offence was committed.

[Ch3902s26]26. Minister may give directions

Without prejudice to any provision of this Act requiring the consent or approval of the Minister to be obtained for anything to be done by the Corporation, the Minister may give directions to the Corporation for restricting the exercise by it of its powers under this Act, or for requiring it to exercise those powers in any manner specified in the direction.

[Ch3902s27]27. Dissolution of the Corporation

Where the Minister is satisfied that the purposes of the Corporation have been achieved or is satisfied that it should cease operating, the Minister shall by order provide for the winding up and dissolution of the Corporation. The assets of the Corporation at the time of dissolution shall, subject to the payment of the liabilities of the Corporation, be disposed of in the manner prescribed by the Minister.

NOTICE G.N. 246/1969

under s. 2

The Minister has determined that the financial year of the Corporation after the financial year ending on the 31st day of March, 1970, shall be the twelve month period commencing on the 1st day of April in each year.

SUBSIDIARY LEGISLATION

CAPITAL CITY DEVELOPMENT CORPORATION DESIGNATION ORDER

under s. 9

G.N. 160/1968

1. Citation

This Order may be cited as the Capital City Development Corporation Designation Order.

2. Designation of land

The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

Commencing at the junction of the Lilongwe-Salima road approximately four and a half miles north of the Lingadzi Bridge with the road from Chitedze via Mbabzi and the road from Kasungu, the boundary proceeds in an easterly direction to the source of the Machendza/Kananga stream; thence by the Machendza/Kananga stream downstream to its confluence with the Mchenzi stream; thence by the Mchenzi stream downstream to its confluence with the Lilongwe River; thence by the

Lilongwe River downstream to its confluence with the Nankhwali stream; thence by the Nankhwali stream upstream to its source on the road from Lilongwe to Mndondwe; thence in a south-westerly direction along the said road for approximately one mile to its junction with the roads running north to Kalonga village and south to Chambala village; thence in a south-westerly direction on an approximate true bearing of 233° through Nchesi Hill to the main Lilongwe-Dedza road near Katanta village at a point marked by a beacon approximately two miles south of the Nchesi Quarry road turn-off, thence due west along a line of beacons to the confluence of the Kawala Dambo and the Kadakale stream, thence by the Kadakale stream downstream to its confluence with the Lilongwe River near Borehole No. D. 17 on its northern bank; thence in a northerly direction along the Fire-break through the Chinsapo Forest to the Lilongwe-Likuni road, thence east along the road to the western boundary of Chankhandwe Veterinary Station, thence in a northerly direction along the western boundary fence of Chankhandwe Veterinary Station and an extension thereof to its junction with the Chankhandwe Dambo, thence by the Chankhandwe Dambo upstream to its junction with the Machenga Dambo, thence by the Machenga Dambo upstream until it meets the LilongweMchinji road; thence following the said road in an easterly direction to its junction with the Lilongwe Airport turn-off, thence in a northerly direction to the source of the Kamankuku Dambo, thence by the Kamankuku Dambo downstream to its confluence with the Lingadzi River, thence by the Lingadzi River downstream to its confluence with the Nankhaka Dambo, thence by the Nankhaka Dambo upstream to its junction with the Chitedze-Salima road via Mbabzi, thence following the said road in an easterly direction to the main Lilongwe-Salima road, the point of commencement.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

under s. 9

G.N. 40/1972

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order.

2. Designation of land

The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

FIRST ALL THAT piece or parcel of land containing an area of seven thousand eight hundred and sixty (7,860) acres or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 93/71 and are thereon edged with red colour.

SECONDLY ALL THAT piece or parcel of land containing an area of one thousand one hundred and sixty-four (1,164) acres or thereabouts situate at Lilongwe and known as Chinsapo

block the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 92/71 and thereon edged with red colour.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION AND LAND VESTING) ORDER

under s. 9

G.N. 132/1980

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order.

2. Designation of land

The land described in the First and the Second Schedules is hereby designated part of the Capital City of Lilongwe.

3. Vesting of land in the Corporation

The land described in the First and the Second Schedules is hereby vested in the Corporation in fee simple.

4. Exception of mines and minerals

There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule.

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of eleven thousand five hundred and twenty-eight (11,528) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 4/78 and thereon edged in red.

SECOND SCHEDULE

ALL THAT piece or parcel of land containing an area of one thousand six hundred and eighty decimal point five six (1,680.56) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 9/78 and thereon edged in red.

THIRD SCHEDULE

ALL MINES, minerals, oil, silver, gold and precious stones within under or upon the said land or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his

or their prospectors or agents to enter upon the said land and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines, minerals, oil, gold, silver and precious stones without leaving any support for the surface of the said land with full liberty and power to make sink drive maintain and use all such pits, drifts, shafts, tunnels, levels, drains, watercourses and reservoirs and to construct erect maintain and use all such spoil-banks railroads, tramroads, and other roads, bridges, buildings, works, engines, machinery and conveniences whatsoever and to do all such things in under upon through or over the said land or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said land by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (LAND VESTING) ORDER

under s. 9

G.N. 228/1969

1. Citation

This Order may be cited as the Capital City Development Corporation (Land Vesting) Order.

2. Vesting of certain land etc. in Corporation

The land (hereinafter called "the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings erections and structures thereon and all other the hereditaments demised by or now subject to the several leases mentioned in the Second Schedule hereto are hereby vested in the Capital City Development Corporation (hereinafter called "the Corporation") in fee simple subject as to such parts of the said premises as are respectively comprised in the several Indentures of Lease specified in the Second Schedule hereto to such Indentures respectively and with the benefit of the several rents thereby reserved and of the covenants conditions and stipulations therein respectively contained and on the part of the lessees to be observed and performed and subject also to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

3. Exception of mines and minerals

There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule hereto.

FIRST SCHEDULE

All land (other than private land held under a freehold title) within the area of which the boundary commences at the junction of the Lilongwe-Salima road approximately four and a half

miles north of Lingadzi Bridge with the road from Chitedze via Mbabzi and the road from Kasungu, and proceeds in an easterly direction to the source of the Machendza/Kananga stream; thence by the Machendza/Kananga stream downstream to its confluence with the Mchenzi stream; thence by the Mchenzi stream downstream to its confluence with the Lilongwe River; thence by the Lilongwe River downstream to its confluence with the Nankhwali stream; thence by the Nankhwali stream upstream to its source on the road from Lilongwe to Mndondwe; thence in a south-westerly direction along the said road for approximately one mile to its junction with the roads running north to Kalonga Village and south to Chambale Village; thence in a south-westerly direction on an approximate true bearing of 233° through Nchesi Hill to the main Lilongwe-Dedza road near Katanta Village at a point marked by a beacon approximately two miles south of the Nchesi Quarry road turn-off, thence due west along a line of beacons to the confluence of the Kawala Dambo and the Kadakale stream, thence by the Kadakale stream downstream to its confluence with the Lilongwe River near Borehole No. D. 17 on its northern bank; thence in a northerly direction along the Fire-break through the Chinsapo Forest to the Lilongwe-Likuni road, thence east along the road to the western boundary of Chankhandwe Veterinary Station, thence in a northerly direction along the western boundary fence of Chankhandwe Veterinary Station and an extension thereof to its junction with the Chankhandwe Dambo, thence by the Chankhandwe Dambo upstream to its junction with the Machenga Dambo, thence by the Machenga Dambo upstream until it meets the Lilongwe-Mchinji road; thence following the said road in an easterly direction to its junction with the Lilongwe Airport turn-off, thence in a northerly direction to the source of the Kamankuku Dambo, thence by the Kamankuku Dambo downstream to its confluence with the Lingadzi River, thence by the Lingadzi River downstream to its confluence with the Nankhaka Dambo, thence by the Nankhaka Dambo upstream to its junction with the Chitedze-Salima road via Mbabzi, thence following the said road in an easterly direction to the main Lilongwe-Salima road, the point of commencement.

SECOND SCHEDULE

Lands Dept.	File No.	Plot	Description	Date of Lease	Deed No.	Lessee
32092	2242	3- 7-64	29775	Lilongwe Town Council		
32092	3287	3- 7-64	29775	Lilongwe Town Council		
32092	2243	3- 7-64	29775	Lilongwe Town Council		
32092	2244	3- 7-64	29775	Lilongwe Town Council		
32092	2245	3- 7-64	29775	Lilongwe Town Council		
32092	3108	3- 7-64	29775	Lilongwe Town Council		
32092	2080	3- 7-64	29775	Lilongwe Town Council		
17465	2030	6- 3-65	30305	A.L.H. and O.H. Jagot		

40645	4006	31-12-64	30228	Costantini and Co. Ltd.
40815	4079	22- 5-65	30470	Shire Construction Co. Ltd.
31885	4048	12- 3-66	31290	W.N.L.A.
26960	4025	30- 4-66	31378	I. I. Bheda
41486	3221	9- 1-68	33398	Portland Cement Co. (Malawi)
25170	2063	27- 6-66	31541	C. Ibrahim
34916	3282	2- 5-64	29571	Lilongwe Water Board
24622	2002	9- 8-29	7930	Indian Mohamedan Mosque
21541	4116	7-12-53	17839	Mobil Oil (Malawi) Ltd.
25295	2128	8- 4-54	18158	O. A. Karim
25306	2097	3- 8-55	19414	Y. M. Patel
28306	624-625	30-11-63	29132	M. A. Sattar/G. H. Nabibhai
32059	514	24-12-58	23975	Seventh Day Adventists
29909	2215	28- 8-59	24789	United Transport (Malawi) Ltd.
34791	636	5-5-60	25528	N.L. Pashu
34792	641	17- 3-69	35130	M. C. Mdumuka
40626	3288	3- 7-64	29773	Lilongwe Town Council
32059	685	30- 1-65	30216	Seventh Day Adventists
40721	525	23- 1-65	30202	Shell (Malawi) Ltd.
40990	14	12- 7-66	31578	A. R. Elias
27356	10-11	11-2-60	25296	B. S. Tafatatha
21430	4129	22-11-52	16946	Bookers (Malawi) Ltd.
16189	3073	6-8-41	11716	United Transport (Malawi) Ltd.
41057	3226	18- 1-69	34914	J. E. Gill
41047	2230-2231	4- 6-66	31478	D. H. Gelu
41486	3205	9- 1-68	33397	Portland Cement Co. (Malawi)
41220	2037	21- 8-68	34198	I. T. Karatela

40965 2235-2236 8-11-66 31971 S. A. Manyethera

41059 4026 4-11-66 31955 A. D. Sacranie

41052 2229 2- 7-66 31562 J. Jagjivan

41046 2227 2- 7-66 31561 M. H. Kassam

41109 3128 20- 8-66 31700 J. Morgado

41045 2228 30- 7-66 31641 K. M. M. Shah

41269 4075-4077 27- 5-67 32594 Shire Construction Co. Ltd.

41264 3129 11-10-67 33068 H. G. da Silva

41266 3127 4- 3-67 32277 Standard Bank Ltd.

41267 3232 18- 3-67 32324 Standard Bank Limited

41274 3139 8- 4-67 32409 R. C. R. Partridge

20361 110 29-3-52 16368 Brown and Clapperton Ltd.

20160 4126 23- 7-52 16661 Farmers Marketing Board

21542 4120-4121 5- 4-54 18147 Cold Storage Co. Ltd.

28383 4083 19- 3-57 21520 M. P. de Noronha

20160 4124 1-10-56 20942 Farmers Marketing Board

10835/III 3247 20- 5-58 23142 United Transport Co. Ltd.

33276 4108-4109 24-12-58 23999 Lilongwe Garage Ltd.

34214 4084 18- 3-59 24238 Paramount Bakery (1963)

34841 4112 4- 3-60 25339 M. M. Patel

26387 4001 24- 4-61 26657 Lilongwe Diocese

10835/III 3245-3246 17- 7-62 27837 United Transport (Malawi)

24376 4117 17-10-62 27891 W.N.L.A.

26387 4134 26-10-63 29065 Lilongwe Diocese

40853 4097 23-11-65 30876 A. N. de Oliveira Silva

32092 4132 3- 7-64 29775 Lilongwe Town Council

32092 3286 3- 7-64 29775 Lilongwe Town Council

41194 4138 9-1-68 33401 Portland Cement Co. (Malawi)
40963 4086 27- 2-66 31539 J. D. da Fonseca
32531 4099 30- 7-66 31643 G. C. Antoine
41107 4105-4106 3-12-66 32025 J. Margado
41205 3222 7-1-67 32113 Shire Construction Co. Ltd.
41631 4090 1- 6-68 33927 Horacio Construction Ltd.
41176 3224 6- 2-67 32208 C. Morgante
41392 4094-4095 19- 6-67 32654 General Construction Co. Ltd.
41395 4100 14-10-67 33092 General Construction Co. Ltd.
41409 4092-4093 14-10-67 33087 Chibuku Products Ltd.
41215 3243 14-10-67 33085 General Construction Co. Ltd.
41311 4085 25-11-67 33245 J. D. da Fonseca
41603 4139 19-12-67 33311 M.A.R.T.A.
41177 3223 3- 2-68 33495 Mandala Building and Construction Co.
31805 4098 19-11-66 31987 A. A. Ismail
41416 3242 4- 5-68 33991 M. Morgante
39636 4110-4111 12-11-68 34605 Horacio Construction Ltd.
20160 4141 23-11-68 34638 Farmers Marketing Board
16728 2034 11-10-67 33070 K. Ahmed
17362 2033 12- 9-66 31747 M. H. Kassam
17453 4012 22- 8-29 7932 W. H. Stansfield
16729 4008 25- 5-68 33933 Road Motor Services
24652 2022 8- 2-30 8084 Mrs. B. K. Patel
17454 2008 20-10-56 20994 I. S. Jasat
17361 2010 26- 3-31 8556 Lilongwe Community Trust
17326 2032 2-11-68 34551 C. Adam Ltd.
17381 2024 7-9-40 11428 P. H. Patel

41006 2062 3-12-66 32017 A. M. Osman
41282 4036-4037 11-5-68 33825 Universal Industries Ltd.
41056 3126 3-12-66 32026 A. G. da Silva
30693 2059 19-12-67 33307 A. G. Afghan
41206 3230 21- 1-67 32174 E.S.C.O.M.
30415 2083 12- 3-57 21501 O. Nurmahomed
40991 2238 20- 2-67 32241 H. A. Mkanda
29925 2061 25- 2-67 32265 I. Hassam/A. Issa
35570 642 & 51- 4-67 32376 M.A.R.T.A.
41147 2237 4- 3-67 32387 G. K. Banda
41293 3240 16- 5-67 32541 Advanx Ltd.
41329 3122 6- 5-67 32521 Barclays Bank
41329 3123 6- 5-67 32522 Barclays Bank
41023 2079 6- 5-67 32519 Hindu Seva Samaj
23012 LE 874 5- 6-65 30530 R. C. Calvert
40806 LE 905 25- 9-65 30774 Malawi Broadcasting Corporation
41167 2225 27-5-67 32593 N. V. Patel
28587 2045 27- 5-67 32592 Gill Bros. (1964) Ltd.
41215 3241 14-10-67 33086 General Construction Co. Ltd.
41447 3209 11-12-67 33265 General Construction Co. Ltd.
41394 3200 11-12-67 33269 General Construction Co. Ltd.
41456 3217 11-12-67 33270 General Construction Co. Ltd.
41443 3206 29-12-67 33345 General Construction Co. Ltd.
41458 3219 29-12-67 33365 General Construction Co. Ltd.
41455 3216 29-12-67 33367 General Construction Co. Ltd.
41453 3214 29-12-67 33360 General Construction Co. Ltd.
41448 3210 29-12-67 33351 General Construction Co. Ltd.

41446	3208	29-12-67	33353	General Construction Co. Ltd.
41440	3202	29-12-67	33362	General Construction Co. Ltd.
41445	3207	29-12-67	33347	General Construction Co. Ltd.
41439	3201	29-12-67	33364	General Construction Co. Ltd.
41442	3204	29-12-67	33346	General Construction Co. Ltd.
41441	3203	29-12-67	33363	General Construction Co. Ltd.
41454	3215	29-12-67	33366	General Construction Co. Ltd.
41642	2060	19-12-67	33308	K. M. M. Shah
41383	4028-4034	16- 3-68	33655	Shire Trading Co. (1964) Ltd.
41548	3125	16- 3-68	33653	Mandala Building and Construction Co. Ltd.
41376	3124	16-3-68	33660	Air Malawi Ltd.
41027	4046	11-2-69	34841	V. J. Mamtora
41027	4047	11-2-69	34842	V. J. Mamtora
41216	3235-3236	19-12-67	33412	R. B. Chidzanja
20585	LE 526	31-12-54	18939	Lilongwe Agricultural Society
41817	2113	21-8-68	34228	O. Nurmahomed and Co.
16192	2004	12- 2-44	12509	Lilongwe District Council
25350	2129	21- 8-68	34202	K. I. and D. Ismail
16193	2239	6- 2-57	21389	I. Conforzi (TAT) Ltd.
28930	3107	24- 4-56	20289	United Transport (Malawi) Ltd.
24748	2084	19- 7-56	20668	C. L. Patel
29923	3085	7- 1-57	21270	Northern Trust Co. Ltd.
29145	3074	18- 8-56	20779	Road Motor Services
29144	3027	18- 8-56	20778	Road Motor Services
24373	2072	18- 8-56	20792	United Transport (Malawi) Ltd.
19463	2038	23- 5-57	21756	G. Pradrudas
30418	3083	12- 3-57	21483	United Transport (Malawi) Ltd.

30534	2099	14- 2-57	21408	Y. M. Tutla
30416	2086	31- 1-57	21369	G. Jevant
41457	3218	29-12-67	33384	General Construction Co. Ltd.
29622	3028	23-10-56	20995	Lilongwe Town Council
22614	A283-297	23-10-56	20997	Lilongwe Town Council
21333	2005	1-10-56	21032	Lilongwe Town Council
30710	3084	22- 5-57	21750	Standard Bank Ltd.
30828	3089	17- 4-57	21643	United Transport (Malawi) Ltd.
30825	2041	17- 4-57	21642	United Transport (Malawi) Ltd.
30067	2131	19- 3-57	21519	I. I. Bheda
30665	2076	31- 1-57	21366	Lilongwe Hardware Centre
26582	3051	23- 5-57	21758	United Transport (Malawi) Ltd.
24860	2108-2109	31- 1-57	21367	C. S. Patel
30925	2135	23- 5-57	21753	Y. M. Tutla
29883	3284	31- 1-57	21368	Lilongwe Town Council
30926	2114	15-7-57	21944	D. T. Nathenie and Co.
31273	2049	26-8-57	22114	D. H. Gelu
31272	2048	26-8-57	22116	D. H. Gelu
31047	2069	30- 7-57	22037	R. Sharma
31274	2053	26-8-57	22115	D. H. Gelu
31271	2052	19-11-57	22475	I. N. Makda and Co.
17357	2029	23- 5-57	21760	Mrs. B. K. Kokri
29952	2042	22- 5-57	21757	United Transport (Malawi) Ltd.
30031	3088	22-5-58	23117	A. C. Omar
31327	3071A	7-10-57	22292	E. M. Hendry
25403	2116	1-11-57	22378	M. M. Bhayat
23052	2130	14- 3-58	22904	D. H. H. Thandar

32184	3008	14- 3-58	22869	Road Motor Services
19906	3145	2- 4-58	22948	Barclays Bank
31046/II		4080-4082	14- 4-58	23018 Road Motor Services
32817	2074	20-12-58	23953	M. I. Lorgat
16183	2031	13- 1-58	22647	M. A. Karim
29308	2035	28- 2-58	22808	R. Purshottam
19068	2077	7- 7-58	23280	I. M. Makda and Co.
25402	2101	9- 7-58	23333	A. L. A. Karim
23693	2006	1-10-58	23671	I. Hassam
24633	2027	21- 7-33	9194	D. I. and K. I. Bheda
16188	4009	20- 8-53	17565	Mrs. J. Patridge
24392	4013	2-8-39	11075	Bookers (Malawi) Ltd.
20290	2007	13- 3-39	10955	H. L. Dossani
16729	4007	5-4-40	11312	Road Motor Services
24383	3070	6-12-39	11166	W.N.L.A.
16250	2089	28-11-45	13345	I. M. Makda
16252	2068	6- 9-54	18550	Road Motor Services
17342	3058	3- 3-52	16293	Bookers (Malawi) Ltd.
16489	3029	18-9-51	15935	United Transport (Malawi) Ltd.
16488	3030	30- 6-52	16600	United Transport (Malawi) Ltd.
15426	3055	9- 9-52	16787	U.M.C.A.
18854	4063-4065	16- 2-52	16259	Brown and Clapperton Ltd.
18869	3031	16-10-51	16008	Brown and Clapperton Ltd.
19274	2078	17-10-55	19682	Bookers (Malawi) Ltd.
19115	4061	16-2-52	16239	Road Motor Services
19116	4062	16-2-52	16237	Road Motor Services
19470	3069	31-12-51	16146	Road Motor Services

19109 4066 4- 7-52 16618 Advanx Ltd.

19627 3141 22- 8-51 15903 Farmers Marketing Board

16481 3147 28- 8-51 15902 Halls Holdings Ltd.

17247 4068-4070 25- 4-52 16455 Costantini and Co. Ltd.

19665 2065 6- 9-54 18541 Mrs. M. A. Sattar

19614 3057 29- 3-52 16369 W.N.L.A.

19909 3144 9- 9-52 16791 Universities Mission Trust

19490 4003 14- 3-52 16329 Oilcom

19491 4004 14- 3-52 16329 Oilcom

19775 3072 21- 2-52 16249 Halls Holdings Ltd.

19907 3143 21- 2-52 16258 Standard Bank Ltd.

20032 3056 3- 3-52 16290 Bookers (Malawi) Ltd.

19469 3045 16- 2-52 16240 Road Motor Services

19752 3142 3- 3-52 16291 Farmers Marketing Board

20049 4114 3-3-52 16292 Bookers (Malawi) Ltd.

19152 3146 21- 3-52 16338 Lilongwe Town Council

19699 4042-043 8- 4-52 16397 Bookers (Malawi) Ltd.

20874 3148 21- 6-52 16566 Farmers Marketing Board

21142 4115 30-6-52 16598 United Transport (Malawi) Ltd.

20950 3053-3054 12- 7-52 16641 Lilongwe Town Council

19424 3061 2- 8-52 16707 W.N.L.A.

21252 3005 19- 9-52 16813 Brown and Clapperton Ltd.

21296 4072-4073 7-10-52 16845 Lilongwe Town Council

21230 3034 18-12-52 17007 Costantini and Co. Ltd.

21231 4071 18-12-52 17006 Costantini and Co. Ltd.

20257 4044 25- 2-53 17160 Blantyre Printing and. Publishing Co. Ltd.

31049 3090 11-6-58 23179 Brown and Clapperton Ltd.

16196	3068	3-11-58	23787	W.N.L.A.
30535	2066	19- 7-58	23361	M. A. Desai
25167	2044	25-11-58	23933	P. Kaur
33049	3121	27- 6-58	23249	Road Motor Services
33563	3165	28- 7-58	23372	African Lakes Corporation
24632	4021	20-5-58	23135	United Transport (Malawi) Ltd.
25351	2117	29-9-58	23652	D. H. Gelu
25481	2055	29- 9-58	23660	M. M. Chunara and Co.
25396	2132	1- 9-58	23506	M. M. Patel
33890	3234	25-7-59	24672	Assemblies of God
33838	2092	3-12-60	26278	D. H. Gelu
17335	3149	11-11-59	25000	Lodge Angoni
25346	2123	20- 8-59	24765	M. A. Karim
16104	2090	12- 5-59	24416	I. M. Sidat
25450	2119	2-4-59	24286	K. Tarmahomed
24857	2104	2- 4-59	24287	K. Tarmahomed
33822	3169	8- 6-59	24498	E.S.C.O.M.
34312	3233	13- 7-59	24625	McConnell and Co.
16224	2091	12- 9-60	26021	D. Issa and Co.
31598	2085	4- 8-59	24710	Y. M. Limbada
30797	2050	27- 4-59	24364	R. C. Morgan
24851	2081	30-11-59	25053	M. M. Chunara and Co.
28221	2075	1- 3-60	25410	M. M. Chunara and Co.
35039	3032	10-1-61	26360	Lilongwe Water Board
35329	3150	20-1-60	25197	Bookers (Malawi) Ltd.
22650	4054	15-1-60	25207	Lilongwe Town Council
25383	2118	9- 3-60	25359	I. M. Randerera

16211	4016	9-3-60	25348	United Transport (Malawi) Ltd.
16211	4058-4060	9-3-60	25348	United Transport (Malawi) Ltd.
36611	3229	18-3-61	26541	C.A.T.C.O.
23731	2046	15-8-60	25925	R. Purshottam
27893	2036	30-9-60	26084	G. Prabhudas
24395	3001	8-11-60	26195	Lilongwe Golf Club
29924	3086	15-4-61	26622	Baptist Mission of C.A.
26612	4067	24-4-61	26656	R. C. Morgan
32086	2039	2-1-62	27260	Girl Guides Association
37045	3154	10-2-62	27415	Lilongwe Town Council
39490	4078	26-9-62	28034	Shire Construction Co.
39604	2240	16-10-63	29026	Lilongwe District Council
39791	4074	31-12-62	28360	Lilongwe Town Council
16297	2025	16-1-65	30165	D. H. Gelu
17388	2023	28-12-64	30158	H. Ahmed Bros.
40254	3228	16-9-63	28952	Baptist Mission of C.A.
32092	3285	3-7-64	29775	Lilongwe Town Council
32092	2241	3-7-64	29775	Lilongwe Town Council
32092	4133	3-7-64	29775	Lilongwe Town Council
24853	2110	29-3-54	18115	K. T. Nathanie and Co.
24856	2088	29-3-54	18118	M. M. Bayhat
24858	2098	1-5-54	18208	Y. I. Dakri
24855	2107	29-3-54	18113	D. H. Gelu
25172	2067	12-4-54	18167	Road Motor Services
25307	2120	3-3-54	18042	K. Tarmahomed
25292	2105	29-3-54	18112	E. M. Makda
25349	2106	3-5-54	18209	I. Dawood

24854	2100	23- 2-54	18035	D. H. H. Thandar
25360	2133	1- 5-54	18210	A. Alimahomed
25373	2121	8- 4-54	18156	A. N. Coccolis
25301	2102-2103	31- 7-54	18435	A. N. Coccolis
25442	2056	23- 2-54	18062	M. S. Lambert
25296	2057	3- 5-54	18259	C. L. Patel
25604	3071	17- 7-54	18387	C.C.A.P.
24859	2095	3- 3-54	18041	I. M. Sidat
25453	3036	15- 7-54	18374	W.N.L.A.
19776	4113	9-8-54	18455	Bookers (Malawi) Ltd.
41818	2112	27-7-68	34137	A. M. Osman
25408	2093	6- 9-54	18562	Y. M. Randerera
25384	4024	31-12-54	18884	Bata Shoe Co. (Malawi) Ltd.
26133	3063	18-11-54	18727	Road Motor Services
25441	2122	14- 7-54	18375	A. L. A. Karim
25382	2094	31- 7-54	18433	M. A. Chunara
25841	3077	1-11-54	18675	W.N.L.A.
25347	2134	17- 2-68	33558	M. A. Chunara
26134	3026	17-12-54	18808	Road Motor Services
25168	2115	23-7-54	18517	M. M. Chunara and Co.
26788	3025	3- 3-55	19094	Road Motor Services
25338	2111	6-9-54	18561	A. G. Omar
26656	2051	19- 5-55	19188	M. Shah
26374	2087	23-5-55	19211	M. M. Chunara and Co.
26546	2054	23-9-55	19611	I. M. Randerera
26937	2064	19- 4-55	19133	Muslim Community Trust
27947	3048	15-11-55	19781	Lilongwe Town Council

27857	2047	31- 8-56	20823	Lilongwe Indian School
16485	2043	25-8-55	19495	Bookers (Malawi) Ltd.
20984	3067	18- 6-55	19288	Road Motor Services
27926	A.99	28- 2-56	20064	Assemblies of God Mission
28307	3087	9- 7-56	20670	Farmers Marketing Board
28246	3152	15-11-55	19780	Lilongwe Water Board
16955	2058	13- 8-55	19452	C. S. Patel
25834	3106	24- 4-56	20290	Dutch Reformed Church Mission
27033	3064	25- 8-55	19491	Road Motor Services
21859	2019	18-7-38	10727	Indian Country Club
24622	2147	19- 8-29	7931	Indian Mohamedan Cemetery
25361	2127	29- 3-54	18117	A. I. Tataria
25297	2125	8- 4-54	18157	H. Omar
25298	2126	29-3-53	18111	S. K. Dhada
25328	2136	21- 8-68	34203	O. Mussa
25309	2124	3- 3-54	18045	A. E. Badat
25310	2137	3- 3-54	18044	I. M. Sidat
25345	2138	31-12-54	18919	I. M. Hansrod
26295	2139	1-10-57	22265	H. A. Gani
27759	472-490	3-10-57	22255	Lilongwe District Council
31482	434-443	19- 3-58	22902	Lilongwe Town Council
24616	2146	31-12-57	22607	Muslim Sports Club Trust
31481	430-433			
	450	14- 4-58	23015	Lilongwe Water Board
31864	463-464	9- 3-60	25349	A. P. Mballah
32400	615-616	19- 2-59	24171	Farmers Marketing Board
33721	612	12-12-58	23941	Dutch Reformed Church

34241	549—550	16- 2-60	25289	B. S. Tafatatha
34348	458, 467	22- 2-60	25309	H. B. Phiri
34844	644	21-12-59	25108	E.S.C.O.M.
34643	649	28-11-60	26274	M. A. Latif
35222	2014	12- 5-60	25520	I. A. Aziz
35300	497—498	19- 8-60	25935	Lilongwe District Council
34648	646	21- 1-60	25209	Church of Christ
32111	465	21-12-59	25109	M. Kadango
24622	2220,2226	5- 6-61	26774	Muslim Community
34695	505—513	5- 6-61	26771	Lilongwe Diocese
38552	656A	11-1-62	27297	Lilongwe Diocese
31827	551	17- 1-62	27324	J. J. Mpita
38907	2216	1- 8-62	27868	I. O. Adam Ltd.
39133	4	17- 3-62	27503	E.S.C.O.M.
16222	2021	19- 3-62	27505	P. Kaur
39767	677/1—2	3-7-64	29772	Baptist Mission of C.A.
31608	3	9- 2-63	28390	Lilongwe District Council
40163	670	4- 5-63	28614	Lilongwe Town Council
32092	675	3- 7-64	29775	Lilongwe Town Council
32092	684	3- 7-64	29775	Lilongwe Town Council
39133	659,669	18- 3-63	28472	E.S.C.O.M.
24631	2011	10-8-63	28871	O. Nurmahomed and Co.
40550	502-504	26-10-63	29064	Lilongwe Diocese
34916	650	2-5-64	29571	Lilongwe Water Board
40279	645	3-7-64	29771	Church of the Nazarene
40632	471	4- 7-64	29802	B. M. & K. B. Mbewe
40536	555	9- 6-64	29640	J. S. Ndau

40701	499-501	17-10-64	29954	Lilongwe Diocese
18964	2013	11-12-65	31021	M. A. Karim
36526	654	10-11-65	30920	Dutch Reformed Church
16223	2018	12- 9-60	26019	Dutch Reformed Church
11898/II	2012	4-10-57	22253	I. O. Adam Ltd.
16208	2020	27- 5-61	26757	Lilongwe Diocese
24852	2096	23- 2-54	18036	S. Osman
24374	2016	24- 1-44	12475	Hindu and Sikh Indian Community
34376	2181	18-10-66	31891	A. R. M. Shah
41219	2142	21- 8-68	34213	I. A. Aziz
41219	2143	21- 8-68	34214	I. A. Aziz
41071	2140	13- 8-66	31686	J. S. Sacranie
41400	2169	18-11-67	33202	B. Bonelli
41372	2168	28-10-67	33145	Mr. & Mrs. M. A. Girrash
41864	543	21-12-68	34757	S. L. Phiri
34916	LE.880	2- 5-64	29570	Lilongwe Water Board
30997	LE.729	25-11-58	23908	Marist Bros. of the Schools
30997	LE.817	31-12-61	27312	Marist Bros. of the Schools
17430	LE. 170	10- 1-35	9572	S. Kour
29284	LE.624	12-12-56	21236	Lilongwe District Council
40621	LE.890	18-4-64	29517	Shell (Malawi) Ltd.
40581	LE.898	9- 1-65	30142	E.S.C.O.M.
16030	LE.916	13- 6-66	31504	Shell (Malawi) Ltd.
34649	2180	12- 8-66	31745	S. Nurmahomed
41726	563	8- 2-69	34998	M. R. da S. Carvalho
16180	2028	31- 5-54	18299	Bookers (Malawi) Ltd.
16181	2026	31- 5-54	18277	Bookers (Malawi) Ltd.

22650	4131	11- 3-58	22865	Lilongwe Town Council
23056	4039-4040	16- 7-53	17486	Costantini and Co. Ltd.
24747	2082	19- 7-54	18474	P. H. Patel
16194	4020	24- 4-56	20397	J. Abegg
18868	3047	17-10-55	19681	United Transport (Malawi) Ltd.
41250	2182	15- 2-69	35043	M. I. Lorgat
17430	LE.675	5- 6-58	23169	S. Kour
40890	3225	2- 9-66	31770	K. L. Chimbiri
41143	4045	17-3-69	35128	V. J. Mamtora
41916	3237	17- 3-69	35129	B.A.T. (Malawi) Ltd.
34792	641	17- 3-69	35130	M. C. Mdumuka
41786	459	25- 3-69	35197	F. Mkandawire
	466			
41932	454	28- 4-69	35338	B. M. & K. B. Mbewe
16253/II	4107	9- 6-69	35495	J. Morgado
42097	643			
	655-657	9- 6-69	35506	E.S.C.O.M.
41893	617	28- 6-69	35576	A. R. Elias
15426	3400	18-8-69	35742	Diocese of Malawi
41889	3238	18-8-69	35744	The Church of the Nazarene

THIRD SCHEDULE

ALL MINES minerals mineral oil gold silver and precious stones (other than earth clay gravel and sand lime and stone for the purpose of building bridge-building roadmaking and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals mineral oil gold silver and precious stones (other than as aforesaid) without leaving any support for

the surface of the said premises with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels, levels drains watercourses and reservoirs and construct erect maintain and use all such spoilbanks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CTTY DEVELOPMENT CORPORATION (SUPPLEMENTAL LAND VESTING) ORDER

under s. 9

G.N. 28/1972

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Land Vesting) Order.

2. Vesting of certain land in the Corporation

The land (hereinafter called "the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings, erections and structures thereon are hereby vested in the Capital City Development Corporation (hereinafter called "the Corporation") in fee simple subject to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

3. Exception of mines and minerals

There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Second Schedule hereto.

FIRST SCHEDULE

FIRSTLY ALL THAT piece or parcel of land containing an area of seven thousand eight hundred and sixty (7,860) acres or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 93/71 and are thereon edged in red.

SECONDLY ALL THAT piece or parcel of land containing an area of one thousand one hundred and sixty-four (1,164) acres or thereabouts situate at Lilongwe and known as Chisapo Block the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 92/71 and thereon edged in red.

SECOND SCHEDULE

ALL MINES minerals mineral oil gold silver and precious stones (other than earth clay gravel sand lime and stone for the purpose of building bridge-building road-making and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals mineral oil gold silver and precious stones (other than as aforesaid) without leaving any support for the surface of the said premises with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels levels drains watercourses and reservoirs and construct erect maintain and use all such spoil-banks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL LAND VESTING) ORDER

under s. 9

G.N. 115/1975

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Land Vesting) Order.

2. Vesting of certain land in the Corporation

The land (hereinafter called "the said premises") more particularly described in the First Schedule hereto together with the several messuages buildings, erections and structures thereon are hereby vested in the Capital City Development Corporation (hereinafter called "the Corporation") in fee simple subject to and with the benefit of all agreements to which the Government may be a party and which touch and concern the said premises.

3. Exception of mines and minerals

There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Second Schedule hereto.

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of two thousand one hundred and sixty-three (2,163) hectares or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 179/74 and thereon edged in red.

SECOND SCHEDULE

ALL MINES minerals mineral oil gold silver and precious stones (other than earth clay gravel sand lime and stone for the purpose of building bridge-building road-making and other constructional purposes) within under or upon the said premises or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said premises and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines, minerals, mineral oil, gold, silver and precious stones (other than as aforesaid without leaving any support for the surface of the said premises with full liberty and power to make, sink, drive, maintain and use all such pits, drifts, shafts, tunnels, levels, drains, watercourses and reservoirs and construct, erect, maintain and use all such spoil-banks, rail-roads, tram roads and other roads, bridges, buildings, works, engines, machinery and conveniences whatsoever and to do all such things in, under, upon, through or over the said premises or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation, its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said premises or any buildings or other erections thereon by the exercise of the power, rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

under s. 9

G.N. 86/1977

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order.

2. Designation of land

The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

ALL THAT piece or parcel of land containing an area of two thousand one hundred and sixty-three (2,163) hectares or thereabouts situate at Lilongwe the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 179/74 and thereon edged in red.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION AND LAND VESTING) ORDER

under s. 9

G.N. 132/1980

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Designation and Land Vesting) Order.

2. Designation of land

The land described in the First and the Second Schedule is hereby designated part of the Capital City of Lilongwe.

3. Vesting of land in the Corporation

The land described in the First and the Second Schedule is hereby vested in the Corporation in fee simple.

4. Exception of mines and minerals

There is excepted and reserved out of and excluded from this vesting the mines and minerals and ancillary rights set out in the Third Schedule.

FIRST SCHEDULE

ALL THAT piece or parcel of land containing an area of eleven thousand five hundred and twenty-eight (11,528) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 4/78 and thereon edged in red.

SECOND SCHEDULE

ALL THAT piece or parcel of land containing an area of one thousand six hundred and eighty decimal point five six (1,680.56) hectares or thereabouts situate in the Lilongwe District the boundaries whereof are more particularly described and delineated on Survey Department Sketch Plan No. 9/78 and thereon edged in red.

THIRD SCHEDULE

ALL MINES minerals oil silver gold and precious stones within under or upon the said land or any part thereof and all mining rights and other rights whatsoever of like nature relating thereto with full and unrestricted liberty and power for the Minister and his successors and assigns and his or their prospectors or agents to enter upon the said land and any part thereof to prospect search for dig raise win or work (whether by means of open working or otherwise) and to lay dress manufacture use make merchantable and keep thereon and to remove and carry away all or any of the said mines minerals oil gold silver and precious stones without leaving any support for the surface of the said land with full liberty and power to make sink drive maintain and use all such pits drifts shafts tunnels levels drains watercourses and reservoirs and to construct erect maintain and use all such spoil-banks railroads tramroads and other roads bridges buildings works engines machinery and conveniences whatsoever and to do all such things in under upon through or over the said land or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid provided always that the Minister or his successors or his assigns (as the case may be) shall from time to time make to the Corporation its successors and assigns and their lessees and tenants reasonable and adequate compensation for all damage done or occasioned by the Minister or his successors or assigns to the said land by the exercise of the powers rights and liberties or any of them hereinbefore in this Schedule excepted and reserved.

CAPITAL CITY DEVELOPMENT CORPORATION (SUPPLEMENTAL DESIGNATION) ORDER

under s. 9

G.N. 88/1984

1. Citation

This Order may be cited as the Capital City Development Corporation (Supplemental Designation) Order.

2. Designation of land

The land described in the Schedule hereto is hereby designated as part of the Capital City of Lilongwe.

SCHEDULE

ALL THAT piece or parcel of land containing an area of nine two four (924) hectares or thereabouts situate at Lumbadzi in the Lilongwe and Dowa Districts the boundaries whereof (the same to be more precisely ascertained and defined by survey) are more particularly described and delineated on Survey Sketch Plan No. 125/83.

CAPITAL CITY DEVELOPMENT CORPORATION (WINDING-UP) ORDER

under s. 27

G.N. 25/1984

118/1986

1. Citation

This Order may be cited as the Capital City Development Corporation (Winding-up) Order.

2. Interpretation

In this order—

“corporation” means the Capital City Development Corporation;

“date of dissolution” means the date of dissolution of the corporation as published in the Gazette by notice pursuant to paragraph 14; G.N. 118/1986

“General Manager” means the general manager of the corporation.

“Malawi Housing Corporation” means the Corporation established under Malawi Housing Corporation Act; Cap. 32:02

“traditional housing area” means an area specified in the Schedule. Schedule

3. Date of commencement of winding-up

The winding-up of the corporation commences on 1st April, 1984.

4. Termination of appointment

(1) Subject to paragraph 5, and with effect from 31st March, 1984, all appointments to the corporation and to the Board of the corporation are terminated.

(2) All assets in the staff pension fund of the corporation shall be distributed among the pensionable employees of the corporation in accordance with their rights in the fund after deduction of any debts which the employees may owe to the corporation.

5. Continuation of certain appointments

(1) The General Manager and Chief Accountant of the corporation shall continue in office until the date of dissolution or the date of expiration of their contracts of employment, whichever be the earlier, for the purpose only of winding-up the business of the corporation and shall be subject to the control and supervision of the Comptroller for Statutory Bodies.

(2) The Comptroller for Statutory Bodies shall, in relation to the conduct of the winding-up affairs of the corporation, have the same powers as the Chairman of the corporation had in relation to the conduct of the corporation’s affairs.

(3) The Assistant Landscape Manager of the corporation shall, with effect from 1st April, 1984, until the date of expiry of his contract, assist the Lilongwe City Council in matters relating to landscape management.

(4) The General Manager may, if he deems it necessary to the purpose of winding-up the affairs of the corporation, employ such temporary staff as he may require.

6. Continuation of sponsorships

(1) Without prejudice to paragraph 4 (1), employees of the corporation at present overseas on various training courses who are being sponsored, or whose salaries are being paid, by the corporation shall continue to be so sponsored or paid until two months after the completion of their courses or the date of dissolution, whichever be the earlier.

(2) Subsequent to the date of dissolution the responsibility of the corporation under subparagraph (1) shall be that of the Government, but the Government's liability towards payment of salaries shall endure no further than two months after the date on which the employees concerned are due to complete their respective courses.

7. Transfer of assets, etc.

With effect from 1st April, 1984, and subject to the exceptions contained in this Order, all property, assets, rights, liabilities, obligations and agreements vested in, acquired, incurred or entered into by or on behalf of the corporation shall— G.N. 118/1986

(a) in the case of those situated, or related to the property or assets situated, in any area other than a traditional housing area, be deemed to have been acquired, incurred or entered into by or on behalf of the Government;

(b) in the case of those situated, or relating to the property or assets situated, in any traditional housing area, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Malawi Housing Corporation,

and accordingly every such right, liability or obligation may be enforced by or against the Government or the Malawi Housing Corporation, as the case may be, to the same extent as it could have been enforced by or against the corporation.

8. Retention of moneys for winding-up purposes

Notwithstanding paragraph 7, the General Manager may retain in the bank account of the corporation a sum not exceeding K800,000 which shall be used—

(a) to purchase for a sum not exceeding K320,000 an option on preference shares in Industrial Developments Limited, which shares shall, upon their purchase, be vested in the Government;

(b) to meet all the expenses relating to the winding-up of the corporation and to the obligations of the corporation under this order.

9. Recovery of mortgaged property and bad debts

(1) The General Manager shall during the winding-up period—

(a) where a mortgagor has made default in payment of a mortgage debt owed to the corporation pursue any or all of the remedies which the corporation had at law or under the mortgage deed to recover the mortgaged debt, the interest thereon and all the expenses incurred in recovery of the debt; G.N. 118/1986

(b) take the necessary steps to ensure the recovery of all debts due to the corporation prior to 1st April, 1984.

(2) Nothing in sub-paragraph (1) shall be construed as precluding the Government or the Malawi Housing Corporation from taking action in enforcing the rights vested or acquired under paragraph 7, and where action is taken by the General Manager under sub-paragraph (1) such action shall be deemed to be taken by him for and on behalf of the Government or the Malawi Housing Corporation.

10. Charges

All charges of land or leases of land registered in favour of the corporation under the Registered Land Act and vesting in the Government pursuant to paragraph 7 shall be enforced by the Lands Division of the Department of Lands and Valuation. Cap. 58:01

11. Landscape department and nurseries

The area of land which the landscape department and nurseries of the corporation occupy in Area 13 at Lilongwe, though vesting in the Government pursuant to paragraph 7, shall, as from 1st April, 1984, be under the control and management of the Lilongwe City Council.

12. Retention of certain assets

(1) Notwithstanding paragraph 7, the corporation shall, during the winding-up period, retain—

(a) for the use of the officers remaining in office the house furniture which may have been allocated to them;

(b) such vehicles, office furniture and equipment as may be required for the purposes of winding-up its affairs.

(2) None of the assets retained under sub-paragraph (1) shall be disposed of by the corporation, but these assets shall be transferred to the Government at the date of dissolution.

13. Statement of accounts, audit, etc.

The General Manager shall, before the date of dissolution, produce to the Comptroller for Statutory Bodies—

(a) a full statement of the conduct of the corporation's affairs during the winding-up period;

(b) a true account of all receipts and disbursements of the corporation during the same period;

(c) an audit of the accounts of the corporation during the same period and the auditor's report thereon;

(d) a list of all assets retained by the corporation under paragraph 12.

14. Notice of dissolution

The Comptroller for Statutory Bodies shall, upon being satisfied that the affairs of the corporation have been satisfactorily wound-up, by notice in the Gazette, declare the dissolution of the corporation specifying the date thereof.

SCHEDULE

TRADITIONAL HOUSING AREAS paras. 2 and 7, G.N. 118/1986

- (1) Area 7 (Kawale)
- (2) Area 8 (Biwi and Mchesi)
- (3) Area 21 (Chilinde)
- (4) Area 22
- (5) Area 23 (Tsabango)
- (6) Area 25 (Mkomachi)
- (7) Area 49
- (8) Area 53 (North-East Lumbadzi)

[Chap3903]CHAPTER 39:03

EXPORT PROMOTION COUNCIL

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

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2. Interpretation

PART II

THE COUNCIL

3. Establishment of Council
4. Composition of the Council
5. Council may co-opt advisers to attend meetings
6. Tenure of office of Council members
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FUNDS OF THE COUNCIL

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Schedule

32 of 1971

8 of 1980

16 of 1983

G.N. 46/1986

An Act to provide for the establishment of an Export Promotion Council of Malawi and for matters connected therewith and incidental thereto

[31ST DECEMBER 1971]

PART I

PRELIMINARY

[Ch3903s1]1. Short title

This Act may be cited as the Export Promotion Council Act.

[Ch3903s2]2. Interpretation

In this Act unless the context otherwise requires—

“Council” means the Export Promotion Council of Malawi established by section 3;

“financial year” means the period commencing on the date of commencement of this Act and ending on the 31st March, 1972, and thereafter the period of twelve months ending on the 31st March each year.

PART II

THE COUNCIL

[Ch3903s3]3. Establishment of Council

There is hereby established a body to be known as the Export Promotion Council of Malawi (hereinafter referred to as “the Council”) which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and, subject to this Act, of doing all such acts and things as a body corporate may lawfully do and perform.

[Ch3903s4]4. Composition of the Council

(1) The Minister shall, by notice published in the Gazette, appoint the members of the Council other than the ex officio members.

(2) The Council shall consist of—

- (a) one member designated as Chairman by the Minister;
- (b) one member designated as Vice-Chairman by the Minister;
- (c) the Principal Secretary of the Ministry of Trade and Industry, ex officio;
- (d) the Secretary to the Treasury, ex officio;
- (e) the Chief Information Officer, ex officio;
- (f) the Chief Tourism Officer, ex officio;
- (g) one member representing the Malawi Development Corporation, appointed from a panel of three individuals nominated by the said Corporation;
- (h) one member representing the Chamber of Commerce and Industry of Malawi, appointed from a panel of three individuals nominated by the said Chamber of Commerce;

- (i) one member representing the Tea Association (Central Africa) Limited, appointed from a panel of three individuals nominated by the said Association;
- (j) one member representing the Tobacco Control Commission appointed from a panel of three individuals nominated by the said Commission;
- (k) one member representing the Agricultural Development and Marketing Corporation, appointed from a panel of three individuals nominated by the said Corporation;
- (l) three ordinary members.

(3) The Minister may appoint to the Council such additional members as he deems essential to the Council in the exercise of its powers and functions.

(4) No person shall be appointed to the Council 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 Council shall not, by virtue only of their appointments to the Council, be deemed to be officers in the public service.

(6) The names of all members of the Council as first constituted and every change in membership thereof shall be published in the Gazette.

[Ch3903s5]5. Council may co-opt advisers to attend meetings

(1) The Council may, with the consent of the Minister, co-opt any one or more persons as advisers, to attend any particular meeting or series of meetings for the purpose of assisting or advising the Council in respect of any matter under consideration by the Council.

(2) Any adviser co-opted pursuant to subsection (1) may take part in the deliberations of the Council at any meeting he attends, but shall have no voting powers.

(3) Advisers co-opted pursuant to subsection (1) shall not, by virtue of such co-option, be deemed to be members of the Council.

[Ch3903s6]6. Tenure of office of Council members

8 of 1980(1) Members of the Council, other than ex officio members, shall, subject to this section, hold office for two years from the date of their respective appointments.

(2) ex officio members of the Council shall hold office as such so long as they hold the public office by virtue of which they are members of the Council pursuant to section 4.

(3) The office of a member, other than an ex officio member, shall be vacated—

- (a) upon the expiry of two years from the date of his appointment;
- (b) upon his death;
- (c) if he is adjudged a 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 Council 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 Council;
- (j) if the Minister, or the association 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 Council, 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 reappointment if not disqualified under section 4 (4).

(6) Where the office of any member of the Council appointed under section 4 (2) (g), 4 (2) (h), 4 (2) (i), 4 (2) (j) or 4 (2) (k) is vacated pursuant to subsection (3) of this section, 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.

[Ch3903s7]7. Remuneration of members of the Council

16 of 1983A member of the Council shall be paid by the Council such remuneration and allowances, if any, as the Minister may in his case fix.

[Ch3903s8]8. Meetings of the Council

(1) The Council 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 once in every month unless, in the opinion of the Minister, there are valid reasons for not so doing.

(2) Meetings of the Council shall be convened by at least two days' notice thereof in writing being given to the members by the Chairman.

(3) The Chairman shall preside at meetings of the Council 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 six other members shall form a quorum.

(5) Meetings of the Council 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 Council deems meet.

(6) 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.

(7) Decisions of the Council shall be made by a majority of the members present at a meeting of the Council; 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) The Council may appoint an Executive Committee and such other committees as it may deem fit. The Executive Committee shall consist of not less than five members of whom any three shall form a quorum. The Council may, with the consent of the Minister, delegate to the Executive Committee such of its powers as it may from time to time determine.

[Ch3903s9]9. Member to declare pecuniary interests

(1) If a member of the Council 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 Council 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 subsection (1) shall not take part in the consideration of, or vote on, any question before the Council which relates to the matter referred to in that subsection, without the written permission of the Chairman and the Minister.

(3) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per centum of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

PART III

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch3903s10]10. Functions and powers

(1) The functions of the Council shall be to promote the export of agricultural and manufactured goods produced in Malawi, to co-ordinate the operations of statutory bodies and of other persons directed towards the export of Malawi products, to gather, collate and make available to exporters in Malawi information and statistics on export marketing and export market trends; to organize and operate trade fairs inside or outside Malawi and to organize and arrange for representation by Malawi exhibitors at trade fairs organized by other bodies both in Malawi and elsewhere, and otherwise to implement Government export policy.

(2) The Council shall have the powers set out in the Schedule.

(3) The Minister may, at any time, by notice published in the Gazette, alter or amend the Schedule.

PART IV

FUNDS OF THE COUNCIL

[Ch3903s11]11. Funds of the Council

The funds of the Council shall consist of—

(a) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;

(b) such moneys or assets as may accrue to or vest in the Council 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 Council 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 Council;

(e) such sums as are received by the Council by way of voluntary contributions;

(f) such moneys or other assets as may be donated to the Council by any foreign government, international agency or other overseas body.

[Ch3903s12]12. Annual budget

The Council shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, respectively, and shall submit the said budget for the approval of the Minister.

[Ch3903s13]13. Books, accounts, audit and reports

(1) The Council shall cause to be kept proper books of account and other books in relation thereto.

(2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Council.

(3) The Council 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

[Ch3903s14]14. Regulations

The Minister may, by notice published in the Gazette, make regulations for the better carrying into effect of this Act.

SCHEDULE G.N. 46/1986

POWERS OF THE COUNCIL

(SECTION 10)

1. To appoint and employ, with the approval of the Minister, a General Manager, Deputy General Manager, Executive Secretary and such professional, technical and administrative officers, clerks and other servants as it may deem requisite.

2. To pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit.

3. To provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.

4. To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for persons in its employ.

5. To purchase land and construct thereon dwelling-houses for persons in its employ.

6. To sell or lease dwelling-houses and land for residential purposes to persons in its employ.

7. Subject to the Finance and Audit Act to raise moneys by way of loan or bank overdraft.
Cap. 37:01

8. To purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal, movable or immovable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions.

9. To construct, maintain, alter and improve any buildings, works, machinery and plant necessary or expedient for the purpose of performing its functions.

10. To work or otherwise beneficially use, to exchange, let, sell or mortgage any property, rights or privileges acquired or constructed under paragraphs 4, 5, 8 or 9.

11. To invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments.

12. To invite and receive donations from any person towards its expenses and to award bursaries and to make grants towards export marketing research or to any other such project as it deems conducive towards the promotion of export marketing.

13. To enter into agreements to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employer.

14. For the better performance of its functions, to cooperate with Government departments, universities, technical colleges, persons engaged in export marketing research, Chambers of Commerce, manufacturers, exporters, producers and such other associations, organizations or persons as may desire to avail themselves of its facilities inside and outside Malawi.

15. To obtain and collate all available information concerning export market opportunities for existing and potential Malawi export goods, and to advise exporters thereon.

16. To organize, or assist in the organization of, export promotion missions abroad.

17. To make available to Malawi commercial firms and to potential exporters from Malawi, advice and assistance in relation to international trade and all aspects of such trade.

18. To advise the Minister, whenever so requested by him, on such export incentives as, in its opinion, are desirable to further and promote exports from Malawi.

19. To advise the Minister on export trends and on all matters concerning the promotion of exports from Malawi.

20. To publish from time to time, such technical and commercial information as it deems necessary or expedient for the promotion of exports.

21. To do all things incidental or conducive to the performance of its functions under this Act and its approved programme of export promotion.

[Chap3904]CHAPTER 39:04

EXPORT INCENTIVES

ARRANGEMENT OF SECTIONS

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6 of 1988

24 of 1988

22 of 1989

6 of 1990

G.N. 41/1989

39/1992

An Act to provide for export incentives, for the establishment of a National Export Policy Committee and for matters incidental thereto or connected therewith

[1ST JUNE, 1989]

PART I

PRELIMINARY

[Ch3904s1]1. Short title

This Act may be cited as the Export Incentives Act.

[Ch3904s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Bank” means the Reserve Bank of Malawi established by the Reserve Bank of Malawi Act; Cap. 44:02

“Committee” means the National Export Policy Committee established by section 4;

“Council” means the Export Promotion Council of Malawi established by the Export Promotion Council Act; Cap. 39:03

“export sales” mean a value determined from invoices, bills of lading, inward letters of credit, landing certificates and other commercial documents of products of Malawi exported directly from Malawi by a registered exporter in a financial year;

“Foreign Exchange Revolving Fund” means the Fund established under section 11;

“production” means any process by which value is created or added to the value of products already in existence, to transform or change the nature or state of the products;

“Minister” means the Minister responsible for trade and industry;

“registered exporter” means a person registered by the Council under Part V to report products of Malawi;

“financial year” means any period of twelve months in respect of which export incentives are claimable under this Act.

PART II

ADMINISTRATION OF THIS ACT

[Ch3904s3]3. Duties and powers of the Minister

(1) It shall be the duty of the Minister to supervise the implementation of this Act and he shall have power to do all such acts and things as are necessary to develop and foster exports of Malawi.

(2) In the exercise of any power and performance of any duty under this Act, the Minister may have due regard to any recommendations made to him in that behalf by the Committee and the

Council so far as such recommendations are compatible with the efficient promotion of exports of Malawi.

(3) Without prejudice to the generality of subsections (1) and (2), the Minister shall—

(a) supervise the Committee and the Council in the performance of their functions under this Act;

(b) review programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of products of Malawi and in reviewing such programmes the Minister may take such action or consider such measures as in his opinion are necessary to ensure that the programmes are adequately funded; and

(c) review legislative and administrative obstacles to export expansion of all products and where necessary to formulate and adopt measures for the removal of such obstacles.

(4) The Minister may, where he considers it necessary so to do, delegate the performance of any duty and the exercise of any power conferred under this Act, to the Committee and the Council subject to such general and special directions as he considers appropriate.

[Ch3904s4]4. Establishment and composition of the Committee

There is hereby established a committee to be known as the National Export Policy Committee which shall consist of—

(a) the Secretary to the President and Cabinet, who shall be the Chairman of the Committee;

(b) the Secretary for Trade, Industry and Tourism, who shall be the secretary of the Committee;

(c) the Secretary for Economic Planning and Development;

(d) the Secretary to the Treasury;

(e) the Secretary for Agriculture;

(f) the Comptroller of Statutory Bodies;

(g) the General Manager of the Council;

(h) the General Manager of the Bank;

24 of 1988 (i) the General Manager of the Agricultural Development and Marketing Corporation, a corporation established under the Agricultural Development and Marketing Act; and Cap. 67:03

(j) not more than three other members as the Minister may appoint from the export trade sector in Malawi.

[Ch3904s5]5. Functions of the Committee

Subject to any general or special directions of the Minister, the functions of the Committee shall be—

(a) to review, for the purpose of making appropriate recommendations to the Minister—

(i) programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of all products so that the Council's programmes are adequately funded;

(ii) legislative and administrative obstacles to export expansion of products of Malawi and where necessary to formulate and adopt measures for the removal of such obstacles;

(b) to do all other acts and things as are required under this Act to be done by the Committee or are necessary or conducive to the performance of its functions.

[Ch3904s6]6. Proceedings of the Committee

(1) Subject to the provisions of this section, the Committee may regulate its own procedure.

(2) For the transaction of its business, the Committee shall meet at least once every three months, at such times and places as the Chairman may determine.

(3) Any six members of the Committee shall form a quorum at any meeting of the Committee.

(4) A meeting of the Committee may be called by the Chairman, or in his absence by a Committee member designated by the Chairman, upon giving fourteen days notice to its members:

Provided that if the urgency of any particular matter does not permit the giving of fourteen days notice, a special meeting may be called upon giving a shorter notice.

(5) There shall preside at any meeting of the Committee—

(a) the Chairman; or

(b) in the absence of the Chairman, any member of the Committee designated by the Chairman; or

(c) where no member has been designated under paragraph (b) a member elected by the members present from among their number to preside at that meeting.

(6) A decision of the Committee 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 deliberative vote.

(7) Where a member of the Committee, who is a member ex officio, is for any reasonable cause unable to attend a meeting of the Committee, his ministry or organization, as the case may be, may in writing designate another senior officer to attend such meeting in his stead and such other senior officer shall be deemed to be a member of the Committee for the purpose of such meeting.

(8) The Committee may invite any person whose presence is in its opinion desirable to attend, and to participate in the deliberations of, a meeting of the Committee but such person shall not be entitled to vote thereat.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee.

[Ch3904s7]7. Disclosure of interest

(1) If a person is present at a meeting of the Committee at which any matter is the subject of consideration and in which matter the person or his spouse is directly or indirectly interested in a private capacity he shall, as soon as practicable after commencement of the meeting, disclose such interest and may thereafter only participate at the discretion of the Chairman.

(2) Disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

[Ch3904s8]8. Immunity of committee members

No action or other proceedings shall lie or be instituted against any member of the Committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

[Ch3904s9]9. Secretarial of the Committee

The Ministry of Trade, Industry and Tourism shall form the secretariat of the Committee.

[Ch3904s10]10. Functions of the Council

(1) Subject to any general and special directions of the Committee, the functions of the Council under this Act shall be—

(a) to receive and investigate every application made by any person or company for registration as an exporter of products of Malawi;

(b) to register exporters upon such terms and conditions as the Committee may determine;

(c) to issue certificates of registration to registered exporters; and

(d) to maintain a register of all registered exporters and of all certificates of registration issued under this Act.

(2) In addition to the performance of the functions set out in subsection (1), the Council shall render to registered exporters the services specified in section 16 and shall perform all such functions as are assigned to it in this Act.

PART III

FOREIGN EXCHANGE REVOLVING FUND

[Ch3904s11]11. Foreign Exchange Revolving Fund

(1) There shall be established a fund to be known as the Foreign Exchange Revolving Fund for the purpose of facilitating foreign exchange requirements of registered exporters.

(2) The Foreign Exchange Revolving Fund shall consist of—

- (a) such sums as may from time to time be appropriated for the purpose by Parliament;
- (b) all repayments of advances or in respect of facilities granted to registered exporters out of the funds of the Foreign Exchange Revolving Fund together with accrued interest thereon, if any;
- (c) such sums as may, with the approval or agreement of the Committee, be received or otherwise become payable for the purposes of the Foreign Exchange Revolving Fund.

(3) the Foreign Exchange Revolving Fund shall be maintained in an account with the Bank and shall be administered by the Bank in accordance with the standing orders of the Committee.

[Ch3904s12]12. Registered exporters to have access to the Foreign Exchange Revolving Fund

(1) Every registered exporter shall have access to the facilities under the Foreign Exchange Revolving Fund.

(2) Any advance or other facility granted to a registered exporter out of the Foreign Exchange Revolving Fund shall be subject to such terms and conditions as the Committee or the Bank may deem necessary to impose either generally or in relation to a particular registered exporter or class or classes of registered exporters; and such terms and conditions may be imposed to be fulfilled prior or subsequent to the grant of an advance or any facility.

[Ch3904s13]13. Standing orders for the administration of the Foreign Exchange Revolving Fund

The Committee may, under the hand of the Chairman, make standing orders containing provisions for the administration of the Foreign Exchange Revolving Fund and may, in such standing orders—

- (a) specify the class or classes of registered exporters or the class or classes of exports which may enjoy overriding preference;
- (b) prescribe ceilings of advances or other facilities out of the Foreign Exchange Revolving Fund available to a registered exporter or to a class or classes of registered exporters or available in respect of any class or classes of exports.
- (c) provide for any thing or matter deemed by the Committee to be necessary or expedient for the administration of the Foreign Exchange Revolving Fund.

PART IV

EXPORT INCENTIVES AND TECHNICAL ASSISTANCE TO REGISTERED EXPORTERS

[Ch3904s14]14. Income tax allowance

24 of 1988(1) A registered exporter shall, in every financial year during which he exports products of Malawi, be entitled to an income tax allowance of twelve per cent of his taxable income derived from his export sales. G.N. 39/1992

(2) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the Gazette, revise the rate of income tax allowance prescribed in subsection (1)

24 of 1988(3) A registered exporter who, for the purpose of claiming an income tax allowance under subsection (1), makes a false claim as to the amount of the gross proceeds of his export sales, shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of income tax allowance falsely claimed, whichever is greater and to imprisonment for one year.

[Ch3904s15]15. Duty drawback

24 of 1988, 22 of 1989(1) A registered exporter who exports products of Malawi which are manufactured or otherwise produced in Malawi and for the manufacture, processing or production of such products raw materials, including packaging materials on which duty was paid were used shall be entitled to drawback of duty under section 97 of the Customs and Excise Act, which for the purposes of this Act, shall be determined in accordance with the succeeding provisions of this Act.

(2) The drawback of duty under subsection (1) shall be computed on the basis of a ratio prescribed by the Minister; and the Minister may prescribe different ratios for different products.

(3) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the Gazette, prescribe the ratio or ratios applicable in respect of this section.

(4) For the purposes of this section, reference in section 97 of the Customs and Excise Act to "such limitations and conditions as may be prescribed in regulations made under this Act" shall, in relation to drawback of duty to be effected pursuant to this section, be construed to be reference to any ratio or ratios prescribed by order made under subsection (2) and to other provisions contained in such order.

(5) The Controller of Customs and Excise shall effect a drawback of duty within sixty days after receipt by him of the presentation of the claim for drawback of duty, but subject to proof to his satisfaction being made by a registered exporter claiming drawback of duty—

- (a) that the registered exporter exported the products in question; and
- (b) that the duty being claimed was paid.

(6) Any registered exporter who, for the purpose of obtaining drawback of duty under section (1), makes a false claim as to the amount of duty paid by him on the raw materials,

machinery, equipment and other items shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of the duty drawback falsely claimed, whichever is greater and imprisonment for one year.

[Ch3904s16]16. Council to provide technical assistance to registered exporters

The Council shall provide technical assistance to registered exporters in the following activities—

- (a) diversification of export products and export markets;
- (b) improving existing methods of production so as to reduce cost of export products;
- (c) promoting effective marketing of export products abroad;
- (d) developing export packaging and product design;
- (e) conducting seminars, training, courses and other training events on functional aspects of exports;
- (f) promoting investments in export-oriented enterprises; and
- (g) promoting improvements in the quality of export products.

PART V

REGISTRATION OF EXPORTERS

[Ch3904s17]17. Application for registration

(1) An application for registration as an exporter of products of Malawi shall be accompanied with the prescribed fee and shall be made to the Council and shall be in the prescribed form and shall include the following particulars—

- (a) the name and address of the applicant;
- (b) the nature of business activity in which the applicant is engaged and the principal place where the business activity is carried on;
- (c) the date of issue and duration of licence, if any, authorizing the applicant to carry on the business activity specified pursuant to paragraph (b); and
- (d) the description of products of Malawi to be exported.

(2) Any particulars contained in the prescribed form of application which are not specified in subsection (1) or not specifically prescribed under this Act, shall be deemed to be particulars required for the purposes of this Part.

(3) Notwithstanding that an application has been made in the prescribed form, the Council may call upon the applicant or upon any other person to provide such further or other information or particulars as the Council may deem necessary for the proper consideration of the application.

[Ch3904s18]18. Processing applications

Upon receipt of an application, the Council shall consider the application and register the applicant as a registered exporter if it is satisfied that—

- (a) the application is made in accordance with section 17 (1); and
- (b) the business activities of the applicant will contribute towards the economic development of Malawi and are generally in the interest of the national economy.

[Ch3904s19]19. Certificate of registration

(1) Upon registration, the Council shall issue to the registered exporter a certificate of registration in the form prescribed and shall in writing or in such form as may be prescribed give notification of such registration to—

- (a) the Secretary of the Committee;
- (b) the General Manager of the Bank;
- (c) the Commissioner of Taxes; and
- (d) the Controller of Customs and Excise.

(2) A certificate of registration issued under subsection (1) shall, upon production to the Bank and other appropriate authorities and subject to the provisions of this Act, entitle the holder thereof to the grant of export incentives and facilities and other benefits provided under this Act.

[Ch3904s20]20. Refusal of application for registration

(1) Where after due consideration of an application for registration under this Part, the Council decides to refuse the application it shall refer the matter to the Committee together with its comments on the application and its reasons for the intended refusal.

(2) The Committee shall, at its meeting next occurring after a matter has been referred to it under subsection (1) or at a specially convened meeting to be held earlier, consider the matter and for that purpose may call for any information from any person or hear representations from any person as it deems necessary for its consideration of the matter, and thereupon the Committee may—

- (a) accept the recommendations of the Council in which case the application shall stand refused and the Council shall with due dispatch notify the applicant accordingly; or
- (b) direct the Council to register the applicant as a registered exporter with or without conditions;
- (c) require the applicant to fulfill, prior to his registration, such conditions as the Committee may deem necessary to impose.

[Ch3904s21]21. Registered exporter to keep and maintain books of account and to furnish returns

Every registered exporter shall keep and maintain proper books of account and shall, within such period and in such form as may be prescribed, submit returns to the Council on products of Malawi exported by him.

[Ch3904s22]22. Confidentiality of information

Any information given by a registered exporter in his application for registration and in any periodic returns submitted by him to the Council under section 21 shall be confidential.

[Ch3904s23]23. Cancellation and withdrawal of a certificate of registration

(1) Where a certificate of registration has been issued and it is subsequently found that such certificate was issued as a result of any fraudulent representation made or incorrect information supplied by any holder thereof in his application for registration to the Council, the Council may give written notice to the holder of such certificate requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of registration should not be withdrawn and his registration cancelled.

(2) Where a registered exporter fails to export any products of Malawi within such period as may be prescribed either generally or in relation to him and does not notify the Council of the reasons of his failure so to do, the Council may give notice to such registered exporter requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of incentives should not be withdrawn and his registration cancelled.

(3) If the registered exporter to whom notice has been given under subsection (1) or subsection (2) fails to show cause as required within the time specified or if the Council deems the cause shown to be inadequate, the Council shall, with the prior approval of the Committee, cancel the certificate of registration of such registered exporter; and in the notice of cancellation the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

[Ch3904s24]24. Cancellation in other circumstances

Where a registered exporter—

- (a) fails to comply with the provisions of this Act or with any condition imposed in respect of his registration or;
- (b) has committed an offence under this Act; or
- (c) has committed an offence under the Exchange Control Act or is otherwise in breach of the provisions of that Act or the regulations made thereunder, Cap. 45:01

the Council may, with the prior approval of the Committee, cancel the registration of that registered exporter; and in the notice of cancellation to the registered exporter, the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

[Ch3904s25]25. Failure to surrender a certificate where registration cancelled

A person who, without valid excuse, fails forthwith to surrender to the Council a certificate of registration where the registration has been cancelled shall be guilty of an offence.

[Ch3904s26]26. Cancellation of not to debar future registration

A cancellation of registration shall not disqualify the former registered exporter from being considered for fresh registration in accordance with this Act.

PART IV

MISCELLANEOUS

[Ch3904s27]27. Appeals to the Minister

An aggrieved registered exporter or former registered exporter may appeal to the Minister against the decision of the Council or the Committee and the decision of the Minister upon such appeal shall be final and shall not be subject to review by, or to any question in, any court.

[Ch3904s28]28. Penalties

(1) A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of K2,000 and to imprisonment for six months.

(2) Any regulations made under this Act, may notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K1,000 and imprisonment of up to three months for an offence committed against the provisions of such regulations. Cap. 1:01

[Ch3904s29]29. Regulations

The Minister may make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may—

- (a) prescribe registration fees payable upon application for registration or upon registration;
- (b) prescribe forms of application, certificates of registration and forms of returns to be submitted by registered exporters;
- (c) anything which by this Act is required or permitted to be prescribed.

[Ch3904s30]30. Non-application of the Act to certain products, etc.

24 of 1988The Minister may, by order published in the Gazette, exclude from the application of all or any of the provisions of this Act—

- (a) any products specified in such order, either by reference to the name, use, nature, class or description of such products;
- (b) any registered exporter or class of registered exporters.

SUBSIDIARY LEGISLATION

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

under s. 29

G.N. 42/1989

66/1995

1. Citation

These Regulations may be cited as the Export Incentives (Fees and Forms) Regulations.

2. Fees Forms

The fees prescribed in the First Schedule shall be payable in respect of the matters specified in relation to such fees.

3.

The forms set out in the Second Schedule shall be used for purposes of the Act.

FIRST SCHEDULE r. 2, G.N. 66/1995

Matter Fee

K t

- | | | | |
|----|--|-----|----|
| 1. | Upon application for registration as an exporter of products in Malawi | 20 | 00 |
| 2. | Upon issue of a Certificate of Registration | 130 | 00 |

SECOND SCHEDULE r. 3

FORM EIR I

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

APPLICATION FOR REGISTRATION AS AN EXPORTER OF PRODUCTS OF MALAWI

NOTE: This application shall be submitted to the General Manager of the Council at such addresses as shall be notified in the Gazette and shall be accompanied with a non-refundable application fee of K10.

1. Name of applicant

2. Full postal address

.....

3. Location of office/factory (Plot No.)

4. Name of industry

5. Nature of business activity

6. Products to be exported

(a)

(b)

(c)

(d)

7. Business registration/incorporation No.

8. Licence No.

Date of issue Expiry date

9. Size of capital investment

(a) Authorized

(b) Issued and fully paid up

(c) Loans

(d) Other

10. No. of employees:

11. Names and postal addresses of directors (where applicable)—

(1)

(2)

(3)

12. Names and residential addresses of shareholders/partners and percentage of share-
holding

.....

.....

.....

13. Export performance.

Value of: (CIF) or (FOR)

(a) Existing export orders MK

(b) Total value of export sales over each of the last 3 years MK

14. Bankers

Branch

15. Declaration—

I/We hereby, declare that the above information is true and correct to the best of my/our knowledge and belief.

Place Signature(s)

Date Names (in block letters)

.....

.....

Registration approved/not approved

Certificate No.

Date Signature of General Manager for the Council

FORM EIR II

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

CERTIFICATE OF REGISTRATION

I hereby certify that

.....

.....

.....

.....

.....

this day of, 19

have/has been duly registered pursuant to and in accordance with the provisions of the Export Incentives Act, and rules made thereunder, and have/has been registered under the number in this Register of exporters of products of Malawi.

Given under my hand this day of one thousand, nine hundred and

.....

General Manager for the Council

FORM EIR III

EXPORT INCENTIVES ACT

(CAP. 39:04)

EXPORT INCENTIVES (FEES AND FORMS) REGULATIONS

ANNUAL RETURN

1. Name of Exporter

2. Status of Exporter: (Please tick appropriate box)

General Merchant

Manufacturer

Grower

3. Nature of goods exported (value in Kwacha)

19

19

19

(1)

(2)

(3)

TOTAL

4.—(1) Annual Turnover (both domestic and export sales)

Nature of goods: 19 19 19

(a)

(b)

(c)

(d)

TOTAL

(2) Percentage of Exports to Total Business turnover

Nature of goods: 19 19 19

(a)

(b)

(c)

(d)

TOTAL

5.—(1) Particulars of credit/bank facilities enjoyed

(a) Trade Credit (state period)

(b) Money Lender

(c) Bank Finance

(d) Export Incentives (please specify)

.....

(e) Other (please specify)

(2) Manner of receipt of payment

(a) in advance []

(b) against confirmed/unconfirmed LC []

(c) on documents against acceptance []

6. Areas of concern []

export licensing []

drawback of duty []

storage before shipment []

freight costs []

low overseas prices []

bank finance []

foreign exchange availability []

tax allowance []

Other (please specify)

.....

.....

7. Overseas experience non-payment

protracted delays []

refusal to accept goods []

import controls []

delays in transfer of proceeds []

8. Suggestions for improvements in existing facilities (please give a brief narration)

.....

.....

.....

Date:

Signature:

Designation:

EXPORT INCENTIVES (EXCLUSION) ORDER

under s. 30

G.N. 23/1990

1. Citation

This Order may be cited as the Export Incentives (Exclusion) Order.

2. Exclusion of certain products from section 14 para. 2

Export sales of the products specified in the Schedule shall not be eligible for the income tax allowance under section 14 of the Act.

SCHEDULE

1. Unmanufactured tobacco and tobacco refuse
2. Tea
3. Coffee
4. Cane sugar

EXPORT INCENTIVES (DUTY DRAWBACK RATIO) ORDER

under s. 15

G.N. 55/1991

1. Citation

This Order may be cited as the Export Incentives (Duty Drawback Ratio) Order.

2. Duty drawback ratio

Duty drawback in respect of raw materials and packaging materials used in the manufacture or production of goods that are subsequently exported from Malawi shall be claimed, computed and paid on the basis that duty paid on raw materials and packaging materials used in the manufactured or produced goods less duty paid on raw materials and packaging materials used in the manufacture or production of goods that have been disposed of in Malawi multiplied by 100 per cent.

[Chap3905]CHAPTER 39:05

INVESTMENT PROMOTION

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PART VII

MISCELLANEOUS

27. Regulations, rules or orders

Schedule

Supplement

28 of 1991

12 of 1992

19 of 1995

G.N. 49/1992

An Act to accord paramount status to the investment policies and procedures contained in the Statement of Investment Policies and the Investors Guide issued by the Government and revised from time to time; to establish the Malawi Investment Promotion Agency and to provide for its powers, duties and general authority; and to provide for matters connected with or incidental to the foregoing

[16TH MARCH, 1992]

PART I

PRELIMINARY

[Ch3905s1]1. Short title

This Act may be cited as the Investment Promotion Act.

[Ch3905s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Agency” means the Malawi Investment Promotion Agency established by section 5;

“appropriate Minister” means the Minister responsible for the subject matter in question;

“Board” means the board of directors of the Agency established by section 10;

“Chairman” means the chairman of the Board;

“investment” means private investment, and other grammatical variations or cognate expressions thereof shall be construed accordingly;

“investor” means an existing or potential investor;

“Investors Guide” or “Guide” means the publication as set out in the Schedule to this Act as a supplement to the Statement of Investment Policies and as from time to time revised; Schedule

“Minister” means the President in his ministerial responsibility for the Office of the President and Cabinet;

“Statement of Investment Policies” or “Statement” means the statement of the Government as set out in the Schedule to this Act and as from time to time revised, being a statement containing the principles of the Government aimed at promoting and assisting investment in Malawi. Schedule

PART II

PROMOTION OF INVESTMENT IN MALAWI

[Ch3905s3]3. Statement and the Investors Guide to rank paramount

Every public officer and any authority in Malawi exercising or performing powers, duties or functions in connexion with or concerning the commitment of the Government in promoting and assisting investment in Malawi as declared in the Statement of Investment Policies (in this Act otherwise referred to as the "Statement") and in the Investors Guide (in this Act otherwise referred to as the "Guide") shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Statement and the Guide as ranking paramount in the business of the Government and shall further consider it to be his or its paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Statement and the Guide.

[Ch3905s4]4. Publication and revision of the Statement and the Investors Guide

(1) The Statement and the Investors Guide shall be published respectively by the Minister and the Agency for general distribution and, in the case of the Investors Guide, copies of its publication shall be made freely available and without charge in and outside Malawi to investors in Malawi.

(2) Following any change in the Statement, or following any legislative or statutory action or other action having similar effect taken by the Government in pursuance or in the implementation of the Statement or the Investors Guide, the Minister shall, by order published in the Gazette, amend the Schedule to this Act so as to revise the Statement or the Investors Guide accordingly. Schedule

PART III

THE MALAWI INVESTMENT PROMOTION AGENCY

[Ch3905s5]5. Establishment of the Agency

There is hereby established a body to be known as the Malawi Investment Promotion Agency (in this Act otherwise referred to as the "Agency") which shall be a body corporate by that name, having perpetual succession and a common seal and which shall, by that name, be capable of suing and being sued and of acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may by law do or perform.

[Ch3905s6]6. General authority of the Agency

In addition to any other powers, duties and functions conferred on the Agency by or under this Act, it shall be the principal object of the Agency to ensure the giving of practical and prompt effect to the commitment of the Government on investment in Malawi as declared in the Statement of Investment Policies and the Investors Guide and, for that purpose, the Agency shall have power—

(a) to receive queries and complaints by, or on behalf of, an investor against any public officer or any authority in dealing with any matter submitted to the public officer or to the authority by, or on behalf of, the investor;

(b) to summon or call upon any public officer or any authority to promptly decide, in accordance with the relevant written law, on any matter submitted to the public officer or authority by, or on behalf of, an investor and to communicate the decision to the investor or to show cause, satisfactory to the Agency, why a decision on the matter cannot be promptly made or communicated to the investor, and further to request for an indication as to when a decision or the communication will be made;

(c) to inquire into the reasons for any negative decision by any public officer or any authority on any matter submitted by, or on behalf of, an investor to the public officer or authority and, where the Agency is not satisfied with the reasons given, to make representations to the public officer or authority or to the appropriate Minister on behalf of the affected investor;

(d) to report to the Minister cases of inefficiency, laxity and ineptitude by any public officer or any authority in the exercise of his or its powers or the performance of his or its duties and functions bearing upon the purposes and objects of this Act, the Statement of Investment Policies or the Investors Guide; and

(e) to do all such things as the Agency considers to be necessary for its objectives and functions and conducive to the fulfilment of the purposes of this Act, the Statement and the Investors Guide.

[Ch3905s7]7. Compliance with the requirements of written laws

Nothing contained in this Act shall be construed as exempting any investor, any public officer, any authority or any person from complying with the requirements of any written law.

PART IV

OBJECTIVES AND FUNCTIONS OF THE AGENCY

[Ch3905s8]8. General objectives and functions of the Agency

19 of 1995(1) The general objective of the Agency shall be to promote, attract, encourage and facilitate local and foreign investment in Malawi and, without prejudice to the generality of that objective, the Agency shall have the following functions—

19 of 1995(a) to facilitate and support all aspects of the investment process in Malawi including, but not limited to, the timely receipt of Government approvals, permits, licences, registrations and the fulfilment of any other regulatory authorizations;

(b) to provide courtesy services to investors;

(c) to provide information relating to investment in Malawi;

(d) to identify partners in or outside Malawi for joint venture business opportunities in Malawi;

(e) to liaise and generally interact with local and international financial institutions for the benefit of investors;

- (f) encourage expansions and new investments by existing investors in Malawi;
- (g) to develop a favourable investment image of Malawi regionally and outside the region;
- (h) to undertake investment promotion missions within the region and outside the region;
- (i) to recommend to the Government changes in the statutory and administrative framework relevant to the investment climate of Malawi and to make representations against or regarding any changes to any such statutory or administrative framework; and
- (j) to consult with private sector entities with a view to enabling the Agency to make recommendations to the Government for the improvement of the investment climate of Malawi.

19 of 1995(2) For purposes of this Act, the Agency shall accord priority to investment in—

- (a) manufacturing;
- (b) agriculture;
- (c) mining;
- (d) fisheries;
- (e) tourism;
- (f) forestry; and
- (g) such other productive sectors as the Agency may, from time to time, determine with the approval of the Minister.

PART V

ORGANIZATION AND ADMINISTRATION OF THE AGENCY

[Ch3905s9]9. Board of Directors

There shall be a Board of Directors of the Agency (in this Act otherwise referred to as the "Board") which shall be responsible for the administrative and management policies of the Agency.

[Ch3905s10]10. Composition of the Board

The Board shall consist of—

19 of 1995(a) the following public officers as members ex officio—

- (i) the Secretary to the President and Cabinet;
- (ii) the Secretary for Economic Planning and Development;
- (iii) the Secretary for Commerce and Industry;

(iv) the Secretary to the Treasury; and

(v) the Controller of Lands and Valuation;

(b) three persons representing the private sector in Malawi nominated by the Malawi Chamber of Commerce and Industry and appointed by the Minister;

(c) two persons of prominent status appointed by the Minister from amongst persons in the private sector in Malawi who have had managerial experience and shown capacity in matters relating to business operations in the private sector; and

(d) one person appointed by the Minister from amongst serving chief executives of statutory bodies undertaking commercial operations.

(2) The Chairman and Vice Chairman of the Board shall be elected by members from amongst their number appointed from the private sector in Malawi.

[Ch3905s11]11. Tenure of office

19 of 1995(1) A member of the Board appointed under paragraphs (b), (c) or (d) of section 10—

(a) shall hold office for two years from the effective date of his appointment and shall be eligible for reappointment;

(b) may resign his office by giving one month written notice to the Minister.

(2) In making appointments to the Board under paragraphs (b), (c) and (d) of section 10 the Minister shall have regard to the need to ensure a reasonable degree of continuity in the membership of the Board and also expertise, knowledge and experience in matters relating to private sector development and private investment.

[Ch3905s12]12. Members not to delegate attendance to the business of the Board

No member of the Board shall attend to the business of his office as member of the Board by representation, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

[Ch3905s13]13. Co-opted persons

The Board may in its discretion at any time and for any length of time invite any person to attend any meeting of the Board and take part in the deliberations of the Board, but such person shall not be entitled to vote at that meeting.

[Ch3905s14]14. Meetings of the Board

(1) The Board shall hold its ordinary meetings at least six times a year.

(2) An extraordinary meeting of the Board—

(a) may be convened by the Chairman at any time;

(b) shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Board and specifying the purpose for which an extraordinary meeting of the Board is to be convened.

(3) At any meeting of the Board—

(a) the quorum necessary for the dispatch of the meeting shall be formed by any six members at least two of whom shall be members appointed under paragraph (d) or (e) of section 10;

(b) the Chairman or, in the absence of the Chairman, the Vice-Chairman shall preside;

(c) if both the Chairman and the Vice-Chairman are absent, the members present and forming the quorum shall elect one of their number to preside;

(d) the decision on any subject shall be that of the majority of the members present and voting and in the event of a tie in the votes the person presiding shall have a casting vote in addition to his deliberative vote;

(e) a member who is aware that he has a personal, proprietary or pecuniary interest in a matter which is to be or is being considered by the Board shall declare the interest to the Chairman or other person presiding and shall not be entitled to take part in the deliberations or to vote on the matter; and

(f) a member who is unable to attend the meeting may submit to the Board, in writing, his views on any matter before the Board but shall not be entitled to have his vote registered on any matter considered at the meeting.

[Ch3905s15]15. Powers and functions of the Board

The Board shall have power—

(a) to determine policy and courses of action for giving effect to the objectives and purposes of the Agency and generally of this Act;

(b) to appoint committees to assist the Board in the performance of its functions, and the membership of such committees may include persons who are not members of the Board;

(c) to assign to committees of the Board any of its powers and functions but the Board shall not be divested of any power or functions so assigned and may approve, vary or revoke any decision of a committee;

(d) to require the General Manager or any officer of the Agency to make reports to the Board respecting the financial, administrative and other affairs of the Agency and to direct any action to be taken by the General Manager or other officers with regard thereto; and

(e) to determine its own procedure to be followed at its meetings and in dispatching its other business.

[Ch3905s16]16. General Manager of the Agency

(1) There shall be an officer of the Agency to be designated as the General Manager of the Agency who shall be appointed by the Minister.

(2) The terms and conditions of service of the General Manager shall be determined by the Minister on the recommendations of the Board.

(3) In determining the terms and conditions of service of the General Manager the Board and the Minister shall have regard to—

(a) the need to ensure the recruitment and retention of a person, from amongst nationals of Malawi, who has shown the highest qualities of institutional management or who is a person of recognized standing, educational or professional qualifications or experience necessary to achieve the ideals of business efficacy in private sector management and in either case is a person of proven integrity;

(b) the need to provide for an appropriate method of assessing the performance of the office holder and, for that purpose, the Minister may prefer appointment on contract to appointment on permanent terms.

(4) The Minister shall exercise disciplinary control over the General Manager and may act on the recommendations of the Board.

[Ch3905s17]17. Other staff of the Agency

(1) The Board shall appoint such other staff of the Agency subordinate to the General Manager as the Board considers necessary for the proper discharge of the functions of the Agency and the Board may delegate to the General Manager the appointment of certain categories of the staff of the Agency.

(2) The General Manager may appoint temporary employees of the Agency at such daily rates of pay, not below the minimum rates prescribed by written law, as he considers to be required for the discharge of the functions of the Agency.

(3) The General Manager shall report to the Board every appointment by him of any person under subsection (1) or (2).

(4) The Board shall exercise disciplinary control over the staff appointed by the Board and by the General Manager under subsection (1) and the General Manager shall, at his sole discretion, exercise disciplinary control over the staff appointed by him under subsection (2).

[Ch3905s18]18. Duties of the General Manager

The General Manager shall—

(a) be the chief executive officer of the Agency and as such he shall be responsible for the day-to-day administration of the Agency and in that regard he shall be answerable to the Board;

(b) serve as secretary to the Board and to any committee of the Board and shall, on the instructions of the Chairman or the chairman of any committee of the Board, as the case may be, convene meetings of the Board and meetings of the committees and in carrying out his duties as

secretary, the General Manager and such other officers of the Agency as he may designate, shall be entitled to attend all meetings of the Board and of the committees;

(c) subject to the special or general directions of the Board, do or perform any thing or act which he considers to be expedient for the purposes of the Agency.

[Ch3905s19]19. Salaries

The salaries, wages or other remuneration of the General Manager and other staff of the Agency shall be determined so as to be competitive with those in the private sector in Malawi.

[Ch3905s20]20. Honorarium for Board members

Every member of the Board, whether or not serving in an ex officio capacity and including a member who is a public officer, shall be entitled to receive in his personal capacity an honorarium determined by the Minister and paid out of the funds of the Agency.

PART VI

FINANCIAL PROVISIONS

[Ch3905s21]21. Funds of the Agency

The funds of the Agency shall consist of—

(a) such sums as shall be appropriated annually by Parliament for the purposes of the Agency;

(b) the levy payable under section 22; and

(c) such other sums and assets as may vest in or accrue to the Agency, whether in the course of discharging its functions or otherwise.

[Ch3905s22]22. Levy

(1) The Minister may, by order published in the Gazette, impose on any company, corporation, professional or business partnership or any business proprietor a levy to be paid to the Agency and the Minister may impose different amounts or rates of levy for different classes of business and may, in such order, prescribe the manner of collecting such levy.

(2) The amount of levy payable by any person under this section shall be deductible in computing the taxable income of that person for purposes of payment of income tax under the Taxation Act. Cap. 41:01

(3) An order made under this section may prescribe a penalty of sums of money to be paid to the Agency for non-payment or delayed payment of levy.

(4) The amount of levy and the penalty payable to the Agency shall, if not paid, constitute a debt owing to the Agency by the company, corporation, partnership or business proprietor from whom it is due and shall be recoverable by the Agency by civil proceedings.

[Ch3905s23]23. Financial year

The financial year of the Agency shall be a period of twelve months determined by the Board:

Provided that the first financial year of the Agency may be a period shorter or longer than twelve months, but in any event not longer than eighteen months.

[Ch3905s24]24. Books and other records of account

The Agency shall—

(a) keep and maintain proper books and other records of account in respect of every financial year relating to the funds and other assets of the Agency;

(b) in every respect comply with the Finance and Audit Act as that Act applies to statutory bodies; and Cap. 41:01

(c) furnish to the Minister in every financial year or as often as the Minister may direct accounts in respect of its funds and other assets including an estimate of income and expenditure for the following financial year.

[Ch3905s25]25. Audit

The accounts of the Agency in respect of every financial year shall be audited by auditors appointed annually by the Board and approved by the Minister.

[Ch3905s26]26. Pensions and other funds

12 of 1992(1) The Agency may, out of its revenues, establish and maintain pension, superannuation, provident or other funds as it may consider desirable for the provision of payment or benefits or other allowance on death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

(2) The Agency may contract with insurance companies or other bodies for the maintenance and administration of the funds authorized under subsection (1).

PART VII

MISCELLANEOUS

[Ch3905s27]27. Regulations, rules or orders

12 of 1992 The Minister may make regulations, rules or orders for the purposes of this Act and to give effect to its provisions.

SCHEDULE S. 2

STATEMENT OF INVESTMENT POLICIES

1. This policy statement sets forth the Malawi Government's principal policies for encouraging and assisting private investment. The Government is fully committed to enacting these policies and will take whatever measures may be necessary to ensure their prompt implementation. This statement is supplemented by the Investors Guide containing detailed information of importance to investors.

2. The Government seeks to encourage the private sector to assume the leading role in developing the national economy. The thrust of the Government's efforts will be to facilitate, rather than to regulate, private investment. This is consistent with the Statement of Development Policies issued by the Government in 1987.

3. To create a more conducive investment climate, the Government will continue to pursue stable macro-economic policies by exercising fiscal and monetary discipline and maintaining a realistic exchange rate of Malawi Kwacha (MK), the country's currency. Specific measures to deregulate the private sector and create new investment opportunities have already been enacted, including elimination of price controls, termination of import restrictions and of the accompanying need import licences, divestiture of state-owned companies and steps to rectify the external transport situation.

4. To further encourage and assist private investment, the Government announces the following new initiatives:

FREEDOM TO INVEST

5. Investors, both domestic and foreign, may invest in any sector of the economy, with no restriction on ownership. Further there are no restrictions on the size of investment, the source of funds or whether products are destined for export or for the domestic market. Domestic investors are encouraged to join with foreign investors to pursue investment opportunities in Malawi.

INDUSTRIAL LICENSING AND COMPANY FORMATION

6. The industrial licence is to be eliminated, except for investments in such industries as the Government may place on a short negative list. Procedures for company formation and business registration will be simplified to permit prompt establishment. Investors will only be required to provide the Registrar of Companies with basic information on proposed business activities.

TRANSFER OF LAND

7. The Government is committed to ensure that land for industrial and commercial uses is readily available to investors. Accordingly, the Government will accelerate land transfer procedures to expedite granting approvals and consents. To better provide serviced land to investors, the Government will develop new industrial sites. In addition, the Government will provide the necessary framework to enable private investors to develop industrial sites, including sub-leasing to other investors.

TAXES AND DUTIES

8. To further enhance Malawi's investment climate and international competitiveness, the Government is committed to continue the process of reducing rates of taxes and duties. This is to be achieved through the ongoing tax and trade reform programmes.

EXTERNAL TRANSPORT ROUTES

9. The Government is aware that access to efficient and secure transport routes, both within the country and to foreign markets, is of vital importance. To ensure such access, the Government is undertaking a number of initiatives, including the expansion of the domestic transportation network, the development of the Northern Corridor route to the port of Dar-es-Salaam in Tanzania and the rehabilitation of the Nacala Railway Line to the port of Nacala in Mozambique.

AVAILABILITY OF FOREIGN EXCHANGE

10. The Government recognizes that the availability of foreign exchange is critical to investors. The Government will, therefore ensure that foreign exchange is available for business transactions and remittances. The Reserve Bank of Malawi has granted, and will continue to grant, commercial banks the authority, as foreign exchange dealers, to approve such transactions and remittances according to set procedures.

ACCESS TO LOCAL FINANCING

11. The Government has embarked on a reform programme to modernize and liberalize the financial sector. With the enactment of the Capital Market Development Act, 1990, both foreign and domestic investors will have greater access to sources of local financing. The Government is committed to foster competition in the banking sector including the establishment of new banking institutions.

LABOUR PRACTICES

12. The Government will not interfere in employer's choice of workforce. Further, the Government recognizes that investments may require expertise not available in Malawi. Accordingly, it will continue to make Temporary Employment Residence Permits for expatriate personnel readily available for key positions in investments.

ENCOURAGEMENT OF SMALL-SCALE AND MEDIUM-SCALE ENTERPRISES

13. Malawi's small-scale and medium-scale enterprises hold great potential for rapid economic growth and employment creation. The Government is, therefore, dedicated to continuing with various programmes to assist these enterprises, including entrepreneurship training and technical and financial assistance.

ENCOURAGEMENT OF EXPORT-ORIENTED INVESTMENTS

14. To encourage export-oriented investments, the Government will offer incentives competitive to those found in other countries. At present, these incentives include—

- (i) an income tax allowance based on export sales of non-traditional products (i.e. products other than tobacco, tea, sugar and coffee);

(ii) rebates of import duties, surtaxes, and local taxes on most inputs used in production for export.

15. In addition, the Government is considering establishing other incentives, including export financing and guarantee schemes, further developing a manufacturing-in-bond programme, creating export processing zones, and introducing measures to eliminate the payment of duties at the time of importation.

INVESTMENT ASSISTANCE AND PROMOTION

16. In order to increase awareness of the investment opportunities in Malawi, as well as to provide greater assistance to existing and potential investors, the Government has established an investment promotion agency. This agency has been given sufficient authority and operational autonomy to fulfil its mandate of promoting investment and assisting investors.

INVESTMENT PROTECTION

17 The Government recognizes that the security of assets is of primary importance to investors. The Malawi Constitution and existing laws and regulations provide further assurance that investors' assets are protected. In addition, the Government will actively pursue the process of concluding bilateral investment treaties with other Governments. Malawi is also a member of the Multilateral Investment Guarantee Agency (MIGA), and is an eligible country under a number of other investment insurance programmes.

ACCESS TO INTERNATIONAL ARBITRATION

18. The Government acknowledges that investors must have an acceptable forum to resolve disputes that cannot be settled amicably. Parties to disputes may agree to pursue arbitration and to choose an appropriate forum, including international arbitration. The Government is a member of the International Centre for the Settlement of Investment Disputes (ICSID).

SUPPLEMENT

INVESTORS GUIDE

MALAWI WELCOMES PRIVATE INVESTORS

The Government of Malawi encourages local and foreign investment in any sector of the economy, with no restrictions on ownership.

This Guide presents information on the incentives and other advantages available to investors. Malawi offers an attractive investment climate, featuring:

- *A stable political and economic environment
- *Competitive investment incentives
- *Minimal requirements for company incorporation
- *Low cost, productive labour force

- *Modern telecommunications
- *Daily international flight connexions
- *Industrial estates and prospective export processing zones
- *Preferential access to regional and international markets

ONE-STOP ASSISTANCE TO INVESTORS

The Malawi Investment Promotion Agency (MIPA) has been established to provide free assistance to investors. It is directed by a high-level board consisting of private sector, parastatal and Government representatives.

MIPA assists foreign and local investors by:

- *Providing courtesy services to visiting investors
- *Supplying information about Malawi
- *Identifying joint venture partners, when requested
- *Making introductions to the financial community and providers of professional and business services
- *Facilitating all aspects of the investment process, including relations with Government agencies

MIPA is located at—

(1)

.....

.....

Lilongwe

(2)

.....

.....

Blantyre

INVESTMENT INCENTIVES

A. General Incentives G.N. 65/1992

Malawi has a competitive corporate tax rate of 35 per cent and low import duties. In addition, Malawi offers an array of incentives, which often give new businesses an effective tax holiday for the first several years of operation. These include:

*Generous tax allowances:

†40 per cent investment allowance on qualifying expenditures for new buildings and machinery

†an additional 15 per cent allowance for investments in designated areas of the country

†up to 20 per cent investment allowance on qualifying expenditures for used buildings and machinery

†an additional 50 per cent allowance for qualifying training costs

†allowance for manufacturing companies to deduct all operating expenses incurred up to 18 months prior to the start of operation

†indefinite loss carry forward to enable companies to take full advantage of their tax allowances

†agreements for the avoidance of double taxation (see Appendix A)

†agreements for reduction of withholding taxes on remittances and payments (see Appendix B)

†deferred duties on machinery and equipment for up to 2 years

†Full rebate of duties on heavy commercial vehicles

B. Additional Incentives for Export G.N. 65/1992

To encourage exports, Malawi offers special incentives—

*Export Processing Zones:

†corporate tax rate of 15 per cent

†no withholding tax on dividends

†no duty on capital equipment and raw materials

Malawi †no excise taxes on purchases of raw materials and packaging materials made in

†no surtaxes (value added tax)

†transport tax allowance in the amount of 25 per cent international transport costs

*For all other exporters, including manufacturing in bond:

†export tax allowance in the amount of 12 per cent of export revenues for non-traditional exports (i.e. other than tobacco, tea, sugar and coffee)

†transport tax allowance in the amount of 25 per cent of international transport costs, excluding traditional exports

†no duties on imports of capital equipment used mainly in the manufacture of exports for those manufacturing in bond

†no surtaxes (value added tax)

†no excise taxes on purchases of raw materials and packaging materials made in Malawi for those manufacturing in bond

†timely refund of all duties (duty drawback) on imports of raw materials and packaging materials used in the production of exports

†no duties on raw materials and packaging materials for those manufacturing in bond

Information on eligibility for export processing zones and manufacturing in bond is available from MIPA.

LIBERAL TRADE AND FOREIGN EXCHANGE REMITTANCES

Investors in Malawi have free access to foreign exchange, both for paying for imports and transferring financial payments abroad. This free access include the following:

*No licence requirement to import goods into Malawi

*Full remittance of:

† dividends

†investment capital on repatriation

†interest and principal payments for approved international loans

†approved fees for management, licences, royalties and similar obligations

LEGAL FRAMEWORK

Malawi maintains a legal system based on English common law. Its Constitution protects investment, irrespective of ownership. Malawi is also a signatory to international treaties for the protection of foreign investment and the settlement of investment disputes including:

*The Convention Establishing the Multilateral Investment Guarantee Agency (MIGA), 1986

*Bilateral Investment Guarantee and Protection Agreements

*The Convention establishing the International Centre for the Settlement of Investment Disputes between States and Nationals of Other States, (ICSIDS), 1965

LOCAL AND EXPATRIATE LABOUR

A. Local Labour

†Malawi has a hard-working skilled labour force

*Average wages are low by regional and international standards

†Malawi has had no history of industrial or labour boycotts

†Free vocational training for company employees at national training centres

B. Expatriate Labour

†Work permits are routinely granted where foreign expertise is needed

†Two-thirds of after tax salary is remittable

AVAILABILITY OF LAND

†Land is readily available to investors in Malawi

†Developed industrial estates will offer factory shells with necessary infrastructure close to labour pool and transport links

†Serviced land for all uses may be leased from the Government and private leaseholders. Additionally, freeholds and leaseholds exist and may be purchased or leased from the private owners

†Government approval for any transfer of land can be obtained within 90 days of an application

ACCESS TO CAPITAL

A. Local Financing Facilities

Both local and foreign investors have unrestricted access to local financing facilities. The financial system has been liberalized and special features include:

†sound commercial banks and finance houses which adhere to international standards

†no direct Government controls on credit

†market based interest rates

B. Securities Markets

The Government encourages the development of securities markets. Under the new enabling legislation, the Capital Market Development Act, there are: Cap. 46:06

†no restrictions on issues of securities to the public

†no restrictions on private placement of securities to Malawi residents. Transfer of securities to non-residents should be registered with the Reserve Bank of Malawi

EASE OF INVESTMENT PROCESS

The investment process in Malawi is simple. All new companies need to be registered with the Registrar of Companies, and the process takes no more than 15 days.

Manufacturing does not require a licence, except for a small number of industries (see Appendix C) which raise concerns of health and safety. However, trading activities are licensed.

For data collection purposes, foreign investment capital needs to be registered with the Reserve Bank of Malawi. The terms and conditions of international loans, management contracts, licensing and royalty arrangements and similar technology transfers require Reserve Bank of Malawi approval. These approvals are automatically granted within internationally prevailing standards.

APPENDIX A

AGREEMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION

Malawi has entered into Agreements for the Avoidance of Double Taxation with the following countries:

Denmark

France

Kenya

Netherlands

Norway

South Africa

Sweden

Switzerland, and

United Kingdom

APPENDIX B

AGREEMENTS FOR REDUCTION OF WITHHOLDING TAXES

Malawi has entered into Agreements for the Reduction of Withholding Taxes with the following countries which have resulted in the following tax rate reductions—

Treaty Country

recipient	Balance of earnings				Dividends		Interest	Royalty
	%	%	%	%				
Denmark				Nil	15	15	15	
France				Nil	15	15	15	
Kenya				Nil	15	15	15	
Netherlands				Nil	15	15	15	
Norway				Nil	15	15	15	
South Africa				Nil	15	15	15	
Switzerland				Nil	15	15	15	
United Kingdom				Nil	Nil	Nil	Nil	

APPENDIX C

INDUSTRIES REQUIRING AN INDUSTRIAL LICENCE

- (1) Firearms, ammunition and chemical and biological weapons;
- (2) Explosives;
- (3) Manufacturing involving hazardous waste treatment or disposal; and
- (4) Manufacturing involving radioactive material.

[Chap3906]CHAPTER 39:06

EXPORT PROCESSING ZONES

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ESTABLISHMENT OF EXPORT PROCESSING ZONES APPRAISAL COMMITTEE

3. Establishment of the Export Processing Zones Appraisal Committee
4. Tenure of office of members of the Committee
5. Allowances of members of the Committee
6. Meetings of the Committee
7. Functions of the Committee

PART III

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11 of 1995

G.N. 94/1995

An Act to provide for the establishment, operation and administration of export processing zones, and for matters ancillary thereto or connected therewith

[25TH AUGUST 1995]

PART I

PRELIMINARY

[Ch3906s1]1. Short title

This Act may be cited as the Export Processing Zones Act.

[Ch3906s2]2. Interpretation

In this Act, unless the context otherwise requires—

“adequate security” means security which has been accepted as adequate by the Controller pursuant to section 16;

“bonded factory” means a factory situated in an export processing zone;

“certificate” means an export enterprise certificate issued under section 10;

“Committee” means the Export Processing Zones Appraisal Committee established under section 3;

“Controller” means the Controller of Customs and Excise;

“duty” has the same meaning as in section 2 of the Customs and Excise Act;

“enforcement officer” means a customs and excise officer, or an officer designated in writing by the Minister as an enforcement officer for the purposes of this Act pursuant to section 19;

“export” has the same meaning as in section 2 of the Customs and Excise Act;

“export enterprise” means a company in respect of which a certificate is in force;

“export processing zone” means any area or building declared to be an export processing zone under section 8;

“export product” means a product or produce declared to be an export product under section 9;

“import” has the same meaning as in section 2 of the Customs and Excise Act;

“manufacture” has the same meaning as in section 2 of the Customs and Excise Act;

“production day” means the day on which an export enterprise commences, or is deemed to commence, its operations;

“scheduled equipment” means the capital equipment, machinery and spare parts required by an export enterprise for equipping and operating a bonded factory;

“scheduled materials” means the materials, components, substances, matters or other things required by an export enterprise for the manufacture of export products.

PART II

ESTABLISHMENT OF EXPORT PROCESSING ZONES APPRAISAL COMMITTEE

[Ch3906s3]3. Establishment of Export Processing Zones Appraisal Committee

(1) There is hereby established a committee to be known as the Export Processing Zones Appraisal Committee (in this Act otherwise known as the “Committee”) consisting of—

(a) the Secretary for Commerce and Industry who shall be designated by the Minister as Chairman;

(b) the following ex officio members—

(i) the Secretary to the Treasury, or his designated representative;

(ii) the Secretary for Economic Planning and Development, or his designated representative;

(iii) the Secretary for Agriculture and Livestock Development, or his designated representative;

(iv) the Secretary for Labour and Manpower Development, or his designated representative;

(v) the Controller of Customs and Excise, or his designated representative;

(vi) the Controller of Immigration Services, or his designated representative;

- (c) the General Manager of the Malawi Investment Promotion Agency;
- (d) the General Manager of the Malawi Export Promotion Council;
- (e) one member representing the private sector in Malawi nominated by the Malawi Chamber of Commerce and Industry and appointed by the Minister; and
- (f) one member representing the Reserve Bank of Malawi nominated by the Governor of the Reserve Bank of Malawi and appointed by the Minister.

(2) A representative of an ex officio member referred to in subsection 1 (b) shall be designated by, or on behalf of the ex officio member, by a notice in writing to the Chairman of the Committee, and when so designated such representative shall not attend to the business of the Committee by representation.

(3) The Committee may, in its discretion, at any time and for any period invite any person, and the Minister may in like manner nominate any person in the public service, to attend any meeting of the Committee and to participate in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

[Ch3906s4]4. Tenure of office of members of the Committee

A member of the Committee, other than an ex officio member—

- (a) shall hold office for two years from the effective date of his appointment, and shall be eligible for re-appointment;
- (b) may resign his office by giving one month's notice in writing to the Minister.

[Ch3906s5]5. Allowances of members of the Committee

A member of the Committee, other than an ex officio member, shall be paid such allowances as the Minister may determine.

[Ch3906s6]6. Meetings of the Committee

- (1) The Committee shall hold its ordinary meetings at least six times a year.
- (2) An extraordinary meeting of the Committee—
 - (a) may be convened by the Chairman at any time;
 - (b) shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Committee, and specifying the purpose for which an extraordinary meeting of the Committee is to be convened.
- (3) At any meeting of the Committee—
 - (a) the quorum necessary for the dispatch of business shall be formed by any six members;

(b) the Chairman, or in his absence the member elected by members present and forming the quorum, shall preside;

(c) the decision on any subject shall be that of the majority of members present and voting and, in the event of a tie in the votes, the person presiding shall have a casting vote in addition to his deliberative vote;

(d) a member who is aware that he has a personal, proprietary or pecuniary interest in any matter which is to be or is being considered by the Committee shall declare the interest to the Chairman or other person presiding, and shall not be entitled to participate in the deliberations of the Committee or to vote on that matter; and

(e) a member who is unable to attend the meeting may submit to the Committee, in writing, his views on any matter before the Committee but shall not be entitled to have his vote registered on any matter considered at that meeting.

[Ch3906s7]7. Functions of the Committee

(1) The Committee shall be responsible for appraising and reviewing applications for the establishment and operation of export processing zones and the production or manufacture of export products, and making appropriate recommendations to the Minister.

(2) In making recommendations to the Minister regarding any application, the Committee shall have regard to the following considerations—

(a) labour intensive activities of the project and its propensity to contribute to employment;

(b) use of advanced technology;

(c) utilization of local raw materials;

(d) export-oriented activities other than the production for export of tobacco, tea, coffee, and sugar;

(e) the availability of sufficient warehouses for storage of raw materials and export products;

(f) documentary evidence of export markets for the export products.

PART III

DECLARATION OF EXPORT PROCESSING ZONES AND EXPORT PRODUCTS

[Ch3906s8]8. Declarations of export processing zones

The Minister may, on the recommendation of the Committee, for the purpose of attracting, promoting or increasing the manufacture of export products or with the object of promoting economic development generally, by notice published in the Gazette, declare—

(a) any area of land on which a factory has been or is being or is likely to be built;

(b) any factory;

(c) any area of land which immediately surrounds a factory or the plot on which a factory is being or is likely to be built,

to be an export processing zone.

[Ch3906s9]9. Declaration of export products

Where, upon application by a company in the prescribed form, the Minister considers it expedient in the economic interest of Malawi so to do, he may, on the recommendation of the Committee, by notice published in the Gazette, declare—

(a) any manufactured article, substance or other item intended for export, other than tobacco, tea, coffee or sugar; or

(b) any service,

to be an export product.

[Ch3906s10]10. Issuance of certificates

(1) Where, upon application by a company which manufactures or provides, or proposes to manufacture or provide, an export product, the Minister, on the recommendation of the Committee, considers it expedient in the economic interest of Malawi so to do, he may—

(a) upon payment of the prescribed fees, issue to that company an export enterprise certificate, subject to such terms and conditions as he thinks fit to impose; and

(b) by notice published in the Gazette, declare the company to be an export enterprise for so long as the certificate remains in force.

(2) Every application made pursuant to subsection (1) shall be in the prescribed form and be accompanied by the prescribed fee.

(3) Where an application has been made pursuant to subsection (1), the Minister shall communicate his decision within forty-five days from the date of receipt of the application.

(4) A certificate shall be in the prescribed form and shall specify—

(a) the production day of the export enterprise;

(b) the export product which the export enterprise is or will be manufacturing;

(c) the scheduled equipment required by the export enterprise for equipping and operating the enterprise;

(d) the scheduled materials required by the export enterprise for the manufacture of export products;

(e) that company export enterprise shall be domiciled in Malawi;

(f) such other term or condition as the Minister may deem appropriate.

(5) A certificate shall be valid for a period of five years and may thereafter be renewed for successive periods of two years.

[Ch3906s11]11. Amendment of certificate

(1) Subject to subsection (2), the Minister may, by notice in writing addressed to the export enterprise, at any time amend any certificate or any condition attached to a certificate.

(2) No amendment shall be made to a certificate so as to place an export enterprise in a less favourable position than it was prior to the amendment of the certificate.

(3) Where the Minister amends a certificate by substituting for the production day specified another earlier or later production day, this Act shall have effect in relation to that certificate as if the production day so specified had been originally specified.

[Ch3906s12]12. Revocation of certificate

(1) Where the Minister is satisfied that an export enterprise has contravened this Act or any condition attached to a certificate, he may, by notice in writing, require the export enterprise, within thirty days from the date of the service of the notice, to show cause why the certificate should not be revoked, and where the Minister is satisfied that having regard to all the circumstances the certificate should be revoked, he shall do so.

(2) Where a certificate is revoked under subsection (1), the Minister shall specify the date from which the revocation shall become operative and this Act shall from that date cease to have effect in relation to the certificate so revoked.

[Ch3906s13]13. Register of certificates

Every certificate issued under this Act shall be recorded in a Register in the prescribed form.

PART IV

RESTRICTIONS ON CARRYING ON BUSINESS IN EXPORT PROCESSING ZONES

[Ch3906s14]14. Restrictions on carrying on business in export processing zones

No person shall carry on, in an export processing zone, any trade, business or manufacturing, unless there is in relation to such trade, business or manufacturing, a certificate authorizing the carrying on of such trade, business or manufacturing.

[Ch3906s15]15. Restriction on trading

No export enterprise shall carry on any trade or business other than that specified in its certificate.

PART V

DUTY

[Ch3906s16]16. Duty relief

(1) Where an export enterprise imports or purchases any dutiable goods to be used in a bonded factory or export processing zone, no duty shall be paid on the goods if the goods are transported directly and forthwith to a bonded factory or export processing zone and placed there under such conditions as the Controller may impose.

(2) The Controller may require an export enterprise to enter into a bond in the prescribed form, in such amount as he may determine, whereby the export enterprise undertakes to obtain, receive, keep, use or dispose of scheduled equipment or scheduled materials only in accordance with conditions specified in its certificate or this Act, or the Customs and Excise Act. Cap. 42:01

[Ch3906s17]17. Removal of goods from a bonded factory

(1) No scheduled equipment shall be removed from a bonded factory or an export processing zone, except with the written authorization of the Controller.

(2) No scheduled materials or export product shall be removed from a bonded factory or an export processing zone except—

(a) for the purpose of being exported;

(b) for transfer to another bonded factory or export processing zone; with the permission and according to the directions of the Controller;

(c) for consumption in Malawi with the approval of the Minister and subject to the payment of the appropriate duty;

(d) for destruction in such manner as the Controller may direct.

(3) Any person who, without lawful authority or reasonable excuse—

(a) removes any scheduled equipment, scheduled materials or export product from a bonded factory;

(b) is found in possession of any scheduled equipment, scheduled materials or export product outside a bonded factory or export processing zone,

shall be guilty of an offence.

[Ch3906s18]18. Payment of duty

(1) Where there is in any bonded factory a deficiency in the quantity of dutiable scheduled equipment or scheduled materials which ought to be found there, the export enterprise shall, without prejudice to any other proceedings under this Act or any other written law, be liable to pay to the Controller the duty leviable on the goods not satisfactorily accounted for.

(2) Where the Controller is satisfied that the deficiency has been caused by reasonable wastage or unavoidable breakage, leakage or other accident, he may remit the whole or any part of the duty leviable on the goods found deficient.

(3) The Controller shall, by notice in writing, require an export enterprise to pay any duty under this section and the duty shall be paid within thirty days of the issue of the notice.

PART VI

MISCELLANEOUS

[Ch3906s19]19. Enforcement officers

(1) The Minister may, by notice published in the Gazette, designate any public officer or class of public officers to be enforcement officers for the purposes of this Act.

(2) Any enforcement officer may, at all reasonable and, if so required, on showing proof of his identity, enter any export processing zone or bonded factory for the purpose of ensuring that the provisions of this Act are being complied with.

(3) Any enforcement officer may require an export enterprise or any person who is director, secretary or other officer of an export enterprise to furnish him with any information concerning the business or activities of the export enterprise.

(4) Any person who wilfully obstructs or hinders an enforcement officer acting in the exercise of his functions under this section or, without reasonable excuse, fails or refuses to give to an enforcement officer any information required of him under this section shall be guilty of an offence.

[Ch3906s20]20. Offences and penalties

Any person who—

(a) in any application, declaration or statement made for the purposes of this Act, makes a statement which is false or misleading in any material particular;

(b) keeps any record or account relating to an export enterprise which is false or misleading; or

(c) otherwise contravenes any provision of this Act,

shall be guilty of an offence and shall on conviction be liable to a fine of ten thousand Kwacha and to imprisonment for five years.

[Ch3906s21]21. Regulations

The Minister may make regulations for carrying the purposes and provisions of the Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

SUBSIDIARY LEGISLATION

EXPORT PROCESSING ZONES (FEES AND FORMS) REGULATIONS

under s. 21

G.N. 96/1995

1. Citation

These Regulations may be cited as the Export Processing Zones (Fees and Forms) Regulations.

2. Fees

The fees prescribed in the First Schedule shall be payable in respect of matters specified in relation to such fees.

3. Forms

The forms set out in the Second Schedule shall be used for purposes of the Act, and such particulars as are contained in those forms and not particularly prescribed by the Act are hereby prescribed as particulars required under the Act—

FIRST SCHEDULE r. 2

FEES

Matter Fee

K t

1. Upon application for export enterprise certificate	500	00
2. Upon issue of export enterprise certificate (valid for 5 years)	5,000	00
3. Upon renewal of export enterprise certificate (valid for 2 years)	3,000	00

SECOND SCHEDULE r. 3

FORMS

FORM EPZ I

EXPORT PROCESSING ZONES ACT

Cap. 39:06

APPLICATION FOR AN EXPORT ENTERPRISE CERTIFICATE

(under section 10)

Note:

This application is intended to collect sufficient information for the purpose of enabling the Minister to consider the issuance of an export enterprise certificate. All information collected shall be treated in the strictest confidence. This application should be submitted in duplicate to the following address—

The Secretary for Commerce and Industry

P.O. Box 30366

Lilongwe 3

Malawi

PROFILE OF INVESTOR

1. Name of Company

2. Company Domicile

Postal Address:

.....

Plot No.

Street/Road

Telephone Fax Telex

District

Region

3. Date of incorporation (attach copy of certificate of incorporation)

4. Details of Directors and Shareholders:

Full Name	Nationality	Contact Address
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5. Applicant's Bankers:

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PROFILE OF PROPOSED INVESTMENT

6. Proposed location of export enterprise:

Plot No. Town

District Region

7. List of Products/Services to be exported:

Description of Products/Services	HS Code
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8. Estimated production capacity and sales:

Product/ Services		Year 1	Year 2	Year 3	Year 4	Year 5					
Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value	Qty.	Value

9. Indicate prospects of export markets for the above stated products (attached documentary evidence where available).

.....

10. Inputs sources and quantities:

Description of inputs, raw materials and components	HS Code	Source Country	Year 1				
			Year 2	Year 3	Year 4	Year 5	

Electricity

Water

Fuel

11. Labour requirements and costs:

Category Level	Year 1	Year 2	Year 3	Year 4	Year 5				
Nos.	Cost	Nos.	Cost	Nos.	Cost	Nos.	Cost	Nos.	Cost
Managerial	Local	Foreign							

Skilled Local Foreign

Unskilled Local Foreign

12. Proposed training of Malawians:

Category	Number of staff to be trained	Duration of training (months per person)
Technical supervision

Skilled production

Semi-skilled production

Managerial

13. Fixed Capital Investment:

Item	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Land preparation						
Building						
Machinery						
Other equipment						
Tools, fixtures						
Furniture						
Other (specify)						

14. Finance Requirements:

Particulars of the capital structure:

(a) Issued and paid up capital—

Amount

Resident

Non-resident

(b) Loans—

Amount Country of Lender

(i)

(ii)

(iii)

(iv)

(v)

15. List of Technological and Management Agreements:

Please give a brief statement on each—

(i)

(ii)

(iii)

(iv)

(v)

(vi)

16. Expected date of commencement:

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.....

17. Additional Information:

.....

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.....

Declaration

I, declare that the information given above is correct to the best of my knowledge and belief, I further declare that I have not previously submitted any application in respect of the same project.

Date

(Signature of Applicant)

.....

(Title of Signatory)

FORM EPZ II

EXPORT PROCESSING ZONES ACT

Cap. 39:06

CERTIFICATE

(UNDER SECTION 10)

Certificate No. issued at under section 10 of the Export Processing Zones Act.

This is to certify that has been granted authority to operate an export enterprise for a period of years at the location specified hereunder—

Name of Company

Business Enterprise

Products

Location Plot No. District

Production Date

This certificate is granted subject to the following conditions—

(a) that the Company shall engage solely in the export activity listed above;

(b) that the scheduled materials and equipment listed on the reverse side of the certificate shall not be changed save with express written approval of the Minister.

Dated this day of, 20

(Official Stamp)

Minister of Commerce and Industry

Scheduled materials:

Scheduled equipment:

[Chap3907]CHAPTER 39:07

MALAWI REVENUE AUTHORITY

ARRANGEMENT OF SECTIONS

SECTION

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PRELIMINARY

1. Short title
2. Interpretation

PART II

ESTABLISHMENT OF THE MALAWI REVENUE AUTHORITY

3. Establishment of the Authority
4. Functions of the Authority
5. Powers of the Authority
6. Taxpayer identification and exchange of information
7. Duty of the Minister to determine fiscal policies, etc.

PART III

ESTABLISHMENT OF THE BOARD OF THE AUTHORITY

8. Establishment of the Board
9. Vacation of members from office
10. Meetings of the Board
11. Disclosure of interest
12. Invited persons
13. Committees of the Board
14. Remuneration and expenses of members
15. Powers of the Board
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17. Appointment of Commissioner-General and Deputy Commissioner-General
18. Appointment of revenue commissioners, etc.

PART V

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19. Revenue to be paid into the Consolidated Fund

20. Funds of the Authority
21. Books and other records of accounts and audit
22. Annual reports
23. Financial year

PART VI

MISCELLANEOUS PROVISIONS

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25. Exemption from personal liability
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27. Vesting of assets, liabilities, etc.
28. Construction and modification of other written laws

14 of 1998

26 of 2004

G.N. 4/2000

20/2001

24/2002

21/2007

An Act to provide for the establishment of the Malawi Revenue Authority as a main body responsible for the assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue; and to provide for matters incidental thereto or connected therewith

[15TH FEBRUARY 2000]

PART I

PRELIMINARY

[Ch3907s1]1. Short title

This Act may be cited as the Malawi Revenue Authority Act.

[Ch3907s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Authority” means the Malawi Revenue Authority established under section 3;

“Board” means the Board of the Authority established under section 9;

“Chairman” means the Chairman of the Board designated as such under section 9 (2);

“Commissioner-General” means the Commissioner-General of the Authority appointed under section 17 (1);

“Deputy Commissioner-General” means the Deputy Commissioner-General of the Authority appointed under section 17 (11);

“member” means a member of the Board;

“revenue” means the taxes, duties, fees, fines or other monies imposed by or collected under the written laws, or the specified provisions of the written laws, set out in the Schedule.

PART II

ESTABLISHMENT OF THE MALAWI REVENUE AUTHORITY

[Ch3907s3]3. Establishment of the Authority

There is hereby established a body to be known as the Malawi Revenue Authority (in this Act otherwise referred to as the “Authority”) which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable and immovable, for purposes of, or in the course of carrying out its functions; and
- (d) doing or performing all such acts and things as bodies corporate may by law do or perform.

[Ch3907s4]4. Functions of the Authority

(1) The Authority shall be an agency of the Government responsible for the assessment, collection and receipt of specified revenue, and shall be accountable to and operate under the general supervision of the Minister.

(2) Without prejudice to the generality of the foregoing, the functions of the Authority shall be—

- (a) to administer and enforce the laws or the specified provisions of the laws set out in the Schedule;
- (b) to promote voluntary tax compliance to the highest degree possible;

(c) to take such measures as may be required to improve the standards of service given to taxpayers with a view to improving efficiency and effectiveness and maximizing revenue collection;

(d) to take such measures as may be required to counteract tax fraud and other forms of fiscal evasion;

(e) to advise the Minister on matters of revenue policy and matters relating to the administration and collection of revenue under the laws listed in the Schedule; and

(f) to perform such other functions in relation to revenue as the Minister may direct.

(3) The Minister may, by notice published in the Gazette, amend the Schedule.

[Ch3907s5]5. Powers of the Authority

The Authority shall, in the discharge of its functions, have power—

(a) to study revenue laws and identify amendments which may be made to any law for the purpose of improving the administration of, and compliance with, revenue laws;

(b) to study the administrative costs, compliance costs and the operational impact of intended legislative changes, and to advise the Minister accordingly;

(c) to collect and process statistics needed to provide forecasts of revenue receipts and the effect on yield of any proposals for changes in revenue laws, and to advise the Minister accordingly; and

(d) to take such other measures as the Authority deems necessary or desirable for the achievement of the purposes or provisions of this Act.

[Ch3907s6]6. Taxpayer identification and exchange of information

(1) The Authority shall, with the approval of the Minister, by notice in the Gazette, provide for the establishment, maintenance, and application of systems for the convenient and effectual identification of taxpayers for the purpose of co-ordinated administration of the revenue laws of Malawi.

(2) Without prejudice to subsection (1), it shall be lawful for officers in the revenue departments of the Authority to exchange or furnish each other with information or documents concerning any taxpayer and for the purposes of the discharge of functions under this Act.

[Ch3907s7]7. Duty of the Minister to determine fiscal policies, etc.

Notwithstanding the provisions of this Part, it shall be the duty of the Minister—

(a) subject to any written law, to determine and ensure the effective application of the fiscal policies of Malawi; and

(b) to ensure the effective co-ordination of the policies for the collection and preservation of revenue accounts.

PART III

ESTABLISHMENT OF THE BOARD OF THE AUTHORITY

[Ch3907s8]8. Establishment of the Board

(1) There is hereby established a Board of the Authority (in this Act otherwise referred to as the "Board") which shall be the governing body of the Authority and which shall consist of—

- (a) the Secretary to the Treasury;
- (b) the Secretary for Commerce and Industry;
- (c) the Accountant General;
- (d) the Governor of the Reserve Bank, who shall be a member of the Board notwithstanding section 12 (4) of the Reserve Bank of Malawi Act; Cap. 44:02
- (e) one member nominated by the Society of Accountants of Malawi, and appointed by the Minister;
- (f) one member nominated by the Malawi Chamber of Commerce and Industry, and appointed by the Minister; and
- (g) two other members appointed by the Minister from private sector, and who shall be appointed on the basis of their professional knowledge and experience in finance, commerce, legal or economic affairs.

(2) Every member appointed under subsection (1) (e) (f) and (g) shall be a person of high integrity and shall have no record of tax evasion.

(3) The Minister shall designate the Chairman of the Board from amongst the members of the Board and the members of the Board shall elect a Vice Chairman from amongst their number.

(4) An ex officio member of the Board or any person employed in the public service shall not be eligible to be designated Chairman or elected Vice Chairman of the Board, but shall have the right to vote on any matter at the meetings of the Board.

(5) Every member shall personally attend meetings of the Board, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

(6) A member shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

(7) A member, other than an ex officio member, shall hold office for a period of three years from the date of his appointment and shall be eligible for reappointment at the expiry of that period.

(8) The names of all members as first constituted, and every change in the membership thereof, shall be published in the Gazette.

[Ch3907s9]9. Vacation of members from office

(1) The office of a member, other than an ex officio member, shall be vacated—

- (a) upon the expiry of the period of his appointment;
- (b) upon his death;
- (c) if he is adjudged a bankrupt;
- (d) if he is sentenced for an offence—
 - (i) under section 11 (2);
 - (ii) against any written law to a term of imprisonment of, or exceeding six

months;

(e) if he is convicted of an offence involving fraud or dishonesty;

(f) if he is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;

(g) upon notice in writing of his intention to resign his office;

(h) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(i) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member; and

(j) if, on the recommendation of the majority of members, the Minister so directs.

(2) Whenever there is a vacancy in the office of a member, the Minister shall, by notice published in the Gazette, appoint—

(a) in the case of a member referred to in section 8 (1) (e) and (f), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and

(b) in the case of a member referred to in section 8 (1) (g) appoint another person to fill the vacancy.

(3) Subject to section 10 (4), the Board may act notwithstanding any vacancy in the membership of the Board.

[Ch3907s10]10. Meetings of the Board

(1) The Board shall meet at such place or places, and at such time or times, as the Chairman may determine, and shall meet at least once in every three months.

(2) An ordinary meeting of the Board shall be convened by at least fourteen days written notice to the members.

(3) The Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The Chairman, or in his absence, the Vice Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be four members.

(5) In the absence of both the Chairman and Vice Chairman, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(6) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(7) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding meeting.

(8) The decision of the Board at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

[Ch3907s11]11. Disclosure of interest

(1) If a member acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board at which the matter is the subject of consideration by the Board, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the matter.

(2) Any member who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for twelve months and a fine of K10,000.

[Ch3907s12]12. Invited persons

(1) The Board may, in its discretion, at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Board.

[Ch3907s13]13. Committee of the Board

(1) For the better carrying into effect of the purposes for which the Board is established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine.

(2) The Board shall appoint the Chairman of each committee from amongst the members.

(3) The provisions of section 10 relating to the meetings of the Board shall apply mutatis mutandis to the meetings of any committee.

[Ch3907s14]14. Remuneration and expenses of members

(1) Members shall be paid from the funds of the Authority such allowances as the Board may, subject to the approval of the Minister, determine.

(2) The Board may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connexion with the business of the Board or the committee.

[Ch3907s15]15. Powers of the Board

(1) In the discharge of its functions under this Act, the Board may—

(a) direct the Commissioner-General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;

(b) give instructions and orders to the Commissioner-General in connexion with the management, performance and operational policies of the revenue departments of the Authority;

(c) formulate and devise a system for securing, through internal audit systems, and verifying the correct processing of various tax cases, and in accordance with the law the relevant directions of the Minister; and

(d) on the recommendation of the Commissioner-General, approve such organizational structures as the Commissioner-General may consider necessary for the discharge of the functions of the Authority.

(2) Notwithstanding any provision of this Act to the contrary, the Board shall have no power to intervene in the determination of any revenue assessment or revenue liability of any taxpayer.

[Ch3907s16]16. Exemptions, etc.

(1) The Board shall recommend to the Minister—

(a) criteria or factors by reference to which any exemption, mitigation, deferment or remission of any revenue may be granted; and

(b) procedures to be followed in granting any exemption, mitigation, deferment or remission of revenue,

and the Minister shall by Order published in the Gazette specify the criteria or factors and the procedures so recommended.

(2) The Minister may, by Order published in the Gazette, exempt, mitigate, defer or remit any revenue in accordance with the criteria published pursuant to subsection (1).

(3) The Commissioner-General shall submit to the Board quarterly reports on the total amount of revenue remitted or foregone in respect of each of the criteria specified under subsection (1).

(4) The Board shall within three months of the end of the financial year of the Authority submit to the Minister a report setting out the total amount remitted or foregone in pursuant to subsection (2) and the report shall be published in the Gazette.

PART IV

ADMINISTRATION OF THE AUTHORITY

[Ch3907s17]17. Appointment of Commissioner-General and Deputy Commissioner-General

(1) There shall be a Commissioner-General of the Authority (in this Act otherwise referred to as "Commissioner-General") who shall be appointed by the Board on such terms and conditions as the Board shall determine.

(2) The appointment and terms and conditions of service of the Commission-General shall be subject to approval by the Minister.

(3) The Commissioner-General shall be the chief executive officer of the Authority and, subject to the general supervision and control of the Board, shall be responsible for—

- (a) the day to day operations of the Authority;
- (b) the management of the funds, property and business of the Authority;
- (c) the administration, organization and control of the other officers and staff of the Authority; and
- (d) the effective administration and implementation of the provisions of this Act.

(4) The Commissioner-General shall, subject to subsection (5), hold office for a period of four years and shall be eligible for reappointment for one additional term of four years.

(5) The Board may, subject to the approval of the Minister, terminate the appointment of the Commissioner-General for—

- (a) misconduct or misbehaviour in terms of the code of conduct of the Authority; or
- (b) inability, incapacity or incompetence to perform the duties of his office.

(6) The Commissioner-General shall devote his full time to the duties of his office and shall not, without the prior approval of the Board, hold any office of trust or profit, other than that of Commissioner-General, or engage in any occupation for reward outside the office of Commissioner-General.

(7) The Commissioner-General may, subject to this Act and to any general or specific directions of the Board, delegate any of his functions in relation to a revenue law to a revenue commissioner or any other commissioner or officer.

(8) The Commissioner-General or, in his absence such officer of the Authority as the Commissioner-General may designate in writing, shall attend meetings of the Board and any committee of the Board but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Commissioner-General or such other officer to withdraw from the meeting.

(9) The Commissioner-General shall, on the instructions of the Chairman, convene meetings of the Board; and an officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to the Board.

(10) An officer of the Authority duly designated in writing by the Commissioner-General shall be secretary to any committee of the Board, and shall, on the instructions of the chairman of the committee convene meetings of the committee.

(11) There shall be a Deputy Commissioner-General of the Authority who shall—

(a) be appointed by the Board on such terms and conditions as the Board shall determine; and

(b) perform such functions and duties as may be assigned to him by the Commissioner-General from time to time.

(12) The appointment and terms and conditions of service of the Deputy Commissioner-General shall be subject to approval by the Minister.

(13) The Deputy Commissioner-General shall—

(a) hold office for a period of four years, and shall be eligible for reappointment for one additional term of four years; and

(b) be eligible to be appointed Commissioner-General.

(14) Subsections (5) and (6) shall apply mutatis mutandis to the Deputy Commissioner-General.

[Ch3907s18]18. Appointment of revenue commissioners, etc.

(1) The Board may, on the recommendation of the Commissioner-General, and on such terms and conditions as the Board may determine, appoint on the basis of merit, such number and grades of revenue commissioners or other commissioners in relation to any revenue law as the Board may think necessary or desirable for the efficient and effective discharge of the business and purposes of the Authority.

(2) The Commissioner-General may, on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority subordinate to the Commissioner-General as may be required for the performance of the functions of the Authority.

PART V

FINANCIAL PROVISIONS

[Ch3907s19]19. Revenue to be paid into the Consolidated Fund

All revenue collected by, or due and payable to the Authority under this Act shall be paid into the Consolidated Fund.

[Ch3907s20]20. Funds of the Authority

(1) The funds of the Authority shall consist of— G.N./ 20/2001, 21/2007

(a) 3.0 per cent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act;

(b) 5.0 per cent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected during that period:

Provided that the amount payable under this paragraph and paragraph (a) shall not exceed 3.5 per cent of the actual amount collected in respect of any three-month period;

(c) such moneys as may be received by the Authority under subsection (5); and

(d) such moneys as may otherwise vest in or accrue to the Authority.

(2) The funds of the Authority—

(a) specified in subsection (1) (a) shall be payable to the Authority in monthly installments on or before the beginning of each month; and

(b) specified in subsection (1) (b) shall be payable to the Authority within one month after the end of the three-month period.

(3) The Minister may, on the recommendation of the Board, by order published in the Gazette, revise the percentages of revenue referred to in subsections (1) (a) and (b).

(4) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year.

(5) The Authority may—

(a) accept money by way of grants or donations from any source in or outside Malawi;

(b) subject to the approval of the Minister, raise by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.

(6) The Authority may, subject to the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

[Ch3907s21]21. Books and other records of accounts and audit

(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall—

(a) be audited annually by independent auditors appointed by the Board and approved by the Minister; and

(b) be examined by the Auditor General before being presented to the Minister in accordance with section 22.

[Ch3907s22]22. Annual reports

(1) The Authority shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Authority and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure;

(c) the total amount of revenue remitted or foregone pursuant to section 16 (2); and

(d) such other information as the Authority may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Authority may publish the report for sale to the public.

[Ch3907s23]23. Financial Year

The financial year of the Authority shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or on such other dates the Minister may specify by Order published in the Gazette:

Provided that the first financial year of the Authority may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months nor more than eighteen months.

PART VI

MISCELLANEOUS PROVISIONS

[Ch3907s24]24. Confidentiality

(1) Every member of the Board, revenue commissioner or any other person employed by the Authority in the carrying out of the provisions of this Act, shall regard and deal with as secret to any unauthorized person all documents and information relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties.

(2) The provisions of the Taxation Act relating to the preservation of secrecy by officers and other persons discharging functions under that Act shall apply mutatis mutandis to persons discharging functions under this Act. Cap. 41:01

[Ch3907s25]25. Exemption from personal liability

No member of the Board, any committee of the Board, or an employee of the Authority shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

[Ch3907s26]26. Regulations

26 of 2004(1) The Minister may, on the recommendation of the Board, make regulations for the carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) prescribing the code of conduct and discipline of members of staff of the Authority;
- (d) respecting the administration and management of the funds of the Authority;
- (e) respecting the performance targets of the Authority; and
- (f) respecting the offer or order of such rewards as he may think fit to be paid to any officer or other person for services rendered in connexion with the detection of any offence against the revenue laws or in connexion with any seizure under the customs laws.

[Ch3907s27]27. Vesting of assets, liabilities, etc.

(1) All property, except any such property as the Minister may determine, by notice published in the Gazette, which immediately before the commencement of this Act was vested in the Government for the use of the Department of Customs and Excise and the Department of Income Tax for purposes of the written laws set out in the Schedule, shall, on the commencement of this Act, and without further assurance, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Department of Customs and Excise and the Department of Income Tax before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written laws set out in the Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the commencement of this Act.

(4) Unless the Board otherwise determines, all persons who before the commencement of this Act are employed by the Government for the purposes of the written laws specified in the Schedule shall, on the commencement of this Act, be deemed to be on secondment to the Authority until they are employed in the service of the Authority in accordance with this Act or their secondment with the Authority otherwise ceases in accordance with the terms of the secondment.

[Ch3907s28]28. Construction and modification of other written laws

On the coming into force of this Act— G.N. 24/2002

(a) all references to the Controller of Customs and Excise or the Commissioner of Taxes in any written law specified in the Schedule or any other law shall be construed as references to the Commissioner-General;

(b) any reference to Customs and Excise Department or Income Tax Department in the written laws specified in the Schedule or in any other law be deemed to be reference to the Authority;

(c) except as provided in paragraph (a) any reference to an officer of the Customs and Excise Department or Income Tax Department howsoever designated in the written laws specified in the Schedule or in any other law shall be deemed to be reference to such officer of the Authority.

SCHEDULE ss. 2 and 4

WRITTEN LAWS RELATING TO REVENUE G.N. 24/2002

1. Customs and Excise Act
2. Taxation Act
3. Value Added Tax Act

[Chap4001]CHAPTER 40:01

INVESTMENT DISPUTES (ENFORCEMENT OF AWARDS)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Binding effect of Award
4. Application for registration
5. Effect of registration
6. Rules
7. Act binding on the Government

46 of 1966

An Act to make provision for the enforcement in Malawi of Awards of the Tribunal of the International Centre for Settlement of Investment Disputes and for purposes connected therewith and incidental thereto

[10TH JANUARY 1967]

[Ch4001s1]1. Short title

This Act may be cited as the Investment Disputes (Enforcement of Awards) Act.

[Ch4001s2]2. Interpretation

In this Act unless the context otherwise requires—

“Award” means an Award made in accordance with the Convention;

“Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States dated 18th March, 1965;

“Investment Dispute” means a legal dispute arising directly out of an investment which is within the scope of the Convention;

“party” means a person who has had an Investment Dispute which has resulted in an Award;

“Secretary General” means the Secretary General of the International Centre for Settlement of Investment Disputes established under the Convention.

[Ch4001s3]3. Binding effect of Award

Every Award shall be binding on the parties.

[Ch4001s4]4. Application for registration

(1) Where an Award has been obtained, a party may apply to the High Court for registration of the Award at any time within six years after the date of the Award, or within such longer period as the High Court may in its discretion allow.

(2) An application under subsection (1) shall be accompanied by—

(a) a copy of the Award certified by the Secretary General;

(b) a sworn statement made by the applicant or his duly authorized officer that no application is pending under Article 52 of the Convention and that enforcement of the Award has not been stayed;

(c) if the party against whom it is sought to enforce the Award is not the Government, a statement of the property which it is proposed should be the subject of proceedings for enforcement.

(3) In any case where any document required to be furnished under subsection (2) is in a foreign language, it shall be the duty of the applicant to produce a translation certified as correct in such manner as may be approved by the Court.

(4) Where the Court is satisfied in relation to an Award of the truth of the sworn statement made in accordance with subsection (2) and—

(a) that the Government is a party; or

(b) that there is property in Malawi which can properly be the subject of execution proceedings,

the Court shall direct registration of the Award.

[Ch4001s5]5. Effect of registration

Where an Award is registered under section 4, then—

(a) the Award shall, as from the date of registration, have the same effect as a judgment of the High Court so far as relates to the enforcement in Malawi of pecuniary obligations imposed by the Award;

(b) the reasonable costs of and incidental to the registration of the Award (including the cost of obtaining a certified copy thereof and of the application for registration) shall be recoverable in the like manner as if they were sums payable under the Award.

[Ch4001s6]6. Rules

The Chief Justice may make rules of court prescribing the procedure to be followed and the fees to be paid in proceedings under this Act.

[Ch4001s7]7. Act binding on the Government

This Act shall bind the Government.

SUBSIDIARY LEGISLATION

INVESTMENT DISPUTES (ENFORCEMENT OF AWARDS) RULES

under s. 6

G.N. 19/1969

1 Citation

These Rules may be cited as the Investment Disputes (Enforcement of Awards) Rules.

2 Application

An application under section 4 of the Act for leave to have an Award registered shall be made ex parte or by summons to a judge of the High Court. If an application is made ex parte, the judge to whom it is made may direct a summons to be issued.

3 Documents to accompany application

An application under rule 2 shall be accompanied by—

(a) the copy of the Award in question duly certified as required by section 4 (2) (a) of the Act;

(b) an affidavit exhibiting the statement required under section 4 (2) (b) of the Act; and the statement, if any, required by section 4 (2) (c) of the Act.

4 Title of affidavit and summons

The affidavit and summons (if any) shall be entitled—

"In the Matter of the Investment Disputes (Enforcement of Awards) Act Cap. 40:01

and

In the Matter of an Award made in accordance with the Convention on the Settlement of Disputes between States and Nationals of other States dated 18th March, 1965, between

and

.”.

5 Service of summons

The summons (if any) for leave to register an Award shall be an originating summons and (unless otherwise ordered by a judge) be served in the same manner as a summons is required to be served. The party against whom the Award in question was made shall not be required to enter any appearance thereto.

6 The order

An order giving leave to register an Award shall be drawn up by or on behalf of the party in whose favour it was made, and shall be served upon the party against whom it was made. Where the order is made on an ex parte application, no service of the order on the party against whom the Award was made shall be required.

7 Register

A register of Awards ordered to be registered under the Act shall be kept in the Registry of the High Court. An Award shall be registered there in accordance with the order giving leave to register it.

8 Form of the register

Entries in the register shall be arranged in alphabetical order in the name of the party against whom each Award was made and there shall be shown in the register the date of the order for registration.

9 Notice

Notice in writing of the registration of the Award must be served on the party against whom the Award was made within a reasonable time after such registration. Such notice shall (in the absence of an order by the judge as to the mode of service thereof) be served on the party against whom an Award was made by personal service (with power to order substituted service or service out of the jurisdiction or both) as in the case of a summons, but the judge may at any stage of the proceedings authorize or direct some other mode of service and if he does so the service shall be effected in accordance with such authority or direction.

10 Form of notice

The notice of registration shall contain full particulars of the Award registered and of the order for such registration and shall state the name and address of the party in whose favour the Award was given or of his legal practitioner or agent.

11 Fees

The fees set out in the Schedule shall be payable in respect of the registration of Awards under these Rules.

SCHEDULE r. 11

	£	s	d
On filing an application for leave to have an Award registered whether made ex parte or by summons	2	0	0
On filing an affidavit in support	10	0	0

On the order for registration 1 0
0

On issuing execution The same fee as on a judgment of the High Court.

Other fees the same as those payable in the High Court.

[Chap4002]CHAPTER 40:02

BRETTON WOODS AGREEMENT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Acceptance of Agreement
4. Financial and other provisions
5. Reserve Bank of Malawi authorized to as depository
6. Regulations

Schedule

7 of 1965

40 of 1968

31 of 1974

8 of 1977

12 of 1991

10 of 2002

3 of 2010

An Act to provide for acceptance by Malawi of the Agreements for the International Monetary Fund and the International Bank for Reconstruction and Development and to provide for matters related thereto

[19TH FEBRUARY 1965]

[Ch4002s1]1. Short title

This Act may be cited as the Bretton Woods Agreement Act.

[Ch4002s2]2. Interpretation

40 of 1968(1) In this Act unless the context otherwise requires—

“Bank” means the International Bank for Reconstruction and Development;

“Bank Agreement” means the agreement for the establishment and operation of the Bank;

“Fund” means the International Monetary Fund;

“ Fund Agreement” means the agreement for the establishment and operation of the Fund.

(2) For the purposes of sections 4, 5, 6 and the Schedule—

(a) “Fund Agreement” shall mean the Fund Agreement as read and construed with the amendments approved by the Board of Governors of the Fund in Resolution 23–5 of 31st May, 1968, and with the further amendments approved by the said Board of Governors in Resolution 29–10 of 30th April, 1976;

(b) The Special Drawing Rights Department established to implement the special drawing rights facility in accordance with the Fund Agreement shall be and be deemed to be part of the Fund.

[Ch4002s3]3. Acceptance of Agreement

8 of 1977, 10 of 2003The Minister, or such person as may be authorized by him in that behalf in writing, shall be empowered on behalf of the Government of Malawi—

(a) to sign the Articles of the Fund Agreement and the Articles of the Bank Agreement, respectively;

(b) to deposit with the Government of the United States of America instruments of acceptance of the Fund Agreement and of the Bank Agreement stating that the Government of Malawi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund and under the Resolution of the Board of Governors of the Bank relating to membership of Malawi in the Bank as the terms upon which the Government of Malawi shall be admitted to membership of the Fund and of the Bank;

(c) to accept the amendments to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 23—5 of 31st May, 1968, and to execute and deposit with the Fund an instrument in which the Government of Malawi undertakes all of the obligations of a participant in the Special Drawing Account in accordance with its laws, and confirm that it has taken

all steps necessary to enable Malawi to carry out all such obligations and to give effect to such amendments;

8 of 1977(d) to accept the amendments to the Fund Agreement approved by the Governors of the Fund in Resolution 29—10 of 30th April, 1976, and to execute and deposit with the Fund an instrument in which the Government of Malawi undertakes all of the obligations of a participant in the Special Drawing Rights Department in accordance with its laws, and confirm that it has taken all steps necessary to enable Malawi to carry out all such obligations and to give effect to such amendments:

12 of 1991(e) to accept the Third Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 45—3 of 28th June, 1990, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Third Amendment;

10 of 2002(f) to accept the Fourth Amendment to the Fund Agreement approved by the Board of Directors of the Fund in Resolution No. 52—4 on 23rd September, 1997, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Fourth Amendment;

3 of 2010(g) to accept the Voice and Participation Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (2) of 28th March, 2008, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Voice and Participation Amendment; and

3 of 2010(h) to accept the Investment Authority Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (3) of 5th May, 2008, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Investment Authority Amendment.

[Ch4002s4]4. Financial and other provisions

31 of 1974, 8 of 1977(1) Subject to section 5, there shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—

(a) all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund; and

(b) all payments required to be made from time to time to the Bank under the Bank Agreement and the Resolution of the Board of Governors of the Bank relating to membership of Malawi in the Bank.

(2) The Minister may, on behalf of the Government, create and issue to the Fund or the Bank such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 4 of Article III of the Fund Agreement and section 12 of Article V of the Bank Agreement, and, subject to section 5, any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.

(3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connexion with their issue shall be charged on and paid out of the Consolidated Fund:

40 of 1968, 8 of 1977 Provided that in order to assure all payments resulting from the participation of Malawi in the Special Drawing Rights Department of the Fund the Minister may borrow from the public or from the Reserve Bank of Malawi an amount up to twice the net cumulative allocation of special drawing rights to Malawi, and the powers of the Minister to borrow and of the Reserve Bank of Malawi to lend for the purposes of this proviso shall not be subject to any general limitations which have been or may be imposed, whether by written law or by agreement, upon the powers of the Minister or the Government to borrow and of the Reserve Bank of Malawi to lend.

(4) Subject to section 5, any moneys received by the Government from the Fund or the Bank or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which that Fund is available.

(5) The provisions of the Fund Agreement and the Bank Agreement set out in the Schedule to this Act shall have the force of law in Malawi:

Provided that nothing in section 9 of Article IX of the Fund Agreement or in section 9 of Article VII of the Bank Agreement shall be construed as—

- (a) entitling the Fund or Bank to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;
- (b) conferring on the Fund or the Bank any exemption from duties or taxes which form part of the price of goods sold; or
- (c) conferring on the Fund or the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered.

[Ch4002s5]5. Reserve Bank of Malawi authorized to act as depository

40 of 1968(1) The Reserve Bank of Malawi shall become a depository of the Fund in application of section 2 of Article XIII of the Fund Agreement, and a depository of the Bank in application of section 11 of Article V of the Bank Agreement.

(2) Special drawing rights and any proceeds from their use shall be kept in a special account in the Reserve Bank of Malawi, and that bank will be authorized, on behalf of Malawi, to acquire or dispose of special drawing rights and of any proceeds from their use and to make payments in or in respect of any acquisition of special drawing rights.

(3) Any provisions of section 4 to the contrary notwithstanding, the Reserve Bank of Malawi shall, on behalf of Malawi—

(a) make all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund;

(b) make all payments due and payable to the Fund in respect of any non-interest-bearing and non-negotiable notes or other obligations created and issued, or hereafter created or issued, by the Minister under section 4 (2); and

(c) receive and account for any moneys receivable by Malawi from the Fund;

and to such extent only as such payments are so made, or such moneys are so received, by the Reserve Bank of Malawi, they shall not be charged on and paid from, or received into, the Consolidated Fund, as the case may be.

[Ch4002s6]6. Regulations

The Minister shall make regulations to carry out the obligations of Malawi under the Fund Agreement, the Bank Agreement and the resolutions on Malawi's membership in the Fund and the Bank.

SCHEDULE s. 4 (5)

PROVISIONS OF AGREEMENTS WHICH ARE TO HAVE THE FORCE OF LAW

THE FUND AGREEMENT

ARTICLE VIII—GENERAL OBLIGATIONS OF MEMBERS

SECTION 2. Avoidance of restrictions on current payments—

Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

ARTICLE IX—STATUS, IMMUNITIES AND PRIVILEGES

SECTION 2. Status of the Fund—

The Fund shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

SECTION 3. Immunity from judicial process—

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

SECTION 4. Immunity from other action—

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. Immunity of archives—

The archives of the Fund shall be inviolable.

SECTION 6. Freedom of assets from restrictions—

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. Privilege for communications—

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

SECTION 8. Immunities and privileges of officers and employees—

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, section 3 (j), advisors of the foregoing persons, officers and employees of the Fund—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;

(ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. Immunities from taxation—

(a) The Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers or employees of the Fund who are not local citizens, local subjects or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because of its origin; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

8 of 1977ARTICLE XXI—ADMINISTRATION OF THE GENERAL DEPARTMENT AND THE SPECIAL DRAWING RIGHTS DEPARTMENT

In addition to the privileges and immunities that are accorded under Article IX of this Agreement no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.

THE BANK AGREEMENT

ARTICLE VII—STATUS, IMMUNITIES AND PRIVILEGES

SECTION 2. Status of the Bank—

The Bank shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

SECTION 3. Position of the Bank with regard to judicial process—

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No action shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

SECTION 4. Immunity of assets from seizure—

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

SECTION 5. Immunity of archives—

The archives of the Bank shall be inviolable.

SECTION 6. Freedom of assets from restrictions—

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

SECTION 7. Privilege for communications—

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

SECTION 8. Immunities and privileges of officers and employees—

All Governors, Executive Directors, Alternates, officers and employees of the Bank—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

SECTION 9. Immunities from taxation—

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Executive Directors, Alternates, officials or employees of the Bank who are not local citizens, local subjects or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

[Chap4003]CHAPTER 40:03

INTERNATIONAL FINANCE CORPORATION AND THE INTERNATIONAL DEVELOPMENT ASSOCIATION AGREEMENTS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Acceptance of agreements
4. Financial and other provisions
5. Reserve Bank of Malawi authorized to act as depository
6. Regulations

9 of 1965

An Act to provide for acceptance by Malawi of the international agreements for the establishment and operation of the International Finance Corporation and the International Development Association and to provide for matters related thereto or connected therewith

[26TH FEBRUARY 1965]

WHEREAS on the 11th day of April, 1955, and on the 26th day of January, 1960, respectively, the Executive Directors of the International Bank for Reconstruction and Development approved Articles of the following respective Agreements, that is to say—

(a) an agreement (hereafter in this Act referred to as “the Finance Corporation Agreement”), which term shall be taken to include all subsequent amendments thereof, for the establishment and operation of an international body to be known as the International Finance Corporation (hereafter in this Act referred to as “the Corporation”); and

(b) an agreement (hereafter in this Act referred to as “the Development Association Agreement”), which term shall be taken to include all subsequent amendments thereof, for the

establishment and operation of an international body to be called the International Development Association (hereafter in this Act referred to as "the Association"):

AND WHEREAS copies of the text of the articles of the Finance Corporation Agreement and the Development Association Agreement have been laid before the National Assembly:

AND WHEREAS it is expedient that Malawi becomes a member of the Corporation and of the Association and that provision be made for acceptance by Malawi of the Finance Corporation Agreement and the Development Association Agreement and for carrying out the obligations of Malawi thereunder:

NOW, THEREFORE, be it enacted by the Parliament of Malawi—

[Ch4003s1]1. Short title

This Act may be cited as the International Finance Corporation and the International Development Association Agreements Act.

[Ch4003s2]2. Interpretation

In this Act, unless the context otherwise requires, "Minister" means the Minister for the time being responsible for the administration of the Act.

[Ch4003s3]3. Acceptance of Agreements

The Minister, or such person as may be authorized by him in that behalf in writing shall be empowered on behalf of the Government of Malawi—

(a) to sign the Articles of the Finance Corporation Agreement and the Articles of the Development Association Agreement respectively; and

(b) to deposit with the International Bank for Reconstruction and Development instruments of acceptance of the Finance Corporation Agreement and of the Development Association Agreement stating that the Government of Malawi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Corporation relating to membership of Malawi in the Corporation and under the Resolution of the Board of Governors of the Association relating to membership of Malawi in the Association as the terms upon which the Government of Malawi shall be admitted to membership of the Corporation and of the Association.

[Ch4003s4]4. Financial and other provisions

(1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—

(a) all payments required to be made from time to time to the Corporation under the Finance Corporation Agreement and the Resolution of the Board of Governors of the Corporation relating to membership of Malawi in the Corporation; and

(b) all payments required to be made from time to time to the Association under the Development Association Agreement and the Resolution of the Board of Governors of the Association relating to membership of Malawi in the Association.

(2) The Minister may, on behalf of the Government, create and issue to the Association such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 2 (e) of Article II of the Development Association Agreement, and any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.

(3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.

(4) Any moneys received by the Government from the Corporation or the Association or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which moneys from that Fund are available.

(5) The provisions of the Finance Corporation Agreement and the Development Association Agreement set out in the Schedule to this Act shall have the force of law in Malawi:

Provided that nothing in section 9 of Article VI of the Finance Corporation Agreement or in section 9 of Article VIII of the Development Association Agreement shall be construed as—

(a) entitling the Corporation or the Association to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;

(b) conferring on the Corporation or the Association any exemption from duties or taxes which form part of the price of goods sold; or

(c) conferring on the Corporation or the Association exemption from taxes or duties which are in fact no more than charges for services rendered.

[Ch4003s5]5. Reserve Bank of Malawi authorized to act as depository

The Reserve Bank of Malawi shall become a depository of the Corporation in application of section 9 of Article IV of the Finance Corporation Agreement, and a depository of the Association in application of section 9 of Article VI of the Development Association Agreement.

[Ch4003s6]6. Regulations

The Minister may make such regulations as he may deem necessary or expedient to carry out the obligations of Malawi under the Finance Corporation Agreement, the Development Association Agreement and the Resolutions in accordance with those Agreements on Malawi's membership in the Corporation and the Association.

SCHEDULE s. 4 (5)

PROVISIONS OF AGREEMENTS WHICH ARE TO HAVE THE FORCE OF LAW

THE FINANCE CORPORATION AGREEMENT

ARTICLE VI—STATUS, IMMUNITIES AND PRIVILEGES

Section 2. Status of the Corporation

The Corporation shall possess full juridical personality, and in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

Section 3. Position of the Corporation with regard to judicial process

Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

Section 4. Immunity of assets from seizure

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Corporation shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees.

All Governors, Directors, Alternates, officers and employees of the Corporation—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

(a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

THE DEVELOPMENT ASSOCIATION AGREEMENT

ARTICLE VIII—STATUS, IMMUNITIES AND PRIVILEGES

Section 2. Status of the Association

The Association shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

Section 3. Position of the Association with regard to judicial process

Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

Section 4. Immunity of assets from seizure

Property and assets of the Association, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Association shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Association shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Association shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, officers and employees of the Association—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

(a) The Association, its assets, property income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Association shall also be immune from liability for the collection or payment of any tax or duty.

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Association to Executive Directors, Alternates, officials or employees of the Association who are not local citizens, local subjects or other local nationals.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Association (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Association; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Association.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Association (including any dividend or interest thereon) by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Association; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Association.

[Chap4004]CHAPTER 40:04

AFRICAN DEVELOPMENT BANK

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Malawi's accession to the Bank Agreement
3. Financial provision
4. Certain provisions of the Bank Agreement to have force of law

First Schedule

Second Schedule

16 of 1968

An Act to provide for Malawi's accession to the African Development Bank Agreement, to provide for the carrying out of Malawi's obligations arising under the agreement and for matters related thereto or connected therewith

[26TH JULY 1968]

WHEREAS at the Conference of African Finance Ministers held at Khartoum in the Sudan in July and August, 1963, there were drawn up Articles of an Agreement (hereinafter referred to as the Bank Agreement which term shall include all subsequent amendments to the Bank Agreement) for the establishment and operation of the African Development Bank (hereinafter referred to as the Bank):

AND WHEREAS on the 25th July, 1966, Malawi acceded to the Bank Agreement and acquired full membership status in the Bank with effect from the 1st August, 1966:

AND WHEREAS Malawi's instrument of accession has been deposited with the Secretary General of the United Nations and Malawi has paid to the Bank the first two instalments of its paid-up subscription totalling \$150,000.

NOW, THEREFORE BE IT ENACTED by the Parliament of Malawi as follows—

[Ch4004s1]1. Short title

This Act may be cited as the African Development Bank Act.

[Ch4004s2]2. Malawi's accession to the Bank Agreement

The accession of Malawi to the Bank Agreement is hereby ratified, and the payment of the first two instalments of Malawi's paid-up subscription as set out in the First Schedule is approved.

[Ch4004s3]3. Financial provision

(1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Bank under the terms of the Bank Agreement and in accordance with the resolution of the Board of Governors of the Bank relating to the membership of Malawi in the Bank.

(2) The payments referred to in subsection (1) include payments of the instalments of Malawi's paid-up subscription to the Bank, as set out in the First Schedule and all administrative costs arising out of such payments to the Bank.

[Ch4004s4]4. Certain provisions of the Bank Agreement to have force of law

The provisions of the Bank Agreement set out in the Second Schedule shall have the force of law in Malawi:

Provided that nothing in the Bank Agreement shall be construed as—

(a) entitling the Bank to import goods free of customs duty without any restrictions on their subsequent sale in Malawi;

(b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold;

(c) conferring on the Bank exemption from taxes or duties which are in fact no more than charges for services rendered.

FIRST SCHEDULE ss. 2 and 3

INSTALMENTS OF MALAWI'S PAID-UP SUBSCRIPTION

U.S. Dollars

First Instalment (already paid) 5 %	50,000
Second Instalment (already paid) 10% August, 1967	100,000
Third Instalment 15% payable August, 1968	150,000
Fourth Instalment 20% payable August, 1969	200,000
Fifth Instalment 25 % payable August, 1970	250,000
Sixth Instalment 25% payable August, 1971	250,000
TOTAL	\$1,000,000

SECOND SCHEDULE s. 4

Provisions of the Bank Agreement which are to have the force of law in Malawi.

ARTICLE 23—GENERAL POWERS

In addition to the powers provided elsewhere in this Agreement, the Bank shall have power to—

(a) borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as it shall determine, provided always that:

(i) before making a sale of its obligations in the market of a member, the Bank shall have obtained its approval;

(ii) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and

(iii) where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in subparagraphs (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions;

(b) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;

(c) guarantee or underwrite securities in which it has invested in order to facilitate their sale;

(d) invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;

(e) undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;

(f) (i) provide all technical advice and assistance which serve its purpose and come within its functions; and

(ii) where expenditure incurred by such a service is not re-imbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent. of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and

(g) exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

ARTICLE 24—SPECIAL BORROWING POWERS

(1) The Bank may request any member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.

(2) Unless the member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.

(3) Unless the member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this Article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the Bank.

(4) Loans to the Bank made pursuant to this Article shall bear interest, payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowings for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board of Governors shall determine from time to time.

(5) The Bank shall repay the loan and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.

(6) All resources obtained by the Bank by virtue of the provisions of this Article shall constitute a Special Fund.

ARTICLE 27—USE OF CURRENCIES

(1) Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of the following—

(a) gold or convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;

(b) currencies of members purchased with the gold or convertible currencies referred to in the preceding subparagraph;

(c) currencies obtained by the Bank by borrowing, pursuant to paragraph (2) of Article 23 of this Agreement, for inclusion in its ordinary capital resources;

(d) gold or currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in subparagraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and

(e) currencies, other than its own, received by a member from the Bank in distribution of the net income of the Bank in accordance with Article 42 of this Agreement.

(2) Members may not maintain or impose any restrictions on the holding or use by the Bank, or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless—

(a) that member declares that it desires the use of such currency to be restricted to payments for goods or services produced in its territory; or

(b) such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.

(3) Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization or anticipatory payments or for repurchasing—in whole or in part—its

obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.

(4) The Bank shall not use gold or currencies which it holds for the purchase of other currencies of its members except—

(a) in order to meet its existing obligations; or

(b) pursuant to a decision of the Board of Directors adopted by a two-thirds majority of the total voting power of the members.

ARTICLE 28—MAINTENANCE OF VALUE OF THE CURRENCY HOLDINGS OF THE BANK

(1) Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph (1) (b) of Article 5 of this Agreement, or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount of its currency required to maintain the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.

(2) Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.

(3) The Bank may waive the provisions of this Article where a uniform proportionate change in the par value of the currencies of all its members takes place.

ARTICLE 51—STATUS OF BANK

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity—

(a) to contract;

(b) to acquire and dispose of immovable and movable property; and

(c) to institute legal proceedings.

ARTICLE 52—POSITION OF BANK WITH REGARD TO JUDICIAL PROCEEDINGS

(1) The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.

(2) The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE 53—IMMUNITY OF ASSETS AND ARCHIVES OF BANK

(1) Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

(2) The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 54—FREEDOM OF BANK ASSETS FROM RESTRICTION

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 55—PRIVILEGE FOR COMMUNICATIONS OF BANK

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

ARTICLE 56—PERSONAL IMMUNITIES AND PRIVILEGES

(1) All governors, directors, alternates, officers and employees of the Bank—

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) where they are not local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

(2) Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connexion therewith.

ARTICLE 57—EXEMPTION OF BANK FROM TAXATION

(1) The Bank, its property, other assets, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.

(2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.

(3) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(4) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held—

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 59—APPLICATION OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Articles 52, 54, 56 and 57 of this Agreement in cases where its action would, in its opinion, further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.