

MALAWI GOVERNMENT

(Published 31st May, 2024)

Act

No. 17 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
19th May, 2024

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 22 of No. 31 of 2018
3. Amendment of s. 23 of the principal Act
4. Amendment of s. 29 of the principal Act
5. Insertion of new s. 29A into the principal Act
6. Amendment of s. 30 of the principal Act

An Act to amend the Legal Education and Legal Practitioners Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Legal Education and Legal Practitioners (Amendment) Act, 2024. Short title
2. The Legal Education and Legal Practitioners Act (hereinafter referred to as the “principal Act”) is amended, in section 22 (5), by deleting the words “Chief Justice” and substituting therefor the word “Registrar”. Amendment of s. 22 of No. 31 of 2018
3. Section 23 of the principal Act is amended— Amendment of s. 23 of the principal Act
 - (a) in subsection (1), by deleting paragraph (b) and substituting therefor a new paragraph (b) as follows—

“(b) subject to subsection (3), holds a foreign law qualification as defined in subsection (4); or”;

(b) by renumbering subsections (2), (3), (4), (5), (6) and (7) as subsections (3), (4), (5), (6), (7) and (8), respectively;

(c) by inserting a new subsection (2) as follows—

“(2) A person who—

(a) holds a degree in law awarded by an institution accredited to offer legal education in accordance with this Act; and

(b) to qualify for award of the degree, passed courses assessed by the Council as comparable in scope to those offered by the Institute,

shall be exempt from the requirements to enrol with the Institute and pass the Malawi Law Examinations.”;

(d) in subsection (5)(d), by deleting the words “(2)(b)(ii)” and substituting therefor the words “(3)(b)(ii)”;

(e) in subsection (7), by deleting the words “requirement *First Schedule* under the section,” and substituting therefor the words “requirements under subsection (1).”

4. Section 29 of the principal Act is amended by deleting subsection (3).

5. The principal Act is amended by inserting, immediately after section 29, a new section 29A as follows—

“Conditional
admission to
practise

29A.— (1) Where an application for admission to practise as a legal practitioner is made under section 23, the Chief Justice may admit such person to practise with conditions.

(2) A legal practitioner admitted to practise with conditions, shall practise as an employee, under the guidance, supervision and control of a—

(a) prescribed legal practitioner;

(b) firm of legal practitioners of which at least one partner is a prescribed legal practitioner; or

(c) legal department of a Government ministry, local authority or a body established under any written law, headed by a prescribed legal practitioner.

(3) A prescribed legal practitioner shall not, at any time, exercise guidance, supervision and control over more than two legal practitioners whose admission is conditional.

Amendment
of s. 29 of the
principal Act

Insertion of
new s. 29A
into the
principal Act

The Chief Justice may, on the recommendation of the Society, make rules prescribing the manner of the conduct, guidance, supervision and control prescribed under subsection (2)

(5) A legal practitioner whose admission to practise is conditional may, by motion supported by an affidavit, apply to the Chief Justice for removal of the conditions attaching to the admission of the legal practitioner, under subsection (1).

(6) The Chief Justice may, upon being satisfied that the applicant has—

(a) since the date of the admission, been actively employed for a continuous period of not less than two years in compliance with subsection (2); and

(b) complied with the rules prescribed under subsection (4), order the removal of the conditions and thereupon the admission shall cease to be conditional.

(7) For purposes of this section, “prescribed legal practitioner” means a legal practitioner of at least five years standing at the bar.”

6. Section 30 of the principal Act is amended by—

(a) deleting subsection (3);

(b) renumbering subsections (4), (5), (6), (7), and (8) as subsections (3), (4), (5), (6) and (7), respectively; and

(c) inserting in subsection (7), the words “(c),” immediately after the words “(b),”.

Amendment
of s. 30 of the
principal Act

Passed in Parliament this fifth day of April, two thousand and twenty - four.

FIONA KALEMBA
Clerk of Parliament

(Published 31st May, 2024)

Act

No. 18 of 2024

I assent

DR. LAZARUS MCCARTHY CHAIWERERA
PRESIDENT
19th May, 2024

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of long title to Act No. 20 of 2023
3. Amendment of s.1 of the principal Act
4. Amendment of s.2 of the principal Act
5. Amendment of s.4 of the principal Act

An Act to amend the NBS Bank Plc and National Bank of Malawi Plc (Lake Malawi Water Supply Project) Loan (Authorization) Act, 2023.

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the NBS Bank Plc and National Bank of Malawi Plc (Lake Malawi Water Supply Project) Loan (Authorization) (Amendment) Act, 2024. Short title
2. The NBS Bank Plc and National Bank of Malawi Plc (Lake Malawi Water Supply Project) Loan (Authorization) Act, 2023 (hereinafter referred to as the “principal Act”) is amended, in the long title— Amendment of long title to Act No. 20 of 2023
 - (a) by inserting, immediately after the words, “NBS Bank Plc,” the words “CDH Investment Bank Limited,”; and
 - (b) by deleting the words, “one hundred and five billion Kwacha (MK105,000,000,000)” and substituting therefor, the words “the equivalent of one hundred million United States Dollars (USD 100 million)”.

Amendment
of s. 1 of the
principal Act

3. The principal Act is amended, in section 1, by inserting, immediately after the words, “NBS Bank Plc.,” the words “CDH Investment Bank Limited.”.

Amendment
of s. 2 of the
principal Act

4. The principal Act is amended, in section 2—

(a) the marginal note, by deleting the words “K105,000,000,000” and substituting therefor, the words “the equivalent of USD 100 million”;

(b) subsection (1)—

(i) by inserting, immediately after the words, “NBS Bank Plc.,” the words “CDH Investment Bank Limited.”; and

(ii) by deleting the words “one hundred and five billion Kwacha (MK105,000,000,000)” and substituting therefor, the words “the equivalent of one hundred million United States Dollars (USD 100 million)”;

(c) subsection (2), by inserting, immediately after the words, “NBS Bank Plc.,” the words “CDH Investment Bank Limited.”; and

(d) subsection (3), by inserting, immediately after the words, “NBS Bank Plc.,” the words “CDH Investment Bank Limited.”.

Amendment
of s. 4 of the
principal Act

5. The principal Act is amended, in section 4, by inserting, immediately after the words, “NBS Bank Plc.,” the words “CDH Investment Bank Limited.”.

Passed in Parliament this fifth day of April, two thousand and twenty - four.

FIONA KALEMBA
Clerk of Parliament

(Published 31st May, 2024)

Act

No. 19 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
19th May, 2024

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 4 to Cap. 73:01
3. Amendment of s. 19 of the principal Act
4. Amendment of s. 25 of the principal Act
5. Amendment of s. 26 of the principal Act
6. Substitution of s. 45 of the principal Act
7. Repeal of s. 46 of the principal Act

An Act to amend the Electricity Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Electricity (Amendment) Act, 2024. Short title
2. The Electricity Act (hereinafter referred to as the “principal Act”) is amended, in section 4, by deleting subsection (4) and substituting therefor, a new subsection as follows— Amendment of s. 4 to Cap. 73:01
 - “(4) A licensee shall not hold more than five percent shares in another company which holds a licence under this Act, except where the licensee is a state-owned enterprise.”.
3. Section 19 of the principal Act is amended by— Amendment of s. 19 of the principal Act
 - (a) deleting subsection (1);
 - (b) deleting in subsection (2) the words “owned and”;
 - (c) renumbering subsections (2) and (3) as subsection (1) and (2).

Amendment of s. 25 of the principal Act

4. Section 25 of the principal Act is amended, by deleting the words "transmission licensee" and substituting therefor, the words "system and market operator".

Amendment of s. 26 of the principal Act

5. Section 26 of the principal Act is amended, by deleting the words "transmission licensee", wherever they appear, and substituting therefor, the words "system and market operator".

Substitution of s. 45 of the principal Act

6. Section 45 of the principal Act is amended, by deleting section 45 and substituting therefor, a new section 45 as follows—

"Offences

45.—(1) A person who carries on in any manner an activity for the supply of electricity in contravention of this Act, or fails to carry out any order or decision of the Authority or a licensee made or given under this Act or otherwise contravenes the provisions of this Act, commits an offence and is, upon conviction, liable to a fine of K100,000,000 and to imprisonment for twenty years.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of electricity, including costs associated with such recovery, a person who—

(a) connects electricity to premises without written authorization of the licensee; or

(b) disturbs or tampers with any electricity meter or other measuring instrument or apparatus, commits an offence and is, upon conviction, liable to a fine of K100,000,000 and to imprisonment for twenty years.

(3) A person who denies access to premises for inspections by authorized personnel of a licensee or the Authority, commits an offence and is, upon conviction, liable to a fine of K50,000,000 and to imprisonment for ten years.

(4) A person who—

(a) is found in possession of equipment stolen from a licensee; or

(b) damages, destroys or vandalizes any electricity installation equipment or apparatus,

commits an offence and is, upon conviction, liable to imprisonment for thirty years

(5) Without prejudice to the right of a licensee to recover for illegal consumption of electricity, including costs associated with such recovery, a person, being an employee or former employee of a licensee, who—

(a) connects or assists a person to connect, electricity without authorization of the licensee; or

(b) disturbs or tampers or assists a person to disturb or to tamper, with an electricity meter or any other measuring instrument or apparatus,

commits an offence and is, upon conviction, liable to a fine of K150,000,000 and to imprisonment for twenty-five years.”.

7. Section 46 of the principal Act is repealed.

Repeal of
s. 46 of the
principal Act

Passed in Parliament this fifth day of April, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament

(Published 31st May, 2024)

Act

No. 20 of 2024

I assent

DR. LAZARUS MCCARTHY CHAWERA
PRESIDENT
19th May, 2024

ARRANGEMENT OF SECTIONS

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An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; establish the Competition and Fair Trading Commission; regulate and monitor monopolies and concentrations of economic power; protect consumer welfare; strengthen the efficiency of production and distribution of goods, digital products and services; to secure the best possible conditions for the freedom of trade; facilitate the expansion of the base of entrepreneurship; and to provide for matters incidental thereto or connected therewith.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Competition and Fair Trading Act, 2024, and shall come into force on a date to be appointed by the Minister, by notice published in the *Gazette*.

Interpretation

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

“affiliated” means an association of any two enterprises where—

(a) one of the enterprises is a holding entity of the other enterprise; or

(b) both enterprises are subsidiaries of the same holding entity;

“agreement” includes any agreement, arrangement or understanding, whether oral or in writing, or whether or not the agreement is legally enforceable or is intended to be legally enforceable;

“annual income” means the total amount in cash or otherwise, including any capital gain, received by or accrued to, or in favour of, a person or an enterprise in any year, from a source within Malawi or deemed to be within Malawi;

“buyer power” means the influence exerted by an undertaking or group of undertakings in the position of a purchaser of a product or service to—

(a) obtain from a supplier more favourable terms; or

(b) impose a long-term opportunity cost including harm or withheld benefit, which, if carried out, would be significantly disproportionate to any resulting long term cost to the undertaking or group of undertakings;

“Chairperson” means the Chairperson of the Commission appointed pursuant to section 7(2);

“Chief Executive Officer” means the Chief Executive Officer of the Commission appointed pursuant to section 15;

“Commission” means the Competition and Fair Trading Commission established under section 4;

“Commissioner” means a member of the Commission appointed under to section 7;

“Committee” means a Committee of the Commission established under section 11;

“complaint” means any reporting of information concerning an alleged prohibited, anti-competitive business practice, or unfair trading practice to the Commission, in any manner or form ;

“concerted practice” means co-operative or coordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement;

“confidential information” means—

(a) commercial, trade, business, or industry information—

(i) whose disclosure, the Commission considers, may significantly harm the legitimate business interests of the enterprise to which it relates; or

(ii) belonging to a firm, which is not generally available to, or known by, other firms, and the Commission considers such information to be of a particular economic value;

(b) information relating to the private affairs of an individual whose disclosure, the Commission considers, may significantly harm the individual’s interests; and

(c) information whose disclosure, the Commission considers, is contrary to the public interest;

“consumer” includes a person who—

(a) purchases or offers to purchase goods, digital goods or services supplied by an enterprise, in the course of business, and includes an enterprise which either uses the product or service supplied as an input to its own business or as a wholesaler, a retailer or as a final user; and

(b) uses goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services;

Cap. 3:02

“Court” means the Commercial Division of the High Court established under section 6A (1) (b) of the Courts Act;

“digital product” means a computer programme, text, video, image, sound recording, or any other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically, except for a digitized representation of a financial instrument, including money;

Cap. 74:02

“document” includes electronic records as defined under section 2 of the Electronic Transactions and Cyber security Act;

“enterprise” means a firm, partnership, joint venture, corporation, company, association and other juridical persons, irrespective of whether created or controlled by private persons or by the state, which engage in economic activity, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them;

“goods” include all kinds of moveable and immovable property, money, securities, choses in action and any reasonable substitutes thereto, taking into account ordinary use, functionality, commercial practice and geographical, technical and temporal constraints;

“invited person” means a person invited to attend a meeting of the Commission or a Committee pursuant to section 12;

“know-how” means information that is kept confidential in order to preserve competitive gains and shall include unregistered designs, business processes, trade and business secrets, and other practical and non-patented information, identifiable business processes, or other secret, significant, useful and practical methods;

“market” refers to goods, digital products or services supplied in, Malawi, and when used in relation to any goods, digital products or services, includes a market for those goods, digital products or services and other goods, digital products or services that are substitutable for, or otherwise competitive with, the first-mentioned goods, digital products or services;

“person” includes an individual, a company, a partnership, an enterprise, an association and any group of persons acting in concert, whether incorporated or not;

“Public Appointments Committee” means the Public Appointments Committee of the National Assembly, established under section 56 (7) of the Constitution;

“Secretariat” means the Secretariat of the Commission established under section 14;

“services” includes a service of any description, whether industrial, trade, professional, or otherwise;

“small and medium enterprises” 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 such under the criteria and size standards in the relevant instruments of the Ministry responsible for industry and trade;

“trading practice” means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person, which affects or is likely to affect the method of trading of any trade or class of traders or the production, supply or price in the course of trade of any goods whether real or personal, digital products or of any service; and

“turnover” means the amounts accrued from the sale of goods, digital products or services.

3.—(1) Subject to subsection (3), this Act shall apply to all economic activities within, or having an effect on, Malawi. Application

(2) Subject to the Constitution, in all matters concerning anti-competitive business conduct and review and control of mergers, where there is any conflict or inconsistency, the provisions of this Act or the decisions of the Commission made pursuant to this Act shall prevail.

(3) Nothing in this Act shall apply to—

(a) activities of employees for their own reasonable protection as employees;

(b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment under the Labour Relations Act; Cap. 54:01

(c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members under the Labour Relations Act; Cap. 54:01

(d) elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

(e) any act done to give effect to a provision of an agreement referred to in paragraph (d);

(f) activities expressly approved or required under a treaty or agreement to which Malawi is a party; or

(g) activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public.

PART II—THE COMPETITION AND FAIR TRADING COMMISSION

Establishment
of the
Commission

4.—(1) There is hereby established a body to be known as the Competition and Fair Trading Commission.

(2) The Commission shall be—

(a) a body corporate with perpetual succession; and

(b) capable of doing or performing all other things or acts as body corporates do, for the proper administration of this Act.

5.—(1) The Commission shall regulate, monitor, control and prevent acts or behaviour which are likely to substantially affect competition and fair trading in Malawi.

(2) Without derogation from the generality of subsection (1), the Commission shall—

(a) keep under review commercial activities in, or into, Malawi with a view to ascertaining practices which may substantially affect the welfare and economic interests of consumers in a market in Malawi;

(b) conduct such inquiries and market surveillances as it may consider necessary or desirable, in connection with any matter falling within the provisions of this Act;

(c) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister;

(d) take such action as it considers necessary with respect to any abuse of a dominant position by any enterprise that has an effect on consumers in a market in Malawi;

(e) eliminate—

(i) anti-competitive agreement that has an effect on consumers in a market in Malawi; and

(ii) unfair trading practices in Malawi;

(f) review and control mergers having an effect in, or into, Malawi;

Functions
of the
Commission

(g) undertake advocacy, research and market studies to advance the goal of this Act;

(h) co-operate with and assist any association or body of persons in developing and promoting the observance of standards for the purpose of ensuring compliance with the provisions of this Act; and

(i) carry out such other functions as are required to give effect to this Act or any other written law.

6. The Commission may—

Powers of the
Commission

(a) order, on its own initiative or at the request of any person, such investigations in relation to the conduct of business as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act and impose such sanctions, as may be necessary;

(b) issue determinations on any conduct prohibited under this Act and make orders provided for in this Act; and

(c) carry out such other powers as are required to give effect to this Act.

7.—(1) The Commission shall consist of—

Membership
of the
Commission

(a) the following Commissioners to be appointed by the Minister—

(i) two persons representing business interests, one of whom shall be a member of the Malawi Confederation of Chambers of Commerce and Industry;

(ii) two persons representing consumer interests;

(iii) one legal practitioner, with at least ten years of commercial law work experience and possesses a valid practising licence in accordance with the Legal Education and Legal Practitioners Act;

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2018

(iv) one economist, with at least ten years of work experience, who is a member of an association of economists in Malawi; and

(v) one chartered accountant, registered under the Public Accountants and Auditors Act; and

Cap. 51:06

(b) the following *ex-officio* Commissioners—

(i) the Secretary to the Treasury or his or her representative;

(ii) the Secretary responsible for trade or his or her designated representative;

(iii) the Solicitor General or his or her designated representative; and

(iv) the Director General of the Malawi Bureau of Standards or his or her designated representative.

(2) The Minister shall appoint the Chairperson of the Commission from among the Commissioners appointed under subsection (1)(a).

(3) A person shall not be qualified for appointment as a Commissioner under subsection (1)(a), if that person—

(a) does not possess a minimum education qualification of a bachelor's degree obtained from an institution recognized or accredited under the National Council for Higher Education Act;

(b) does not have at least five years' post qualification work experience;

(c) holds a political office;

(d) is an undischarged bankrupt; or

(e) would, for any other reason, be disqualified by law from serving as a trustee or director of a company.

(4) The Minister shall, in making appointments under subsection (1)(a), (b), (c), (d) and (e)—

(a) take into account the provisions of the Gender Equality Act; and

(b) have regard to the need for continuity in the membership of the Commission so that at least two Commissioners of the immediate past Commission shall be retained.

(5) A Commissioner, other than an *ex-officio* Commissioner, shall not, by reason only of the appointment as a Commissioner, be deemed to be an employee in the public service.

(6) The Minister shall publish, in the *Gazette*, names of all the Commissioners as first constituted and every subsequent change in the membership.

(7) An appointment of a Commissioner pursuant to subsection (1)(a) shall be subject to confirmation by the Public Appointments Committee.

8.—(1) A Commissioner, other than an *ex-officio* Commissioner, shall hold office for a period of three years and may be reappointed for another three-year term.

(2) The office of a Commissioner shall become vacant—

(a) upon expiry of the member's term of office;

(b) if he or she resigns by giving one month notice, in writing, to the Minister;

Cap. 30:12

Cap. 25:06

Tenure of
office and
vacancies

(c) upon his or her death;

(d) if he or she knowingly fails to declare a conflict of interest relating to any matter under consideration by the Commission;

(e) if he or she is absent without valid excuse from three consecutive meetings of the Commission of which he or she has had notice;

(f) if he or she is adjudged to be bankrupt;

(g) if he or she participates, directly or indirectly, in an activity which is in contravention of this Act;

(h) upon the Commissioner being convicted of an offence and sentenced to a term of imprisonment;

(i) if he or she is removed from his or her office for misconduct that is inconsistent with the discharge of his or her duties as a Commissioner;

(j) if he or she becomes, by reason of mental or physical infirmity, whereupon a suitably qualified medical practitioner certifies that the Commissioner is no longer, by reason of the illness, capable of performing duties of the office of Commissioner; or

(k) if any circumstances arise that, if he or she were not a Commissioner, would cause that Commissioner to be disqualified for appointment as a Commissioner.

(3) The Minister shall, within sixty days of the occurrence of the vacancy in the membership of the Commission, appoint a new Commissioner, in accordance with section 7.

(4) The period served by a person appointed under subsection (3) shall not be regarded as a term for purposes of subsection (1).

(5) A person appointed to fill a vacancy under subsection (3) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(6) Subject to section 10(5), a vacancy in the office of Commissioner shall not affect a decision, the performance of functions or the exercise of powers of the Commission under this Act or any other written law.

9 The Minister may, subject to approval of the Public Appointment Committee, remove from office, a Commissioner other than an *ex-officio* Commissioner, on any of the following grounds—

Removal from office

(a) misconduct that brings the Commission into disrepute;

(b) incompetence in the execution of the functions of the office of Commissioner;

(c) failure to declare a conflict of interest relating to any matter under consideration by the Commission;

(d) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Commission obtained in the course of duty or otherwise; or

(e) being compromised to the extent that his ability to exercise the duties of the office of Commissioner impartially and effectively is seriously in question.

10.—(1) The Commission shall meet to conduct its business at least once every three months, at such places and times as the Chairperson may, in consultation with the Chief Executive Officer, determine.

(2) An extraordinary meeting of the Commission—

(a) may be convened by the Chairperson at any time; and

(b) shall be convened by the Chairperson within seven days of receipt by him of a request, in writing, signed by not less than two Commissioners, specifying the purpose for which the meeting is to be convened.

(3) The Chairperson shall convene meetings of the Commission by giving the other Commissioners at least seven days written notice, unless the Chairperson notifies the members, in writing, that the urgency of the matter to be discussed requires a shorter period of notice.

(4) The Chairperson shall preside over meetings of the Commission and in the absence of the Chairperson, the Commissioners present and forming a quorum shall elect one of their number to preside over the meeting.

(5) The quorum for any meeting of the Commission shall be two-thirds of all Commissioners.

(6) At any meeting of the Commission, 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 Chairperson or the person presiding shall have a casting vote in addition to his or her deliberative vote.

(7) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

11.—(1) The Commission may, for the purpose of performing its functions under this Act, establish committees of the Commission, and delegate to any such committees any of its functions as it considers necessary.

Committees
of the
Commission

(2) Notwithstanding subsection (1), the Commission shall establish a Technical Committee which shall hear applications for, and make recommendations to the Commission on, mergers and acquisitions, cases of anti-competitive conduct and unfair trade practices and any other function as the Commission deems fit.

(3) The chairperson of every Committee shall be a Commissioner appointed pursuant to section 7 (1)(a).

(4) The Chairperson shall not be a member of a Committee.

(5) Subject to the general or special directions of the Commission and to the provisions of this Act, every Committee shall have power to determine its own procedure.

12. The Commission or its Committee may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Commission or the Committee, as the case may be.

Invited
persons

13.—(1) The Commissioners, members of Committees or an invited person shall be paid such allowances as the Minister shall determine, on recommendation of the Government department responsible for human resource development and management.

Allowances
and expenses

(2) The Commission may reimburse any reasonable expenses incurred by a Commissioner, a member of a Committee or an invited person, as the case may be.

14.—(1) The Secretariat of the Commission, which shall consist of the Chief Executive Officer and other employees of the Commission appointed in accordance with this Act.

Secretariat
of the
Commission

(2) The Secretariat shall, on behalf of the Commission, be responsible for enforcing competition and consumer protection law and policy, through conducting investigations, market studies, market inquiries, enforcement of the Commission's decisions, and carry out such other functions as are required to give effect to this Act.

(3) The Chief Executive Officer or such other officer of the Commission as the Chief Executive Officer may designate, shall attend meetings of the Commission and of any Committee and may address such meetings, but shall not vote on any matter.

Chief Executive
Officer of the
Commission

15.—(1) The Commission shall appoint, on such terms and conditions as it may determine, a Chief Executive Officer of the Commission who shall perform such duties as the Commission shall assign to his or her office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Chief Executive Officer conferred under subsection (1), the Chief Executive Officer shall be responsible for the day-to-day administration of the Commission.

(3) The Chief Executive Officer shall be appointed through a competitive process and on such terms and conditions as the Commission shall determine.

(4) A person shall not be appointed as Chief Executive Officer, unless the person—

(a) possesses a minimum qualification of a master's degree in a relevant field from a reputable education institution accredited or recognized under the National Council for Higher Education Act;

(b) has proven and demonstrable expertise in competition and fair trading matters, consumer protection matters, economics, law, finance, commerce, administration or any field relevant to the functions and responsibilities of the Commission;

(c) has at least ten years' experience in executive management; and

(d) does not hold a political office.

16.—(1) The Commission may terminate the appointment of a Chief Executive Officer on any of the following grounds—

(a) incompetence in the execution of the functions of the office;

(b) incapacity to perform the functions of the office;

(c) being convicted of an offence and sentenced to a term of imprisonment;

(d) being declared or adjudged bankrupt by a competent court of law;

(e) failure to declare a conflict of interest relating to any matter under consideration by the Commission;

(f) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Commission obtained in the course of duty or otherwise; or

Cap. 30:12

Removal of
the Chief
Executive
Officer:

(g) being found guilty of misconduct punishable by dismissal under the employment contract.

(2) The Commission shall not terminate the appointment of an Chief Executive Officer, unless he or she is given an opportunity to be heard.

17.—(1) The Commission may appoint, on such terms and conditions as it may determine, such other employees of the Commission, subordinate to the Chief Executive Officer, as it considers necessary for the performance of its functions and to assist the Chief Executive Officer in discharging his or her duties and responsibilities.

Other
employees of
the
Commission

(2) The Commission may, by directions in writing, delegate to the Chief Executive Officer, the power to appoint, discipline or dismiss other employees of the Commission, in specified junior ranks and the Chief Executive Officer shall report to the Commission, at its next meeting, every appointment, discipline or dismissal made pursuant to this subsection.

(3) The other employees of the Commission referred to in subsection (1) shall be appointed on such terms and conditions as the Commission shall determine, after consulting with the Government Department responsible for human resource management and development.

(4) The provisions of section 16 shall apply, with the necessary modifications, to dismissal of other employees of the Commission employed pursuant to this section.

PART III—FINANCIAL PROVISIONS

18.—(1) The funds of the Commission shall consist of—

Funds of the
Commission

(a) such sums as may be appropriated by Parliament for the purposes of this Act;

(b) such sums of monies as may accrue to or be received by the Commission by way of fees, subsidies, contributions, subscriptions, charges, penalties, levies, rents, interest or royalties from the Government or any person;

(c) monies paid to the Commission by way of grants or donations;

(d) monies made available to, or borrowed by, the Commission, for the purpose of the Commission; or

(e) any other monies which may in any manner become payable to, or vested in, the Commission in respect of any matter incidental to its functions.

(2) All fees and monetary penalties paid to the Commission, shall be utilized solely for the purposes of this Act, in accordance with the written directions of the Commission and for no other purpose.

(3) The Commission shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

Cap. 37:01
No. 4 of 2022
Cap. 37:03

Levy

19. The Minister, acting on the recommendation of the Commission, and in consultation with the Minister responsible for finance, may by order published in the *Gazette*, impose a levy on such commercial matters as he or she may determine and such levy shall be appropriated for the general operations of the Commission.

Accounts and
audits

20.—(1) The Commission shall cause to be kept proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Finance Management Act.

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(2) The accounts and records of the Commission shall be audited at the end of each financial year, by the Auditor General, or by independent professional auditors appointed by the Commission after consulting the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The financial year of the Commission shall be a period of twelve months in line with the Government financial year.

PART IV—GENERAL POWERS OF THE COMMISSION

21.—(1) For the purposes of carrying out its investigative functions under this Act, the Commission may—

- (a) summon and examine witnesses;
- (b) apply to a competent court of law for a search warrant;
- (c) call for, and examine, any documents;
- (d) enter, search, and carry out inspection of premises, including goods, digital products and services on the premises;
- (e) administer oaths;
- (f) require that any document submitted to the Commission be verified by a sworn statement;
- (g) adjourn any investigation, from time to time;
- (h) require the furnishing of such returns or information as it may require from such persons as it may specify by notice;
- (i) determine and order the remedies and penalties applicable to any conduct regulated under this Act; and

Powers of
investigation

(j) register any order it may have made, with the Court.

(2) In exercising its powers under this Part, the Commission may—

(a) hear orally any person who, in its opinion, will be affected by an investigation under this Act and shall so hear the person if the person has made a written request for a hearing, showing that he or she is an interested party, likely to be affected by the result of the investigation or that there are particular reasons why he or she should be heard orally; and

(b) require a person engaged in business or a trade or such other person as the Commission considers appropriate, to state such facts concerning goods and digital products manufactured, produced or supplied by him or her as the Commission may think necessary, to determine whether the conduct of the business in relation to the goods, digital products or services constitutes an anti-competitive practice.

22.—(1) For the purposes of resolving a matter deemed to be an infringement of this Act, the Commission may issue any of the following administrative orders—

Administra-
tive orders

(a) declare certain business practices to be abuses of dominant position;

(b) order enterprises to cease and desist from any form or conduct that has, or is likely to have, as its object or effect the lessening of competition;

(c) order the termination of an agreement;

(d) prohibit the making, or carrying out, of an agreement or the putting into effect of any anti-competitive term or condition of an agreement;

(e) prohibit and remedy unfair trading practices;

(f) order a product refund or exchange;

(g) impose a monetary penalty for anti-competitive conducts or unfair trading practices;

(h) issue an order for the recall of a product established to be defective;

(i) require a person found to be in infringement of this Act to publish a notice of the infringing conduct in any media or form designated by the Commission;

(j) make applications to the Registrar of the Court, for the purpose of enforcing an order it has made; and

(k) suspend or order the application of conditions to a merger which is likely to substantially lessen competition on a market, in Malawi.

(2) Pursuant to the powers conferred under subsection (1)(g), the Commission may impose a monetary penalty, payable to the Commission, of up to—

(a) ten per cent of gross annual turnover, in the case of an enterprise; or

(b) five per cent of gross annual income, in the case of an individual.

(3) In determining an administrative order under this section, the Commission shall consider the following factors—

(a) the nature, duration, gravity and extent of the infringement;

(b) the damage suffered by a person, an industry or the economy, as a result of the infringement;

(c) the degree to which the infringing party cooperated with the Commission during the investigation;

(d) whether the infringing party has engaged in the infringing conduct complained of or any other infringement of the Act in the past; and

(e) any other mitigating or aggravating factors.

(4) Where the Commission imposes an administrative order under this section, it shall apply to the Court for registration of the order.

(5) An administrative order issued by the Commission and registered by the Court shall have the force and effect akin to an order issued by the Court.

23.—(1) Where the Commission, before it reaches a final decision on a matter, believes, on reasonable grounds, that an undertaking has engaged, is engaging, or is proposing to engage, in conduct that constitutes or may constitute an infringement of this Act and that it is necessary for the Commission to act as a matter of urgency for the purpose of—

(a) preventing serious, irreparable damage to any person or category of persons; or

(b) protecting the public interest,

the Commission may, by order in writing, direct an enterprise or undertaking to stop and desist from engaging in such conduct until the on-going investigation is concluded.

(2) A person or enterprise affected by an interim measure may apply to the Court to set aside the decision of the Commission made pursuant to subsection (1).

(3) Any person that fails to comply with an interim measure imposed under subsection (1) commits an offence.

PART V—ANTI-COMPETITIVE BUSINESS CONDUCT

24.—(1) Any agreement, decision and concerted practice, whether by object or by effect, which is likely to result in the prevention, restriction or distortion of competition to a substantial extent in, or into, Malawi or in any substantial part hereof is declared an anti-competitive trade practice and is hereby prohibited.

Prohibition
of anti-
competitive
trade
practices

(2) Subject to the provisions of subsection (1), a person shall refrain from the following acts or behavior, if the acts or behaviors limit access to markets or otherwise unduly restrain competition, or have, or are likely to have, adverse effect on trade or the economy in general—

(a) predatory behaviour towards competitors, including the use of cost pricing to damage, hinder or eliminate competition;

(b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods, digital products or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) making the supply of goods, digital products or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods, digital products or the provision of competing or other services;

(d) making the supply of particular goods, digital products or services dependent upon the purchase of other goods, digital products or services from the supplier to the consignee;

(e) imposing restrictions where or to whom or in what form or quantities goods or digital products supplied or other goods may be sold or exported; or

(f) minimum resale price maintenance.

(2) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

Defences for anti-competitive agreements

25. Section 24 (1) shall not apply if it is shown that the agreement, decision or concerted practice contributes to improving the production or distribution of goods or digital products or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not—

(a) impose on the enterprises concerned, restrictions which are not indispensable to the attainment of these objectives; or

(b) afford such enterprises the possibility of eliminating competition for a substantial market for the goods, digital products or services in question.

Prohibited activities

26.—(1) An enterprise shall not, on the market, engage in any of the following activities—

(a) price fixing;

(b) collusive tendering and bid-rigging;

(c) market or customer allocation agreements;

(d) collective action to enforce arrangements; or

(e) concerted refusals to supply goods, digital products or services to potential purchasers.

(2) A vertical agreement between enterprises is hereby prohibited *per se*, and shall be void, to the extent that the agreement involves minimum re-sale price maintenance.

(3) This section shall apply to formal, informal, written and unwritten agreements and arrangements.

(4) This section shall not apply where enterprises are dealing with each other in the context of a common entity, where they are under common control or where they are otherwise not able to act independently of each other.

(5) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

(6) For the purposes of this section, “*per se*” in relation to a prohibited practice, means a practice which is prohibited in all circumstances so that it is not necessary for the Commission to demonstrate that it has anti-competitive effects.

27.—(1) Without prejudice to section 26 (1), the following types of agreements between enterprises at the same level of production and supply of any good or service, including agreements between members of a trade association, are declared to be anti-competitive trade practices and are prohibited and void—

Prohibition of agreements between enterprises at the same level of production and supply

(a) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or

(b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to the—

(i) prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

(ii) terms of sale, including discount, credit, delivery, and product and service guarantee terms, of such member or any class of members and which directly affects price or profit margins included in the pricing formula.

(2) Any enterprise, trade association, or member of a trade association which contravenes the provisions of subsection (1) shall be liable to an administrative penalty in the form of a monetary penalty of up to ten per cent of its annual income and in the event that the trade association has no income, the members of the trade association shall be jointly and severally liable to a monetary penalty of—

(a) up to ten per cent of annual turnover, in the case of an enterprise; or

(b) up to five per cent of annual income, in the case of an individual.

(3) For the sake of completeness and clarity, any agreements, such as decisions of association of enterprises and concerted practices between enterprises in a horizontal competing relationship in a market, which is made in violation of this section, shall not be subject to any of the defences as provided for under section 25.

28.—(1) An enterprise, whether on its own or in concert with other enterprises, in a dominant position shall not abuse its dominance.

Prohibition of
abuse of
dominance

(2) An enterprise shall be deemed to have abused its dominant position contrary to this section if it impedes the maintenance or development of effective competition, and in particular, if it engages in conduct which includes—

(a) predatory behavior, including the use of cost pricing to damage, hinder or eliminate competition;

(b) excessive pricing;

(c) discriminatory pricing and discrimination in terms and conditions, in the supply or purchase of goods or services, including using pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods, digital products or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(d) making the supply of goods, digital products or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;

(e) making the supply of goods, digital products or services dependent upon the purchase of other goods, digital products or services from the supplier to the consignee;

(f) imposing restrictions where, on whom, or in what form or quantities, goods or digital products supplied or other goods or digital products may be sold or exported;

(g) resale price maintenance;

(h) margin squeeze; or

(i) refusal to supply goods or services.

(3) An enterprise, either by itself or acting together with others, is deemed to have a dominant position in a market, if it has—

(a) the actual capacity to control prices or other commercial conditions;

(b) the actual capacity to eliminate or restrain competition in the market;

(c) the actual capacity to set barriers against entry of others into the market;

(d) a position in the market which enables it to operate in the market to a substantial extent independently of competitors, suppliers, and buyers;

(e) at least forty per cent or more of the shares in the market; or

(f) operated, or continues to operate, in a manner which demonstrates a combination of any of the aforementioned factors.

(4) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

29.—(1) An enterprise shall not be treated as abusing a dominant position if it is shown that—

(a) its behaviour was exclusively directed at improving the production or distribution of goods, digital products or to promoting technical or economic progress and that the consumers were allowed a fair share of the resulting benefit; or

(b) the effect or likely effect of its behaviour in the market is the result of its superior competitive performance.

(2) Without prejudice to the generality of subsection (1), an enterprise shall not be treated as abusing its dominant position where it seeks to enforce any right existing by virtue of any copyright, patent, registered design or trademark, other property right, or know-how, provided that the exercise of those rights does not—

(a) have the effect of unreasonably lessening competition in a market; and

(b) impede the transfer and dissemination of technology.

30.—(1) Subject to subsection (2), any person who proposes to enter into, or carry out—

Grant of
authorizations

(a) an agreement;

(b) a class of agreements under section 24 (1); or

(c) an agreement which, in that person's opinion, is an agreement affected or prohibited by this Act,

may apply to the Commission for an authorization to do so in the prescribed form and upon payment of the prescribed fee.

(2) A professional association whose rules contain a restriction that has the effect of lessening competition in a market may apply to the Commission for authorization under subsection (1).

(3) Upon receipt of an application under subsection (1), the Commission shall—

(a) publish in a daily newspaper of general circulation in Malawi, a notice of the application; and

(b) give interested parties, fourteen days from the date of that notice, to make representations concerning the application.

(4) After considering an application and any representations received in relation to the application, the Commission may—

(a) if it is satisfied that the agreement is—

(i) likely to promote the public benefit;

(ii) based on the exercise of an intellectual property right or know-how;

(iii) an application for an exemption by a trade association or professional association; or

(iv) likely indispensable to the yielding of the improvement of production or distribution of goods, digital products or services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit, grant an authorization, subject to such terms and conditions as it considers appropriate and for such time as it may specify; or

(b) refuse to grant an authorization and in that case, shall inform the applicant, in writing, of the reasons for refusal.

(5) The Commission may, in relation to an authorization under this section—

(a) revoke an authorization previously granted, where it determines that the applicant misrepresented material facts, in order to secure the grant of the authorization or did not comply with the terms of the grant of the authorization;

(b) investigate the circumstances surrounding the grant of an authorization, to determine whether there has been a non-compliance with the terms of the grant of an authorization or whether a revocation is warranted; or

(c) impose a monetary penalty of up to ten per cent of an enterprise's gross annual turnover, for the submission of any misleading information to secure an authorization or for non-compliance with the terms of the grant of an authorization.

(6) The Commission shall publish a notice of its decision under subsection (4), in such manner and form as it considers appropriate.

(7) The Commission may authorize all, or part, of the rules of a professional association from the provisions of subsection (2) if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of preventing or substantially lessening competition in a market is reasonably required to maintain—

(a) professional standards; or

(b) the ordinary function of the professional association.

(8) The Commission shall, where it refuses to grant authorization, inform the applicant accordingly and give the reasons therefor.

(9) The Commission may, where it considers that any rules of a professional association, either wholly or in part, should no longer be authorized under this section, revoke the authorization in respect of such rules or the relevant part of the rules, at any time after it has given—

(a) the professional association notice of the proposed revocation; and

(b) interested parties fourteen days, from the date of that notice, to make representations concerning the revocation.

31.—(1) Any conduct that amounts to abuse of buyer power in a market in Malawi, or a substantial part of Malawi, is prohibited and any agreement made in furtherance of such conduct shall be void.

Abuse of
buyer power

(2) Where the Commission establishes that a sector or an enterprise is experiencing, or is likely to experience, incidences of abuse of buyer power, it may monitor the activities of the sector or enterprise and ensure compliance by imposing reporting and prudential requirements.

(3) The Commission may require industries and sectors, in which instances of abuse of buyer power are likely to occur, to develop a binding code of practice.

(4) In determining any complaint in relation to abuse of buyer power, the Commission shall consider all relevant circumstances, including the—

(a) nature and determination of contract terms between the concerned enterprises;

(b) payment requested for access to any building or infrastructure; and

(c) price paid to suppliers.

(5) Conduct amounting to abuse of buyer power includes—

(a) delays in payment of suppliers, without justifiable reason, in breach of agreed terms of payment;

(b) unilateral termination or threats of termination of a commercial relationship, without notice or on an unreasonably short notice period, and without an objectively justifiable reason;

(c) refusal to receive or return any goods and digital products or part thereof without justifiable reason in breach of the agreed contractual terms;

(d) transfer of costs or risks to suppliers of goods, digital products or services by imposing a requirement for the suppliers to fund the cost of a promotion of the goods, digital products or services;

(e) transfer of commercial risks meant to be borne by the buyer to the suppliers;

(f) demands for preferential terms unfavourable to the suppliers;

(g) demanding limitations on supplies to other buyers;

(h) reducing prices by a small, but significant, amount where there is difficulty in substitutability of alternative buyers or reducing prices below competitive levels; or

(i) bidding up prices of inputs by a buyer enterprise with the aim of excluding competitors from the market.

(6) When investigating abuse of buyer power complaints, the Commission shall be guided by any existing agreement between a buyer enterprise and supplier enterprise.

(7) An agreement between a buyer enterprise and a supplier enterprise shall include—

(a) the terms of payment;

(b) the payment date;

(c) the interest rate payable on late payment;

(d) the quantity of goods to be purchased;

(e) the conditions for termination and variation of the contract with reasonable notice; and

(f) a mechanism for the resolution of disputes.

(8) A person or an enterprise which contravenes this section shall be liable to an administrative order from the Commission.

32.—(1) Where the Commission is considering a complaint on anti-competitive business conduct, the Commission shall convene a hearing for such purpose and determine the matter.

(2) After consideration of any investigation report, written representations and any oral submissions made during a hearing, the Commission may issue any of the administrative orders provided for under section 22.

33.—(1) A person may apply to the Commission for a non-binding written opinion regarding the application of one or more provisions of the Act.

(2) An application under subsection (1) shall be—

(a) made in a prescribed form; and

(b) accompanied by—

(i) a prescribed fee; and

(ii) prescribed supporting documentation.

34.—(1) The Commission may, where it has reasonable grounds to suspect that an unfair trading practice, or a prevention, restriction or distortion of competition is occurring—

Market studies and market inquiries

(a) within a particular sector of the economy; or

(b) within a particular type of agreement occurring across various sectors,

conduct a market study or a market inquiry.

(2) For the purposes of a market study or a market inquiry under this Part, the Commission may invite interested parties to submit information to it and may exercise, in relation to any enterprise that it considers to be involved in the matters covered by the study or inquiry, its powers of investigation under this Act.

(3) The Commission shall, at the conclusion of a market study or a market inquiry, publish its findings in a daily newspaper of general circulation in Malawi.

PART VI—REVIEW AND CONTROL OF MERGERS

35.—(1) For the purposes of this Part, a merger occurs when one or more enterprises directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another enterprise.

Merger defined

(2) A merger contemplated in subsection (1) may be achieved in any manner, including—

(a) the purchase or lease of shares, acquisition of interest, or purchase of assets of the other enterprise in question;

(b) the acquisition of a controlling interest in a section of the business of an enterprise capable of itself being operated independently, whether or not the business in question is carried on by an enterprise;

(c) the acquisition of an enterprise under receivership by another enterprise either situated in or outside Malawi;

(d) acquiring, by whatever means, the controlling interest in a foreign enterprise that has a controlling interest in a subsidiary in Malawi;

(e) in the case of a conglomerate enterprise, acquiring the controlling interest of another enterprise or a section of the enterprise being acquired capable of being operated independently;

(f) vertical integration;

(g) exchange of shares between or among enterprises which result in substantial change in ownership structure through whatever strategy or means adopted by the concerned enterprises; or

(h) amalgamation, takeover or any other combination with the other enterprise.

Transactions
subject to
merger control

36.—(1) A transaction that is likely to result in—

(a) the acquisition of control;

(b) the acquisition of assets related to a relevant market or to the business of the acquiring firm;

(c) the acquisition of at least forty per cent share of any market or such other amount of the market as the Commission, may prescribe;

(d) a lasting change to the structure of, or have a substantial effect on commerce in, or a local nexus to the domestic market; or

(e) a joint venture which results in an acquisition of control over a party or results in a performance of activities on a lasting basis by an autonomous enterprise,

shall be deemed to as a merger under this Act and shall be subject to merger control proceedings as provided for under this Act.

(2) For the avoidance of doubt, this Act shall not apply to mergers or transactions undertaken by affiliated enterprises, unless the acquisition results in a transfer of joint control to sole control.

Mergers to
require formal
approval

37. A transaction which falls within the meaning of section 35 shall not be completed in Malawi, unless the Commission grants a formal approval to that effect as provided under section 43.

Acquisition of
control defined

38.—(1) A person shall be deemed to have acquired control of an enterprise if that person—

(a) beneficially owns more than one-half of the issued share capital or business or assets of the enterprise;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that enterprise;

(c) is able to appoint, or to veto the appointment of, a majority of the directors of the enterprise;

(d) is a holding company, and the enterprise is a subsidiary of that company as contemplated under the Companies Act;

(e) in the case of the enterprise being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of the enterprise being a nominee enterprise, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the nominee enterprise; or

(g) has the ability to materially influence the policy of the enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

(2) For the purposes of subsection (1)(a), the purchase or lease of shares, acquisition of an interest, or purchase of assets of the other enterprise in question shall not be deemed as acquisition of control in the following circumstances—

(a) where the acquisition of shares or voting rights is by a person acting as a securities underwriter or a registered stockbroker of a stock exchange, on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be;

(b) where the acquisition is solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty-five per cent or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly or in accordance with the execution of any document including a share holders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired;

(c) where the acquirer, prior to acquisition, already controls fifty per cent or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control;

(d) where the acquisition is not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired, except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired,

irrespective of whether such assets are organised as a separate legal entity or not;

(e) where the acquisition is made pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control; or

(f) where the acquisition is of stock-in-trade, raw materials, stores and spares in the ordinary course of business.

Acquisition
of relevant
assets defined

39. For the purposes of section 36(b), assets related to the relevant market shall not include assets acquired solely as an investment or in the ordinary course of business, not leading to control of the target enterprise, except where the assets represent substantial business operations in a particular location or for a particular product or service of the enterprise being acquired, irrespective of whether or not such assets are organized as a separate legal entity.

Thresholds
for proposed
mergers

40. Upon the recommendation of the Commission, the Minister, may, by notice published in the *Gazette*, prescribe the threshold of combined annual turnover or assets in Malawi, either in general, or in relation to specific industries, for the purpose of determining whether a merger is a transaction subject to control within the meaning of section 36.

Assessment
criteria for
mergers

41.—(1) For the purposes of this Act, a transaction that falls within the circumstances provided under section 36 and which is subject to merger control proceedings, shall be subject to an assessment of the likely effects of the merger on the market, by the Commission and shall be subject to—

(a) a competitive effects test, to determine whether the merger is likely to substantially prevent or lessen competition, by assessing the strength of competition in the relevant market and the probability that the enterprises in the market after the merger, will behave competitively or co-operatively, considering any factor that is relevant to competition in that market, including—

(i) the structure of the markets likely to be affected by the proposed merger;

(ii) the degree of control exercised by the enterprises concerned in the proposed merger in the market and particularly the economic and financial power of the enterprises;

(iii) the nature and extent of vertical integration in the market;

(iv) the availability of alternatives to the goods, digital products or services provided by the enterprises concerned in the merger;

(v) the likely effect of the proposed merger on consumers and the economy;

(vi) the actual and potential level of import competition in the market;

(vii) the ease of entry into the market, including tariff and regulatory barriers;

(viii) the level and trends of concentration, and history of collusion, in the market;

(ix) the degree of countervailing power in the market;

(x) the dynamic characteristics of the market, including growth, innovation, and product differentiation;

(xi) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and

(xii) whether the merger will result in the removal of an effective competitor; and

(b) a dominance test, to determine the extent to which the proposed merger would be likely to result in any enterprise, including an enterprise not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market.

(2) The Commission shall, where it appears that the merger is likely to substantially prevent or lessen competition or create a dominant position in a market or strengthen a dominant position in a market, determine whether the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than and offset the effects of any prevention or lessening of competition that may result, or is likely to result, from the merger and would not likely be obtained if the merger is prevented.

42. The Commission shall, in considering a proposed merger under this Part, apply a public interest test in order to determine whether the merger can or cannot be justified on substantial public interest grounds, by assessing the following—

Public interest
assessment

(a) the extent to which the proposed merger would likely affect a particular industrial sector or region;

(b) the extent to which the proposed merger would likely affect employment in a particular industry or sector;

(c) the extent to which the proposed merger is likely to affect the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive;

(d) the extent to which the proposed merger would likely affect the ability of small enterprises to gain access to or to be competitive in any market;

(e) the extent to which the proposed merger would likely affect the ability of national industries to compete in international markets;

(f) the extent to which the proposed merger would likely result in the increase of net exports;

(g) the extent to which the proposed merger would likely result in an acceleration in the rate of economic development;

(h) the extent to which the proposed merger would likely result in a more rapid rate of technological advancement by enterprises in Malawi;

(i) the extent to which the proposed merger would likely result in a substantially more efficient unit with lower production or distribution costs;

(j) the extent to which the proposed merger would likely result in lower prices to consumers;

(k) the extent to which the proposed merger would, or is likely to, promote the transfer of skills, or otherwise improve the production or distribution of goods, digital products or the provision of services in Malawi; and

(l) the saving of a failing firm.

43.—(1) Where an enterprise is desirous of effecting a merger which gives rise to the result as set out under section 36, and the enterprise and all other parties to the merger have reached a good faith intention to conclude an agreement, or in the case of a public bid, where there has been an announcement of an intention to make such a bid, the enterprise shall apply to the Commission for formal approval to effect the merger, upon payment of the prescribed fee.

(2) An application made under this section shall be accompanied by such information as may be prescribed.

(3) Within ninety days after the receipt of an application under this section, the Commission shall determine whether to grant or refuse the formal approval and notify the applicant of its decision, in writing.

(4) Where the Commission is of the opinion that the period referred to in subsection (3) should be extended due to the complexity of the issues involved, it may, before the expiry of that period, notify the merging parties, in writing, of the extension which may not extend the relevant period for more than sixty days.

44.—(1) Upon the completion of its investigation of the merger, the Commission shall take any of the following actions—

Commission
action in
relation to
reviewed
mergers

(a) notify the parties to the merger, in writing with reasons therefor, that the merger has been approved, with or without conditions;

(b) notify the parties to the merger, in writing with reasons therefor, that the merger has not been approved;

(c) enforce its decision by registering the decision with the Court;

(d) make an order directed against any enterprise to the proposed merger or any other person not to proceed with the merger or a part thereof;

(e) make an order directing the enterprises within an agreed period to divest interests or part of their combined business or operations if the Commission is satisfied that such divestment would make the merger less likely to result in anti-competitive effects or to affect substantially the interests of consumers or the economy; or

(f) make an order directing any enterprise to the proposed merger to dispose of assets or shares designated by the Commission.

(2) Within fourteen days of the receipt of notification of the Commission's decision for the application of conditions, the merging enterprises may seek to reach an agreement on a merger agreement order with the Commission.

(3) Where the Commission and the merging parties agree to a merger agreement order, a copy of the agreement setting out the terms agreed between the Commission and the merging parties shall be signed by the Commission and the merging parties and registered with the Court.

(4) An enterprise that fails to comply with an order issued under subsection (1) shall be liable to an administrative order from the Commission.

45. The Commission shall consider a merger to have been implemented without the formal approval required under section 43 if—

Prior
implementa-
tion of a
merger

(a) there has been an exchange of competitively sensitive information for purposes other than valuation during due diligence, or other than on a need-to-know basis;

(b) there has been an actual integration of any aspect of the merging businesses, including, the integration of infrastructure, information systems, personnel, corporate identity or marketing efforts;

(c) there has been placement of personnel from one merging party in new positions at the other merging party; or

(d) there has been any effort by the acquiring party to influence or control any competitive aspect of the target's business, such as setting minimum prices, limiting discounts or restricting sales to certain customers or of certain products.

46.—(1) Where the Commission is of the opinion that enterprises have, without obtaining a formal approval from the Commission pursuant to section 43, structured themselves in such a way as to constitute a merger within the meaning of section 35 or has implemented a merger within the meaning of section 45, the Commission may impose an administrative order on the enterprises.

(2) In determining an order pursuant to subsection (1), the Commission shall consider whether—

(a) the infringement lasted for a significant period;

(b) the infringement has resulted in anti-competitive effects on any part or substantial part of Malawi;

(c) the enterprises were in significant financial distress at the time of the implementation of the merger;

(d) the enterprises have brought the infringement to the attention of the Commission in a timely manner; and

(e) any other mitigating or aggravating circumstances.

(3) Where the Commission has become aware that there is a merger that is in the process of being implemented but has not received a formal approval from the Commission pursuant to section 43, the Commission may apply to the Court for a cease and desist order or any other interim order prohibiting the enterprises to the merger from implementing the merger prior to receiving approval.

(4) The Commission shall require the enterprises to notify the merger for purposes of curing the prior implementation of the merger and remedying any competition or public interest concerns that may have resulted from the merger.

Failure to file for formal approval, or prior implementation, of a merger

47.—(1) The Commission may—

Proposals and measures for remedying a merger

(a) engage in discussions with the enterprises that are parties to the merger or with any other enterprises or individuals with a view to identifying measures which would ameliorate any effects of the merger on the public interest or competition in Malawi or any substantial part of Malawi;

(b) accept proposals from any enterprise involved in the merger with regard to the manner in which the merger may be put into effect; or

(c) unbundle or unscramble the merger.

(2) Pursuant to subsection (1)(b), the Commission may take the proposals into account and shall state in its approval order that the proposals form the basis of or part of its determination of the matter and shall be binding on the Commission and the enterprises who are party to the merger.

48. Where the enterprises that are parties to a merger have decided to abandon the merger, they shall notify the Commission of their intent and the Commission shall—

Action in relation to abandoned mergers

(a) satisfy itself that parties are in the same position as they were prior to the notification of the merger;

(b) notify the parties that the Commission has ceased its investigation; and

(c) notify the parties that the filing fee paid in respect of the merger has been forfeited.

49.—(1) The Commission may, at any time, revoke a formal approval of a merger issued under this Part, if a party to a merger—

Revocation of approval

(a) submitted materially incorrect or misleading information, in support of the merger; or

(b) fails to comply with any condition of an approval of the merger.

(2) The Commission shall, where it proposes to revoke an approved merger under subsection (1), give notice, in writing, of the proposed action to every party to the merger, and to any other person who is likely to have an interest in the matter, and call upon such party or person to submit to the Commission, within twenty one calendar days of the receipt of the notice, any representations which they may wish to make on the proposed revocation.

50.—(1) Any party to a merger transaction—

Negative clearance

(a) seeking clarification as to whether the proposed merger requires the formal approval of the Commission; or

(b) whose proposed merger is subject to review by the Commission,

may apply to the Commission for a negative clearance in the manner as may be prescribed and upon payment of a prescribed fee.

(2) A negative clearance, even if granted, shall not prohibit the Commission from revoking the clearance, if new information becomes available showing that such clearance was wrongly granted.

PART VII—UNFAIR TRADING PRACTICES

Unfair trading

51. A person shall not, in relation to a consumer—

(a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(b) exclude liability for defective goods and services;

(c) in connection with the supply of goods, digital products or services, make any warranty—

(i) limited to a particular geographic area or sales point;

(ii) falsely representing that products are of a particular style, model or origin;

(iii) falsely representing that the goods or digital products are new or of specified age; or

(iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or service;

(e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;

(f) claim payment for unsolicited goods, digital products or services;

(g) engage in unconscionable conduct in carrying out trade in goods, digital products or services;

(h) engage in pyramid selling of goods, digital products and services;

(i) engage in bait selling;

(j) offer gifts or prizes with no intention of supplying them;

(k) put out an advertisement which is misleading or deceptive;

(l) fail to give warranty or guarantee on goods for long term use;

(m) engage in improper or insufficient labelling of products;

(n) fail to display or indicate prices of goods, digital products and services;

(o) fail to issue receipts or invoices on goods, digital products and services supplied;

(p) fail to disclose material information about goods, digital products or services; or

(q) engage in excessive or exploitative pricing.

52.—(1) In a contract between a person and a consumer, a term of a contract shall be regarded as unfair if it causes a significant imbalance in the rights and obligations of the parties, arising under the contract, to the detriment of the consumer.

Unfair
consumer
contracts

(2) An unfair contract or an unfair term of a contract between a person and a consumer shall not be binding.

(3) Notwithstanding subsection (2), the contract shall bind the parties if it is capable of being enforced without the unfair term.

53. The investigation procedures and remedies prescribed for anti-competitive business conduct under this Act shall apply, with the necessary modifications, to unfair trading practices prohibited under this Part.

Procedures
and remedies
for unfair
trading
practices

PART VIII—POWERS OF THE COURT

54. A person or enterprise that has suffered loss or damage, or is likely to suffer loss or damage, by reason of an infringement of the provisions under Part V, Part VI or Part VII may apply for an appropriate order for compensation before a court of law.

Civil
remedies

55.—(1) The Commission or any person in whose favour, or for whose benefit, an order has been made by the Commission, may lodge a copy of the order, certified by the Commission or a person authorized by the Commission, with the Court and the Court shall forthwith register the order as an order of the High Court.

Enforcement
of orders of
the
Commission

(2) An order that has been recorded pursuant to subsection (1) shall, for the purposes of enforcement, have the effect of a civil judgment of the High Court.

(3) Upon an application by the Commission, the Court may grant an order without notice or *ex-parte*, for the entry and search of any premises, for the purpose of inspecting and seizing any evidence that shall be removed from custody of the defendant and held in the custody of the Commission.

(4) Upon an application by the Commission, the Court may grant an interim order for the purpose of maintaining the status quo ante of competition on a market in Malawi, pending the outcome of an investigation by the Commission.

Appeals

56.—(1) A person or enterprise that is aggrieved by a determination of the Commission may, within thirty days from the date on which the determination has been served on the person or enterprise, as the case may be, appeal to the Court.

(2) The Court may—

(a) review the law as applied to the facts as set out by the Commission in its investigative report, and the facts as applied to the law by the enterprise in their written response to the Commission's determination;

(b) confirm, modify, or reverse the Commission's finding or any part thereof; or

(c) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section, the Court shall advise the Commission of its reasons for doing so, and the reconsideration of the whole or any part of the matter that is referred for reconsideration.

(4) Where an appeal is brought against any determination of the Commission, any such determination shall remain in force pending determination of the appeal, unless the Court otherwise orders.

57.—(1) Except as otherwise provided in this Act, an enterprise which engages in conduct which constitutes—

(a) a contravention of any of the obligations or prohibitions imposed in Part V, Part VI or Part VII;

(b) aiding, abetting, counselling or procuring the contravention of any such provision;

Third party liability

(c) inducing by threats, promises or otherwise, the contravention of any such provision;

(d) being knowingly participating in, or party to, any such contravention; or

(e) conspiring with any other person to contravene any such provision,

shall be liable to a monetary penalty, in damages for any loss caused to a third party by such conduct.

(2) An action under subsection (1) may be commenced before the courts, at any time, within three years from the time when the cause of action arose.

PART IX—SETTLEMENT OF INFRINGEMENTS AND LENIENCY PROGRAMMES

58.—(1) The Commission may, at any time, during or after an investigation into an alleged infringement of the prohibitions contained in this Act, enter into a settlement agreement with the enterprise or enterprises concerned.

Settlement
of an
infringement

(2) A settlement agreement referred to in subsection (1) may include—

(a) an award of damages to the complainant; or

(b) any amount proposed to be imposed as a monetary penalty.

(3) The Commission shall prescribe details for settlement of an infringement as provided under subsection (1).

59.—(1) The Commission may operate a leniency programme where an enterprise that voluntarily discloses the existence of an agreement that is prohibited under this Act, and co-operates with the Commission in the investigation of the practice, may not be subjected to all or part of an administrative order imposed under this Act.

Leniency
programme

(2) The Commission shall prescribe details of the leniency programme under subsection (1).

PART X—CROSS-BORDER COOPERATION

60.—(1) Where the Commission seeks to determine whether conduct by an enterprise in Malawi or in another member state has, as its object, the prevention, restriction or distortion of competition or has abused its dominant position in Malawi, or has an effect on consumer welfare in Malawi or where a merger notified to the Commission is likely to affect more than one member state, the Commission shall—

Cooperation
with
multilateral or
regional
authorities

(a) request the assistance of the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, in investigating the matter; or

(b) where applicable, shall refer the matter to the relevant multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, to do an investigation.

(2) Where applicable, the Commission shall comply with the procedures governing requests for information and searches and seizure under the Act, when cooperating with the relevant multilateral competition or consumer protection authority or the regional competition or consumer protection authority.

(3) The Commission may request the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, to cause an investigation to be carried out under this section, where it has reason to believe that an anti-competitive agreement by an enterprise located in another member state has, as its object or effect, the prevention, restriction or distortion of competition or has abused its dominant position in Malawi.

(4) A reference or request made under subsections (2) or (3) shall be in writing and shall disclose such information as would enable the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, to make a preliminary assessment whether it should proceed to cause the investigation to be carried out.

(5) Where a multilateral competition or consumer protection authority or the regional competition or consumer protection authority, on its own initiative or at the request of the Commission is investigating a matter in respect of any anti-competitive business conduct by an enterprise in another member state, and given notice of its determination to the Commission, the Commission shall—

(a) assist the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, in its investigation; and

(b) record and register the determination with the Court.

(6) Where the Commission, on its own initiative or at the request of a multilateral competition or consumer protection authority or the regional competition or consumer protection authority has investigated a matter in respect of any anti-competitive business conduct by an enterprise in Malawi, and given notice of its

determination to the multilateral or regional competition or consumer authority, the Commission shall—

(a) require the assistance of the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, in its investigation; and

(b) record and register the determination with the Court.

(7) A determination referred to in subsections (5) (b) and (6) (b) shall be binding on all parties to the matter and shall be enforced in the same manner as an order of the Court.

(8) A party who is aggrieved by a determination of—

(a) the multilateral competition or consumer protection authority; or

(b) the regional competition or consumer protection authority, may apply to the relevant court that has jurisdiction to review the determination or hear an appeal of such matters.

(9) The multilateral competition or consumer protection authority or the regional competition or consumer protection authority, shall, in relation to any matter referred to it or any request made to it under subsections 5(a) or 5(b), as the case may be, have power to do any act specified in Part IV and any regulations made hereunder.

(10) The provisions of the sections specified in subsection (9) shall apply, with necessary modifications, in relation to any investigation or inquiry being carried out by the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, under the relevant laws.

(11) For purposes of this section, “member state” means a state that is party to a regional or multilateral treaty with protocols on competition and consumer protection law enforcement to which Malawi is a signatory.

61. A decision reached pursuant to an investigation conducted in accordance with this Act, by a multilateral competition or consumer protection authority or the regional competition or consumer protection authority, shall be binding on all parties to which it relates and shall be enforceable in the Court, to the same extent as a decision made by the Commission.

Enforceability of the decisions of the multilateral or regional competition or consumer authority

Cooperation
with other
States

62. The Commission may cooperate with other States on competition and consumer protection law and policy enforcement by written agreement provided that the terms and expressions in the agreement have the same meaning given to them in the laws of the respective countries as in the provisions under this Act.

Definitions

63. For the purposes of this Part—

(a) “multilateral competition or consumer protection authority” means a consumer protection authority established pursuant to a multilateral integration treaty which Malawi has ratified or domesticated into a national law; and

(b) “regional competition or consumer protection authority” means any competition or consumer authority established pursuant to a common market or regional integration treaty which Malawi has ratified or domesticated into a national law.

PART XI—MISCELLANEOUS

Annual
reports

64.—The Commission shall, within three months after the end of each financial year, prepare and submit to the Minister a report of its activities during the preceding year and the Minister shall lay the report before the National Assembly at its next sitting.

Common seal

65.—(1) The common seal of the Commission shall be kept by the Chief Executive Officer and shall not be used, except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Commission—

(a) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson or any other member nominated in that behalf by the Commission and the Chief Executive Officer or any other officer authorized by the Commission; or

(b) where they are not required to be under seal, if executed in that behalf by a member authorized by the Commission for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Commission, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Commission affixed

to any document and shall presume, unless otherwise proven, that it was duly affixed.

66.—(1) A Commissioner, member of a Committee, an invited person, an employee of the Commission or a consultant of the Commission who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall— Disclosure of interests

(a) disclose such interest at, or before, the meeting convened to discuss that matter, the nature of his interest; and

(b) not take part in any deliberation or any decision-making process in relation to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting where that disclosure was made.

(3) A disclosure of interest made under this section shall be made—

(a) in the case of a member of the Commission, to the Chairperson of the Commission; and

(b) in case of an employee of the Commission, to the Chief Executive Officer who shall take such decision as considered appropriate in each case and submit a report thereon to the Commission.

67. Every—

(a) Commissioner;

(b) member of a Committee;

(c) invited person;

(d) employee of the Commission; or

(e) consultant or any person in the service of the Commission, shall, upon assumption of his or her office, take an oath of secrecy in the form set out in the *Schedule*. Oath of secrecy

68.—(1) A person shall not, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his or her duties, contents of any document, communication or information which relates to, and which has come to his or her knowledge in the course of his or her duties under this Act. Confidentiality

(2) The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or given to the Commission in connection with the Commission's operations.

(3) A person who publishes or communicates any information, documents or evidence, the publication of which is prohibited under subsection (1) and (2), commits an offence.

69. No action, suit, or other proceedings shall be brought or instituted personally against any Commissioner, member of a Committee, employee of the Commission or consultant of the Commission in respect of any act done in good faith while carrying out into effect the provisions of this Act.

70.—(1) A person—

(a) who without sufficient cause, omits or refuses—

(i) to furnish any information when required by the Commission to do so;

(ii) to produce any document when required to do so by a notice sent by the Commission;

(iii) to attend or give evidence before the Commission in obedience to a summons issued under this Act; or

(iv) refuses to take an oath or make an affirmation as a witness or to answer any question put to him; or

(b) who knowingly furnishes any false information to the Commission,

commits an offence.

(2) Any person who—

(a) being a witness leaves a hearing of the Commission without the Commission's permission;

(b) insults any member or officer of the Commission;

(c) obstructs or interrupts a hearing of the Commission; or

(d) refuses to comply with a requirement of the Commission under this Act;

commits an offence.

(3) Any person who commits an offence under this Act, for which a penalty has not been specifically provided for, shall, upon conviction, be liable to—

(a) in the case of a natural person, a fine of K5,000,000 and imprisonment for two years; and

(b) in the case of a legal person, a fine of K50,000,000.

(4) Where a person is convicted of an offence under this Act and the person has not taken any action to remedy the action constituting the offence, the person shall be liable, for each continuing day, to a fine of—

Protection of
Commissioners
and
employees

Offences and
penalties

(a) in the case of a natural person, a fine of K100,000 and imprisonment for two years; and

(b) in the case of a legal person, a fine of K1,000,000.

71. Where an offence under this Act is committed by a body corporate or unincorporated body, every director or manager of the body corporate or unincorporated body shall be liable, upon conviction as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Offences
committed by
bodies
corporate

72.—(1) In setting time limits under this Act, the Commission shall have regard both to the time required for the preparation of the submission and to the urgency of the case.

Limitation of
time

(2) Where appropriate and upon reasoned request made before the expiry of the original time-limit, the Commission may extend the time-limits.

(3) An investigation into an alleged infringement of the provisions of this Act shall be initiated within three years from the date the infringement ceased.

73.—(1) The Minister may, on recommendation from the Commission, make regulations for the better carrying into effect the provisions of this Act.

Regulations,
guidelines,
notices and
forms

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(a) the forms, fees payable and the procedure for applications to be made under this Act;

(b) the information and documents to be submitted in support of applications to be made under this Act;

(c) the form of an exemption and the conditions therefor;

(d) the manner and form in which the Commission shall issue an advisory opinion;

(e) the form of the negative clearance and the conditions under which it is issued;

(f) the threshold for prior notification to the Commission of a merger transaction;

(g) the manner and form of lodging appeals or reports with the Commission;

(h) the manner and form of serving notices on any person by the Commission, and the manner of production of books, records or documents;

(i) the manner in which the Commission shall carry out an investigation under this Act;

(j) the manner and form in which the Commission shall institute an inquiry under this Act; and

(k) generally the carrying into effect of the purposes of this Act.

Cap.1:01

(3) Notwithstanding section 21(e) of the General Interpretation Act, the regulations made under this Act may create offences whose penalties may not exceed—

(a) in the case of a natural person, a fine of K1,000,000 and imprisonment for one year; and

(b) in the case of a legal person, a fine of K20,000,000.

(4) The Commission may issue guidelines, notices and prescribe forms for purposes of providing guidance or directions, as the case may be, for better carrying into effect the provisions of this Act.

74. This Act shall apply to, and bind, the Government.

75.—(1) Subject to subsection (2), the Competition and Fair Trading Act is repealed.

(2) Any subsidiary legislation made under the repealed Act, in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act;

(b) shall be deemed to be subsidiary legislation made under this Act; and

(c) may be replaced, amended, revoked, or repealed by subsidiary legislation made under this Act.

76.—(1) Any approvals, authorizations, permission, directions, orders, and any other decisions issued, granted or made in accordance with the repealed Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued, granted or made, as the case may be, under this Act.

(2) Members of the Commission as constituted immediately before the coming into force of this Act, shall continue to hold office as Commissioners until the appointment of new Commissioners in accordance with this Act.

Government
to be bound

Repeal and
savings
Cap.48:09

Transitional
matters

(3) Any legal proceedings commenced before the coming into force of this Act by, or against, the former Commission, shall be deemed to have been commenced by, or against, the Commission.

(4) All property, funds and assets which, immediately before the commencement of this Act were vested in the former Commission, for the use of the former Commission shall, on the commencement of this Act, and without further assurance, be deemed to have vested in, or to have been acquired by, or on behalf of, the Commission, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

(5) All debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by, or on behalf of, the former Commission, shall, on the commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Commission, and shall become enforceable by, or against, the Commission to the same extent as they were enforceable by, or against, the former Commission.

(6) Any person who, immediately prior to the commencement of this Act is employed by the former Commission, shall be deemed to have been transferred to the employment of the Commission under his or her former terms and conditions of service, and, for the purpose of determining his or her rights thereunder, his or her service shall be regarded as continuous from the time he was appointed by the former Commission.

(7) For purposes of this section, "former Commission" means the Commission established under the Act repealed under section 75.

SCHEDULE

(s.67)

OATH OF SECRECY

I,, being a Commissioner/member of a Committee/invited person/employee of the Commission/ consultant of the Commission, do hereby swear/affirm that I will freely without fear or favour, affection, or ill-will, discharge the functions of a Commissioner/member of a Committee /invited person/employee of the Commission/consultant of the Commission and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God.

SWORN/AFFIRMED atthis... day of, 20...

Before me:

.....

Commissioner for Oaths

Passed in Parliament this fifth day of April, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament

(Published 31st May, 2024)

Act

No. 21 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
19th May, 2024

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An Act to provide for the status, well-being, safety and security of older persons through the promotion and protection of their rights; and to provide for connected and incidental matters

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

Short title and
commence-
ment

1. This Act may be cited as the Older Persons Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

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

“abuse” means any conduct contemplated in section 22

“beneficiary” means a recipient of an older person’s grant under Part IV;

“care” means physical, psychological, social or material assistance to an older person, and includes services aimed at promoting the quality of life and general well-being of an older person;

“caregiver” means any person who provides care;

“community-based care and support services” means any programme provided for under section 25;

“Director” means the Director of Elderly Affairs appointed under section 64;

“frail older person” means an older person in need of continuous care due to a physical or mental condition which renders him incapable of caring for himself;

“health care provider” means a person registered under the Medical Practitioners and Dentists Act;

“home-based care” means care provided or services rendered at the place where a frail older person resides, other than at a residential facility, by a caregiver in order to maintain maximum level of comfort of a frail older person, including care towards a dignified death;

“inspector” means a person appointed or designated as an inspector under section 46;

“manager” means the person responsible for the day-to-day management of a residential facility;

“National Steering Committee” means the National Steering Committee on Older Persons established under section 49;

“older person” means a person who is sixty years of age or older;

“operator” means a person who operates a residential facility;

“rehabilitation” means a process by which an older person is enabled to reach and maintain optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore any such functions or compensate for the loss or absence of any such function, but does not include medical care;

“residential facility” means a building or other structure used primarily for the purposes of providing accommodation and providing continuous services to older persons;

“respite care” means a service offered specifically to a frail older person, and which is aimed at the provision of temporary care and relief;

“service” means any activity or programme designed to meet the needs of an older person;

“shelter” means any building or premises maintained or used for the reception, protection and temporary care of an older person in need of care and protection;

“social welfare officer” means a person registered as a social welfare officer under any written law and in the employ or service of government or an organization registered under the Non-Governmental Organizations Act; and

“Technical Sub-Committee” means the National Technical Sub-Committee on Older Persons established under section 56;

PART II—GENERAL PRINCIPLES

Objects of the Act

3. The objects of the Act are to—

- (a) maintain and protect the rights of older persons;
- (b) maintain and promote the status, well-being, safety and security of older persons;
- (c) promote community-based care of older persons in order to ensure that older persons remain in their home within the community for as long as possible;
- (d) regulate the registration, establishment and management of services for older persons;
- (e) regulate the registration, establishment and management of residential facilities for older persons; and
- (f) prevent, eliminate and punish the abuse of older persons.

Implementation of the Act

4.—(1) This Act shall be implemented in an integrated, co-ordinated and uniform manner, at national and local council levels, by all organs of State which render services to older persons.

(2) All organs of State shall take reasonable measures to the maximum extent of their available resources to achieve the realization of the objects of this Act.

(3) All organs of State shall co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to older persons to achieve the implementation of this Act in the manner contemplated in subsections (1) and (2).

5.—(1) All proceedings, actions or decisions in a matter concerning an older person shall—

- (a) respect, protect, promote and fulfil the rights and the best interests of the older person;
- (b) respect the inherent dignity of the older person;
- (c) treat the older person fairly and equitably;
- (d) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person;
- (e) not discriminate against an older person on political grounds; and
- (f) respect, protect, promote and fulfil the principles and rights set out in this Act.

(2) In any matter concerning an older person—

- (a) an approach which is conducive to conciliation and problem-solving shall be followed; and

General principles

(b) delay in any action or decision to be taken shall be avoided as far as possible.

PART III—ENABLING AND SUPPORTIVE ENVIRONMENT FOR OLDER PERSONS

6.—(1) An older person shall, at all times, enjoy the rights provided for under Chapter IV of the Constitution and, in particular, shall not unfairly be denied the right to— Rights of older persons

(a) participate in community life in any position appropriate to interests and capabilities of the older person;

(b) participate in inter-generational programmes;

(c) establish and participate in structures and associations for older persons;

(d) participate in activities that enhance income-generating capacity of older persons;

(e) live in an environment catering for changing capacities of older persons; and

(f) access opportunities that promote optimal level of social, physical, mental and emotional well-being of older persons.

(2) An older person has the right, without discrimination on the basis of age, to an adequate standard of living, for himself or herself and his or her family, including—

(a) access to adequate food, water, clothing and housing; and

(b) the continuous improvement of living conditions.

(3) The Minister shall ensure equal access by older persons to —

(a) appropriate and affordable social services; and

(b) social support programmes.

(4) The Government shall provide appropriate health care services to older persons, including services designed to minimize and prevent the occurrence of communicable and non-communicable diseases, and aggravation of disabilities in old age.

(5) The Minister shall, in collaboration with the Minister responsible for health, take appropriate measures to ensure access for older persons to health services that are age and gender sensitive, and to health-related rehabilitation, and shall, in particular, prescribe measures to—

(a) formulate and implement a programme to enable older persons have access to free or affordable medical and

rehabilitation services in public hospitals and, where there is need for a referral to a private hospital, put mechanisms in place for the older person to access the medical and rehabilitation services;

(b) provide older persons with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in, the area of sexual and reproductive health and population-based public health programmes;

(c) develop national guidelines, minimum norms and standards for the provision of health care services to older persons;

(d) ensure that older persons have access to health care and rehabilitation services in any health establishment, and shall not be required to pay a higher fee for such services, on the basis of age;

(e) include geriatric studies in the curriculum of training institutions for health professionals to develop appropriate human resources to provide general and specialized services to older persons;

(f) prohibit discrimination against older persons in the provision of medical or health insurance and life insurance, where such insurance is permitted by law, which shall be provided in a fair and reasonable manner; and

(g) prevent discriminatory denial of health care or health services, food and fluids on the basis of age.

(6) A person who denies an older person any entitlement under this Act, including access to a medical insurance or life insurance, on the basis of age or medical condition, commits an offence and is, on conviction, liable to—

(a) in the case of a natural person, a fine of ten million Kwacha and to imprisonment for seven years; or

(b) in the case of a body corporate, a fine of one hundred million Kwacha.

Development of national standards and compliance

7.—(1) The Minister may, from time to time, by notice published in the *Gazette*, prescribe national standards for the acceptable levels of services that may be provided to older persons, and the terms under which services shall be monitored and evaluated.

(2) Any person who provides a service to an older person shall comply with the standards prescribed under subsection (1).

8. Every service for older persons shall be provided in an environment that—

Guiding principles for provision of services

(a) recognizes the social, cultural and economic contribution of older persons;

(b) promotes participation of older persons in decision-making processes;

(c) recognizes the multi-dimensional needs of older persons, and promotes inter-sectoral collaboration;

(d) ensures access to information by, education of and training of older persons;

(e) promotes the development and basic care of older persons in rural and urban areas;

(f) promotes the prevention of exploitation of older persons;

(g) promotes the respect and dignity of older persons;

(h) ensures that older persons receive priority in the provision of basic services;

(i) ensures rehabilitation and the provisioning of assistive devices to older persons; and

(j) ensures, as far as is practicable, that services and facilities are accessible to older persons.

9.—(1) The Minister may —

(a) recommend to the Minister responsible for finance—

(i) the provision of fiscal incentives to service providers that provide social services to older persons; and

(ii) conditions for the provision of fiscal incentives, including accounting measures, compliance measures and norms and standard;

(b) for the purposes of paragraph (a), prioritize needs and services for older persons;

(c) in the prescribed manner, enter into contracts with service providers to ensure that the services prescribed under paragraph (a) are provided; and

(d) prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (c).

(2) The Minister shall cause to be opened and maintain a register of all assets bought under the fiscal incentives, and may prescribe conditions for the management of the assets.

Fiscal incentives for support services delivered by third parties

PART IV—OLDER PERSON'S GRANT

Provision of
older person's
grant

10.—(1) The Minister shall, in consultation with the Minister responsible for finance, out of the moneys appropriated by the National Assembly for that purpose, prescribe for a grant to be called the older person's grant (in this Act referred to as the "older person's grant") for eligible older persons.

(2) The older person's grant shall be provided to eligible older persons at monthly intervals, or at such intervals as the Minister may prescribe.

Eligibility for
an older
person's grant

11. An older person shall be eligible to an older person's grant, if the person—

(a) is a citizen of Malawi; and

(b) has attained the age of seventy years.

Identification
and selection of
beneficiaries
for an older
person's grant

12.—(1) The Director shall design the method of identifying and selecting beneficiaries for an older person's grant using community-based targeting approaches.

(2) The identification, selection and verification of beneficiaries shall be done within the community where the beneficiaries live.

(3) A person shall be registered as a beneficiary of the older person's grant in the area where he or she ordinarily resides.

(4) An eligible older person shall, in person present to the Director, or any other designated officer, sufficient and cogent proof of his or her eligibility, and may do so by producing—

(a) a national identification card; or

(b) proof of application for a national identification card.

(5) Where the Director, or other duly designated officer, is in doubt with the credibility of proof of citizenship or eligibility of an older person, he or she may seek written, verbal or visual testimony of the chief or a village headman from the area where the older person resides.

(6) Where an older person satisfies the eligibility and selection criteria for an older person's grant, the eligible older person shall be—

(a) enrolled in the older person's grant payroll by entering the particulars of that person as prescribed therein; and

(b) issued with an older person's grant recipient card in the prescribed form.

(7) The Director shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness of the older person's grant among the citizens of Malawi.

13.—(1) The Director shall, in consultation with local authorities, establish centres throughout every traditional authority area in Malawi as pay points where beneficiaries may receive their grant, and for this purpose the Director shall endeavour to establish the pay points at reasonable walking distances for older persons.

Payment of
older persons
grants

(2) A recipient of an older person's grant (in this Part otherwise referred to as the "beneficiary") shall have the right and the duty to—

- (a) present himself or herself for receipt of the grant;
- (b) verify with the Director, or its designated officers, the amount he or she is supposed to receive; and
- (c) request that any error or omission with respect to his or her grant be corrected.

(3) The Director shall, on a monthly basis, or as otherwise prescribed, pay the beneficiaries of an older person's grant in such amounts as the Minister may, from time to time, determine.

(4) Where a beneficiary is absent during a pay parade for any reasons whatsoever, except where he or she is dead, the Director shall carry forward the grant to the next pay parade.

(5) Where a beneficiary is unable to physically present himself or herself at the pay point due to a medical condition, a disability or frailty, the Director may nominate an adult person who is related to the beneficiary, or a social worker, to receive an older person's grant, on behalf of the beneficiary, if the person so nominated satisfies prescribed conditions.

14.—(1) Where, due to a medical, safety or family emergency, a beneficiary is likely to be absent from his or her area of residence, or from the Republic for a period exceeding ninety days, the Director shall suspend payment of the older person's grant until the beneficiary appears in person before the Director, and confirms his or her permanent return.

Discontinuation of
payments to
older persons
absent from
Malawi

(2) A beneficiary shall not be entitled to claim arrears of an older person's grant for the period he or she was absent from his or her area of residence, or from the Republic.

(3) The Director shall permanently discontinue payment of the grant and de-register the beneficiary from the beneficiary payroll after receipt of information and proof of—

- (a) death of a beneficiary; or
- (b) permanent absence of a beneficiary in the Republic.

Recovery of
older person's
grant

15.—(1) Where the Director pays money to an older person under the belief that the older person is entitled thereto under this Act, but the older person was not entitled thereto, the amount of money so paid is an amount due and payable to the State by the older person or, if he or she is deceased, by his or her estate.

(2) The Director shall recover the amounts to which an older person was not entitled, as specified under subsection (1).

(3) The Director shall investigate all complaints of alleged fraudulent withholding of the full or partial benefit due to a beneficiary, and the holding of the investigation shall not affect the right of a beneficiary to receive the full value of the benefit from date of accrual.

Appeals

16.—(1) Where an older person is dissatisfied with a decision made by the Director with respect to a matter regulated by this Act, the older person or a person acting on his or her behalf may, within ninety days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.

(2) The Minister may, after considering the appeal and the reasons of the Director for the decision—

(a) confirm, vary or set aside that decision; or

(b) appoint an independent tribunal to consider the appeal in accordance with such conditions as the Minister may prescribe by notice published in the *Gazette*, and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision or make any other decision.

False
representation

17.—(1) A person who, during identification, selection, verification or registration of beneficiaries for an older person's grant, furnishes information which he or she knows to be untrue or misleading in an material respect, or makes a representation which to his or her knowledge is false, in order that he or she, or another person may—

(a) obtain or retain the older person's grant to which the person is not entitled to under this Act; or

(b) obtain the older person's grant in excess of his or her entitlement under this Act,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

(2) A person who receives an older person's grant knowing that he or she is not entitled thereto, or is not entitled to the full amount which he or she is receiving, and fails to inform the Director thereof,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

(3) A beneficiary who knowingly fails to inform the Director of any material change of information shall be liable to an administrative penalty.

PART V—PROTECTION FOR OLDER PERSONS

18.—(1) Any person who is involved with an older person in a professional capacity, and who on personal observation concludes that the older person is in need of care and protection, shall report his observations to the Director.

Older persons
in need of
care and
protection

(2) Any person, other than a person referred to in subsection (1), who is of the opinion that an older person is in need of care and protection may report such opinion to a social welfare officer or the Director.

(3) The Director or the social welfare officer to whom a report has been made under subsection (1) or (2) shall investigate the matter.

(4) If the report is substantiated by the investigation, the Director or the social welfare officer concerned, as the case may be, may take any one or more of the following actions—

(a) facilitate the removal of the older person concerned to a hospital, in case of injury or illness, or to a shelter;

(b) report the matter to a police officer, and request the police officer to act in accordance with this Act;

(c) take any other steps as may be prescribed to ensure adequate provision for the basic needs and protection of the older person concerned; or

(d) if the older person concerned is the victim of an offence, assist the older person to lay a complaint before a police officer.

(5) For purposes of this section an older person who is in need of care and protection is one who—

(a) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other economic abuse;

(b) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;

(c) has been neglected or abandoned without any visible means of support;

(d) lives or works on the streets or begs for a living;

(e) abuses or is addicted to a narcotic or intoxicating substance, and is without any support or treatment for the substance abuse or addiction;

(f) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;

(g) lives in or is exposed to circumstances which may harm that older person physically or mentally; or

(h) is in a state of physical, mental or social neglect.

Notification
of abuse of
older persons

19.—(1) Any person who suspects that an older person is or has been abused, or suffers from an abuse-related injury, shall immediately notify the Director, or a police officer, of his or her suspicion.

(2) A person is not liable for an offence in respect of any notification given in good faith under subsection (1).

(3) On receipt of a notification under subsection (1)—

(a) the Director or police officer, as the case may be, shall immediately investigate the matter and if the suspicion is substantiated by the investigation, section 18 (4)(d), with the necessary modifications, shall apply; and

(b) the police officer shall inform the Director of the alleged abuse or, if he or she is satisfied that it is in the best interests of the older person that the alleged offender is removed from the home or place where the older person resides, act accordingly.

(4) Any person who conceals information regarding abuse of an older person, or aids and abets the abuse of an older person, in contravention of this section commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

20.—(1) A police officer to whom a complaint referred to in section 18 (4)(d) has been made and who is satisfied that it is in the best interests of the older person that the alleged offender is removed from the home or place where the older person resides, shall issue a written notice which—

(a) specifies the full names, residential address, occupation and status of the alleged offender;

(b) requests the alleged offender to leave the home or place where the older person resides and refrain from entering the home or place or having contact with the older person until the court hearing specified in paragraph (c);

Written notice
to alleged
offender

(c) summons the alleged offender to appear at a magistrate's court having jurisdiction on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the older person resides:

Provided that the date so specified shall be the first court day after the day upon which the notice is issued; and

(d) contains a certificate under the hand of the police officer that he or she has handed the original copy of the written notice to the alleged offender, and that he or she has explained to the alleged offender the importance of the notice.

(2) The police officer shall forthwith forward a duplicate copy of the written notice to the clerk of the magistrate's court concerned.

(3) The production to the magistrate's court of the duplicate copy of the written notice referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender.

(4) A magistrate's court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice, and may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender—

(a) issue an order prohibiting the offender from entering the home or place where the older person resides or from having any contact with the older person, or both from entering the home or place and having contact with the older person, for a period of time as the court deems fit;

(b) order that the offender may enter the home or the place where the older person resides or have contact with the older person upon such conditions as would ensure that the best interests of the older person are served;

(c) order that the offender will be responsible for the maintenance of the family of the older person during the period specified under paragraph (a); or

(d) make such other order with regard to the matter as the court deems fit.

(5) A person who—

(a) has been issued with a written notice issued under subsection (1) and—

(i) refuses to leave the home or place where the older person resides; or

(ii) has contact with the older person in contravention of the written notice;

(b) contravenes or fails to comply with an order of the magistrate's court issued under subsection (4) or with any condition contained in the order,

commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

Procedure for
bringing
alleged
offenders
before court

21.—(1) If a social welfare officer or a health care provider submits or makes a written statement under oath or affirmation to a public prosecutor, and in such statement alleges that any person within the area of jurisdiction of the magistrate's court to which that public prosecutor is attached abuses an older person, that public prosecutor may, subject to subsection (2), request the clerk of that court to issue a summons informing such first-mentioned person of the allegations against him or her and calling upon him or her to appear, at a time and place specified in the summons, before a magistrate within that area.

(2) A public prosecutor shall not, under subsection (1), request a clerk of the court to issue summons, unless he or she has obtained from the social welfare officer or health care provider a report on the alleged abuse of the older person concerned.

(3) If, on the basis of a statement under oath or affirmation referred to in subsection (1) the magistrate has reason to suspect that a social welfare officer or health care provider will be prevented or prohibited from going into or entering upon the place where the older person concerned resides to make the necessary investigation for the purposes of a report referred to in subsection (2), or if such social welfare officer or health care provider has been prevented or prohibited from doing so, the magistrate may, on an application of the public prosecutor, issue a warrant authorizing the social welfare officer or health care provider to go into or enter upon that place to make such investigation.

(4) A magistrate may, in the warrant issued by him under subsection (3), authorize the social welfare officer or health care provider to take a police officer with him or her for the purposes of an investigation referred to in subsection (3).

(5) The Criminal Procedure and Evidence Code applies, with the necessary changes, in relation to the form and manner of service of summonses in criminal cases in lower courts, the time to be allowed to a person summoned to appear, and the manner in which a person who has been summoned to appear may be dealt with if the person fails to appear or to remain in attendance, as required, in respect of summons issued under section.

(6) A person who—

(a) obstructs or hinders a social welfare officer or a health care provider in the performance of his functions under this section; or

(b) refuses to furnish to a social welfare officer or a health care provider any information in connexion with the alleged abuse of an older person at his disposal which the officer requires for the purposes of an investigation referred to in subsection (3),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

22.—(1) Subject to this section, a magistrate before whom a person is brought under section 21 shall enquire into the correctness or otherwise of the allegations contained in the summons.

Enquiry into
alleged abuse
of older
persons

(2) A public prosecutor or any other person designated by the magistrate for the purpose shall appear at the enquiry, and may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.

(3) The person against whom the allegations is made may give evidence, and he or she, or his or her legal representative, may cross-examine any witnesses called under subsection (2), and may call witnesses and shall be given the opportunity to advance reasons why an order under subsection (9) should not be issued.

(4) Subject to anything to the contrary contained in this Act, the law relating to criminal trials in magistrates' courts applies with the necessary changes in respect of subpoenas, the calling and examination of witnesses for the purposes of or at the enquiry, the taking of evidence and the production of documents and other articles thereat, and the payment of allowances to witnesses.

(5) The magistrate holding the enquiry may determine whether or not the proceedings shall be conducted in open court or in camera.

(6) The Criminal Procedure and Evidence Code, in so far as it relates to the conduct of a criminal trial in the absence of an accused, applies with the necessary changes in respect of an enquiry held under this section.

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(7) The report referred to in section 21 (2) shall be submitted to the magistrate holding the enquiry, who may direct the district health officer, a psychiatrist or a clinical psychologist to examine the older person concerned and to furnish the magistrate with a report on the findings of the examination.

(8) The contents of a report submitted or furnished in accordance with subsection (7) shall be disclosed to the person against whom

the allegations were made, and if he or she so desires, he or she, or his or her legal representative, shall be given an opportunity to cross-examine the person who made the report, in relation to any matter arising out of the report, and to disprove any allegation made therein.

(9) If, after consideration of the evidence and of any report submitted or furnished under subsection (7), it appears to the magistrate that any allegation in the summons is correct, the magistrate may—

(a) authorize the person concerned to accommodate or care for the older person concerned under such conditions as the magistrate may impose; or

(b) prohibit that person from accommodating or caring for any older person for such period, but not exceeding ten years, as may be determined by the magistrate.

(10) Any person who contravenes or fails to comply with any condition imposed under subsection (9)(a) or who contravenes or fails to comply with subsection (9)(b) commits an offence and is, upon conviction, liable, to a fine of ten million Kwacha and to imprisonment for five years.

23.—(1) Any conduct or lack of appropriate action, occurring within any relationship where there is dependence or an expectation of trust, which causes harm, injury or distress, or is likely to cause harm, injury or distress, to an older person constitutes abuse of an older person.

(2) For the purposes of subsection (1), “abuse” includes physical abuse, sexual abuse, psychological abuse and economic abuse and—

(a) “physical abuse” means any act or threat of physical violence towards an older person;

(b) “sexual abuse” means any conduct that violates the sexual integrity of an older person;

(c) “psychological abuse” means any pattern of degrading or humiliating conduct towards an older person, and includes—

(i) repeated insults, ridicule or name calling;

(ii) repeated threats to cause emotional pain; and

(iii) repeated invasion of the privacy, liberty, integrity or security of an older person; and

(d) “economic abuse” means—

(i) the deprivation of economic and financial resources to which an older person is entitled under any written law;

- (ii) the unreasonable deprivation of economic and financial resources which the older person requires out of necessity; and
- (iii) the disposal of household effects or other property that belongs to the older person without the consent of the older person.

(4) If a court, after having convicted a person of any offence, finds that the convicted person has abused an older person in the commission of the offence, that finding shall be regarded as an aggravating circumstance for sentencing purposes.

(5) Any person who abuses an older person commits an offence and is, upon conviction, liable to a fine of fifteen million Kwacha, and to imprisonment for seven years.

24.—(1) The Director shall, in the prescribed manner, keep a register of persons convicted of the abuse of an older person or of any offence provided under section 23 (4).

Register of abuse of older persons

(2) A person whose name appears in the register contemplated in subsection (1) shall not, in any way—

- (a) operate or be employed at any residential facility;
- (b) provide any community-based care and support service to an older person.

PART VI—COMMUNITY-BASED CARE AND SUPPORT SERVICES

25. An older person receiving community-based care and support services has, in addition to the rights provided for under section 6, the right to—

Rights of older persons receiving community-based care and support services

- (a) reside at home as long as possible;
- (b) pursue opportunities for the full development of his or her potential; and
- (c) benefit from family and community care and protection in accordance with the system of cultural values of society.

26.—(1) The Minister may, in collaboration with any other relevant Minister—

Community-based programmes for older persons

- (a) develop community-based programmes regarding—
 - (i) prevention and promotion, which shall ensure the independent living of older persons in the community in which the older persons reside; and
 - (ii) home-based care, which shall ensure that frail older persons receive maximum care within the community through a comprehensive range of integrated services; and

(b) determine how any person who runs a programme under paragraph (a) may be supported, either financially or otherwise.

(2) The programmes referred to in subsection (1) shall be aimed at—

(a) achieving economic empowerment of older persons;

(b) establishing recreational opportunities for older persons;

(c) providing information, education and counselling services, including information, education and counselling services relating to HIV and AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;

(d) providing spiritual, cultural, medical, civic and social services;

(e) providing nutritionally balanced meals to needy older persons;

(f) promoting skills and capacity of older persons to sustain their livelihoods;

(g) providing professional services, including care and rehabilitation, to ensure independent living of older persons;

(h) providing appropriate services for vulnerable and qualifying older persons;

(i) utilizing and managing existing facilities for older persons as multi-purpose community centres;

(j) integrating community care and development systems for older persons; and

(k) implementing inter-generational programmes.

(3) All home-based care programmes for frail older persons within the community may include—

(a) the provision of hygienic and physical care of older persons;

(b) the provision of professional and lay support for the care of older persons within the home;

(c) rehabilitation programmes that include provision of assisted devices;

(d) the provision of respite care;

(e) information, education and counselling for family members, caregivers and the community regarding ageing and associated conditions; and

(f) the provision of free health care to frail older persons and to other older persons, as may be determined by the Minister.

27.—(1) A person shall not provide community-based care and support services, unless the service is registered and licensed in accordance with section 28.

Community-based care and support services to be registered and licensed

(2) A person who provides community-based care or support services without being registered and licensed in accordance with section 35 commits an offence, and is liable, on conviction, to a fine of ten million Kwacha and to imprisonment for five years.

28.—(1) A person who intends to provide community-based care and support services shall apply to the Director for the registration and a licence in the prescribed manner.

Registration and licensing of community-based care and support services

(2) The Director may prescribe conditions for the registration and licensing of community-based care and support services, including conditions regarding application, approval, temporary registration or licensing, withdrawal and termination of registration or the licensing.

(3) A person who has been registered in accordance with this section may apply to the Director for a licence to provide community-based care and support services in accordance with the provisions of Part VIII.

(4) The licence issued by the Director shall not be transferable to another person.

(5) If the service provider, for any reason, intends to stop providing the service, the service provider shall, prior to stopping the service in question—

(a) in writing, notify the Director of the intention and the implications of such stoppage for the affected older persons;

(b) inform the older persons affected of the intended stoppage of the service; and

(c) take reasonable steps to ensure that the older persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to a person providing similar services.

29.—(1) Every service provider for home-based care for older persons shall, prior to provision of services, ensure that caregivers receive the training prescribed by the Director.

Persons providing home-based care

(2) Sub-section (1) does not apply to social welfare officers and health care providers referred to in subsection (3).

(3) All social welfare officers and health care providers in the public service providing care to older persons under subsection (1) shall be registered with the Director.

(4) The Director shall keep a register of all caregivers providing home-based care for older persons.

(5) The Director shall prescribe a code of conduct for the caregivers.

(6) Any person who contravenes or fails to comply with this section commits an offence and shall, on conviction, be liable to a fine of five million Kwacha, and to imprisonment for two years.

30.—(1) A social welfare officer in the public service may, at any time, and any social welfare officer or person designated by the Director shall, if requested to do so by the Director—

(a) visit and monitor any service provider for home-based care and support services for older persons in order to ensure compliance with this Act;

(b) interview any older person cared for or accommodated by service provider for home-based care and support services either with or without the assistance of a health care provider enquire into the well-being of any older person;

(c) direct any person who has in his possession or custody any book or document relating to the service provider for home-based care and support services, to submit the book or document to him for inspection;

(d) submit a report to the Director on the outcome of the inspection; and

(e) provide the service provider for home-based care and support services with a report on the findings of the inspection.

(2) A social welfare officer, or designated person exercising any power under subsection (1), shall, at the request of service provider for home-based care and support services in question or the person who has control over the place in question, as the case may be, produce proof of identity issued by the Director stating that he is a social welfare officer or designated person.

(3) A social welfare officer or designated person may issue a compliance notice to the service provider for home-based care and support services if a provision of this Act has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this Act has been complied with and the social welfare officer or designated person has issued a compliance certificate in respect of that notice.

(5) A person who—

(a) obstructs or hinders a social welfare officer or designated person in the performance of his functions in terms of subsection (1);

(b) refuses to give a social welfare officer or designated person access to an older person cared for or accommodated in a residential facility referred to in subsection (1); or

(c) refuses or fails to comply with a direction in terms of subsection (1)(d),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

PART VII—RESIDENTIAL FACILITIES

31. An older person residing in a residential facility shall have, in addition to the rights under Chapter IV of the Constitution or any other written law, the right to—

Rights of older persons in residential facilities

(a) appoint a representative to act on his or her behalf;

(b) have reasonable access to assistance and visitation;

(c) keep and use personal possessions;

(d) have access to basic care;

(e) be informed about the financial status of the residential facility and changes in management;

(f) participate in social, religious and community activities of his choice;

(g) privacy;

(h) a personal physician, if he or she can afford it; and

(i) be given a notice of at least thirty days of a proposed transfer or discharge.

32. The following services may be provided at residential facilities—

Services at residential facilities

(a) continuous care and support services to frail older persons and older persons who need special attention;

(b) care and supervision services to older persons who are suffering from dementia and related diseases;

(c) rehabilitation services;

(d) public education on issues of ageing, including dementia;

(e) counselling services to residents and family members who need these services;

(f) implementation and monitoring of outreach programmes;

(g) provision of beds for the temporary accommodation of older persons who are at risk;

(h) respite care services;

(i) training of volunteer caregivers to deal with frail older persons; and

(j) sport and recreational activities.

33.—(1) A person shall not operate a residential facility, unless the facility is registered and licensed under this Act.

(2) A person who wishes to operate a residential facility shall, in the prescribed manner, apply to the Director for registration thereof.

(3) The Director may refuse an application under subsection (3), or grant the application, subject to such conditions as the Director may determine, and if the application is granted, the Director may direct that a certificate of registration, in the prescribed form and specifying conditions attached thereto, if any, be issued to the applicant.

(4) The Director may, at any time after giving a notice of one month of its intention to do so, and after consideration of any representations received by the Director during that month, amend or cancel registration.

(5) An amendment or cancellation of a certificate of registration shall be effected by notice to the holder thereof, and takes effect on a date specified in the notice:

Provided that the date specified in the notice in an amendment or cancellation of a certificate of registration shall not be earlier than three months for permanent registration and one month for temporary registration after the date of the notice, unless the Director and the holder of the certificate of registration certificate agree otherwise.

(6) A person to whom a certificate of registration has been issued under subsection (3) shall not transfer it to any other person.

(7) Where the registration of a residential facility has been cancelled in accordance with subsection (4), or if the operator wishes to close down the facility for any reason, the operator shall take reasonable steps to ensure that, on the closing down of the facility, the older persons concerned are accommodated in another registered residential facility or with persons who, in the opinion of a social welfare officer, are fit and proper persons to accommodate the older person or older persons.

(8) A person who has been registered under subsection (4) may apply for a licence to operate a residential facility in accordance with the provisions of Part VIII.

(9) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

(10) This section does not apply to a private residence in which an older person is looked after by a family member.

34.—(1) If there is reason to believe that any of the conditions prescribed under section 33 (3) have not been complied with by the operator, the Director may order specific measures to be adopted to facilitate compliance with those conditions.

Compliance with conditions for registration of residential facilities

(2) The operator shall, at all reasonable times, report to the Minister any circumstances which may result in his inability to comply fully with any condition prescribed under section 33 (3).

(3) Where the registration of a residential facility has been cancelled in accordance with section 33 (5), or if the operator wishes to close down that residential facility, the operator shall—

(a) prior to any decision to close down that residential facility, consult with the Director on the matter;

(b) furnish the Director with a full report on the accommodation of the older persons concerned required under section 33 (7); and

(c) hand over to the Director all assets bought with Government funds.

(4) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

35.—(1) If more than ten older persons reside in a residential facility, other than a shelter, the residents shall establish a residents' committee which shall represent the interests of the residents at the residential facility.

Establishment of residents' committees for residential facilities

(2) The Director shall prescribe—

(a) the composition of a residents' committee established under subsection (1), which shall be reflective of the profile of residents, and shall include representatives of the residents and members of staff of the residential facility and members of the public;

(b) the election, appointment, qualifications, terms of office and grounds for removal from office of the members of a residents' committee and the filling of vacancies on such committee; and

(c) the number of, and procedure at, meetings of a residents' committee.

(3) A residents' committee established under subsection (1) shall ensure that the manager of the residential facility—

(a) facilitates interaction between the residents of the residential facility and their families, the public in general and the committee;

(b) provides quality service to the residents of the residential facility;

(c) provides opportunities for the training of the staff of the residential facility;

(d) applies principles of sound financial management, and submits quarterly financial reports to the residents and staff of the residential facility;

(e) monitors activities at the residential facility in order to deal speedily with any incidents of abuse of the residents of the residential facility, and takes steps to report such incidents to the Director and any other appropriate authority;

(f) consults the residents' committee in the appointment of the residential staff of the residential facility;

(g) establishes complaints procedures for the residents and staff of the residential facility and persons who wish to lodge a complaint on behalf of any such resident; and

(h) does everything necessary or expedient for the effective functioning of the residential facility.

36.—(1) A person shall not, directly or indirectly, unfairly discriminate against an older person applying for admission to a residential facility on the grounds specified in section 20 of the Constitution.

(2) Where an older person is refused admission to a residential facility, the manager of that residential facility shall, on the request of that person, give reasons in writing for the refusal to that person.

(3) An older person shall not be admitted to a residential facility without his consent, unless his or her mental condition renders him or her incapable of giving the consent, in which case a person authorized to give the consent under any written law or pursuant to a court order may give the required consent,

(4) In the absence of a person envisaged under—

(a) subsection (3), the required consent may be given by the spouse or partner of the older person concerned or, in the absence of the spouse or partner, an adult child or sibling of the older person, in the specific order as listed; or

(b) paragraph (a), the required consent may be given by the Director.

(5) The consent specified under subsections (3) and (4) shall only be given after a medical practitioner registered under the Medical Practitioners and Dentists Act has certified that any delay in the admission of the older person to the residential facility may result in the death or irreversible damage to the health of the older person.

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(6) The operator of a residential facility shall take all reasonable steps to obtain the older person's consent.

(7) Notwithstanding subsection (3), an older person who is capable of understanding shall be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent in terms of that subsection.

(8) The operator of a residential facility into which an older person is admitted as a result of consent given in accordance subsection (4)(b) shall notify the Director of the admission within forty-eight hours after such admission.

(9) On receipt of the notice referred to in subsection (8), the Director shall constitute multidisciplinary committee as may be prescribed in order to assess and to confirm or reject the admission contemplated in that subsection.

(10) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is, upon conviction, liable to a fine of ten million Kwacha, and to imprisonment for five years.

37.—(1) A social welfare officer in the public service may at any time, and any social welfare officer or person designated by the Director shall, if requested to do so by the Director—

Monitoring of registered residential facilities

(a) visit and monitor a residential facility in order to ensure compliance with this Act;

(b) interview any older person cared for or accommodated in the residential facility;

(c) either with or without the assistance of a health care provider enquire into the well-being of any older person;

(d) direct any person who has in his possession or custody any book or document relating to the residential facility, to submit the book or document to him for inspection;

(e) submit a report to the Director on the outcome of the inspection; and

(f) provide the operator with a report on the findings of the inspection.

(2) A social welfare officer or designated person exercising any power under subsection (1) shall, at the request of the manager of the residential facility in question, or the person who has control over the place in question, as the case may be, produce proof of identity issued by the Director stating that he or she is a social welfare officer, or designated person.

(3) A social welfare officer or designated person may issue a compliance notice to the operator concerned if a provision of this Act has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this Act has been complied with and the social welfare officer or designated person has issued a compliance certificate in respect of that notice.

(5) Any person who—

(a) obstructs or hinders a social welfare officer or designated person in the performance of his functions under subsection (1);

(b) refuses to give a social welfare officer or designated person access to an older person cared for or accommodated in a residential facility referred to in subsection (1); or

(c) refuses or fails to comply with a direction under subsection (1)(d),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

38.—(1) The operator shall, within sixty days after the end of the financial year of that residential facility, submit to the Director, a report covering that financial year in respect of—

(a) compliance with the prescribed service standards and the prescribed measures to prevent and combat abuse of older persons; and

(b) the provisions of the prescribed service level agreements concluded during that financial year.

(2) If the operator fails to submit a report referred to in subsection (1), the Director may—

(a) give notice to that operator that, if such report is not submitted within ninety days after the date of that notice, the registration of the residential facility may be withdrawn; and

(b) if the report is not submitted within ninety days after the date of the notice given under paragraph (a), withdraw the registration of the residential facility after giving a notice of one month of the intention to do so.

PART VIII—LICENCES

39.—(1) A person who is not licensed or permitted under this Act or any other written law, shall not operate a residential facility or offer community based care and support services to older persons. Requirement for a licence

(2) A person who engages in any act in contravention of subsection (1) commits an offence, and is, upon conviction, liable to a fine of ten million Kwacha, and to imprisonment for five years.

40.—(1) An application for the issue of a licence shall be in the prescribed form, and shall accompanied by— Application for a licence

(a) a certificate of registration issued under section 33;

(b) proof of payment of the prescribed fee;

(c) a plan with the full details of activities for which the licence is being sought and specification of the location where the applicant intends to operate;

(d) where appropriate, proof of incorporation or registration under a written law;

(e) a security clearance certificate from the Malaŵi Police Service of the applicant and each senior officer and director of the applicant;

(f) an undertaking to comply with the laws of Malaŵi;

(g) a declaration, signed and dated by the applicant that he or she is conversant with the provisions of this Act; and

(h) such other details as the Director may prescribe by notice published in the *Gazette*.

(2) The application shall further contain a detailed description of the method that the applicant proposes to use for keeping records, which shall—

(a) ensure compliance with the record keeping requirements under this Act; and

(b) permit the Director to audit the activities of the applicant once licensed in terms of this Act.

(3) An application under this section shall be signed by the applicant or, in the case of a body corporate, one of its officers, directors or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of their knowledge.

Grant or
refusal of
application
for licence

41.—(1) Where, after consideration of an application made under section 40, the Director is—

(a) satisfied that the application meets the requirements of this Act, the Director shall grant the licence to the applicant; and

(b) not satisfied that the application meets the requirements of this Act, the Director shall, within ninety days, give a written notification to the applicant why the application has not been granted.

(2) Where the Director refuses the application in accordance with subsection (1) (b), the applicant may re-submit the application to the Director after rectifying the shortfalls or mischief in the application cited by the Director in his written notification.

(3) The Director may, after consideration of the application under section 40—

(a) grant a licence, subject to such conditions as the Director may determine; or

(b) grant a temporary licence to operate the residential facility or offer community based care and support services for such period as the Director may determine, and direct that a temporary licence specifying those conditions be issued to the applicant in the prescribed form for that period, and after expiration of the said period, or after notice by the applicant in the prescribed manner, that the said conditions have been complied with, whichever occurs first, reconsider the application.

(4) A temporary licence issued under subsection (3)(b) may not be extended for more than twelve months under the same conditions.

(5) Where the grounds for refusal to grant a licence under this section are not in accordance with the principles of fairness or natural justice, the applicant for a licence is entitled to a review of the decision of the Director by a competent court of law.

42.—(1) Every licence issued under this Act shall—

(a) be in the prescribed form, and bear a licence number;

(b) bear the name and address of the licensee;

(c) bear the physical address of the site or sites and, if possible,

Particulars of
licence

of each building location if located in different locations but under the same licence where authorized activities may be conducted;

(d) be valid of for period specified in subsection (3);

(e) indicate the effective and expiry date of the licence;

(f) be issued subject to payment of a prescribed fee, and any other conditions as the Director to prescribe;

(g) bear any conditions which the licensee is required to meet;

(h) list the authorized activities; and

(i) be published in the *Gazette*.

(2) Upon being granted the licence, the licensee shall—

(a) be entitled to engage in the activities for which the licence has been issued;

(b) cause a licence to be conspicuously displayed, at all times, on the site to which the licence relates; and

(c) comply with all the conditions stipulated on the licence.

(3) A licence issued under this Act shall be valid for a period of twelve months after which it may be renewed for further period of twelve months, upon the payment of a prescribed fee.

(4) A person intending to renew a licence under subsection (1) shall apply to the Director for the renewal of the licence, at least three months prior to the expiry of the licence.

(5) A person holding a valid licence under this Act may only transfer the licence to another person with the approval, in writing, of the Director.

(6) The Director may prescribe conditions under which a licence issued under this Act may be transferred to another person.

43.—(1) A licensee shall submit to the Director, on 30th June every year, records of all transactions which are required to be kept under this Act. Annual returns

(2) The Director shall prescribe the manner in which records may be submitted.

(3) A licensee who fails to submit to the Director the records, without a reasonable justification for the default, by the period specified under this section commits an offence and shall be liable to a prescribed daily penalty.

(4) The Director may suspend a licence where the licensee fails to submit the records within the thirty days referred to in subsection (3), on such conditions as the Director deems fit.

(5) The Director may reinstate the licence suspended under subsection (4) on such conditions as he deems fit upon being satisfied that the licensee has complied with the requirement.

(6) Where the licensee fails to rectify the reasons for suspension or fails to comply with the conditions of reinstatement referred to under this section within sixty days of the date of notification, the Director shall cancel the licence.

Cancellation
of licences

44.—(1) The Director shall cancel a licence issued under this Act, where—

(a) the Director has reasonable grounds to believe that the licence was issued on the basis of false or misleading information or false or falsified documents submitted with the application;

(b) the licensee has, since the issuance of the licence, contravened this Act or its regulations or a condition of his licence, and has failed to remedy the contravention within a specified period;

(c) the licensee is no longer eligible to be registered as required under section 28 or 33, as the case may be; or

(d) the information received from any competent national or international agency or under the mutual assistance corporation agreements with other national or international law enforcement partners raises reasonable grounds to believe that the licensee has been involved in illegal activities.

45.—(1) A licensee who intends to cease conducting activities authorized under a licence, whether before or on the expiry of their licence, shall submit to the Director a written notice to that effect, at least thirty days before ceasing those activities.

(2) The Director shall prescribe the manner and nature of information which a licence holder shall submit on cessation of activities.

Cessation of
activities

PART IX—INSPECTION

46.—(1) The Director may appoint or designate inspectors on terms and conditions determined by the Director, to check and verify compliance with this Act, and in this regard the Director may designate any person employed by the Director or appointed under any written law, as an inspector.

(2) The Director shall cause to be published in the *Gazette* the list of persons appointed or designated as inspectors.

Inspectors

(3) The Director shall provide an inspector with an identification card which shall be prima facie evidence of his appointment or designation as an inspector.

(4) An inspector shall, in the performance of his or her functions under this Act—

(a) bear an identification card referred to under subsection (3); and

(b) on request, show the identification card to any person.

47.—(1) An inspector may, for the purpose of enforcing compliance of this Act, at any reasonable time, without prior notice, enter into any premises that the inspector has reasonable grounds to believe that it is being used by a person licensed, or ought to be licensed, under this Act to commit an offence or act contrary to the provisions of this Act, and the Director may—

Powers of inspectors

(a) search the premises;

(b) search any person on the premises, if there are reasonable grounds to believe that the person has possession of an article or item that has a bearing on the investigation, except that the person shall not be searched by a person of the opposite sex;

(c) take extracts from, or any copies from any book, document or record that is on the premises and that has a bearing on the investigation;

(d) demand the production of relevant certificates and inspect the same; and

(e) make any such inquiries as may be necessary in order to ascertain whether this Act, or any other written law on which there is an investigation, is being complied with.

(2) An inspector shall submit to the Director, a written report containing all relevant matters relating to an inspection for the information or action by the Director, as the case may be.

48. A person who—

(a) delays or obstructs an inspector in the performance of the inspector's duties and functions under this Act;

(b) refuses to give an inspector reasonable assistance as he may require for the purpose of exercising the inspector's functions; or

(c) gives an inspector false or misleading information in response to an inquiry made by the inspector,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

Obstruction of inspectors, etc.;

PART X—NATIONAL STEERING COMMITTEE ON OLDER PERSONS AND
NATIONAL TECHNICAL SUB-COMMITTEE ON OLDER PERSONS

Establishment
and
composition
of the
National
Steering
Committee on
Older Persons

49.—(1) There is hereby established a national committee to be known as the National Steering Committee on Older Persons (in this Act referred to as the “National Steering Committee”).

(2) The National Steering Committee shall consist of—

(a) the following *ex-officio* members, or their designated representatives—

- (i) the Principal Secretary responsible for Elderly Affairs;
- (ii) the Principal Secretary responsible for Justice;
- (iii) the Secretary to the Treasury;
- (iv) the Principal Secretary responsible for Local Government;
- (v) the Principal Secretary responsible Health;
- (vi) the Principal Secretary responsible for Agriculture;
- (vii) the Inspector General of Police;
- (viii) the Commissioner of Disaster Preparedness and Management;
- (ix) the Director General of the National Planning Commission; and
- (x) the Executive Secretary of the Human Rights Commission;

(b) the following members appointed by the Minister—

- (i) the Executive Director of an association of older persons;
- (ii) one person representing civil society operating in the elderly persons sector;
- (iii) two eminent older persons;
- (iv) one person representing Traditional Leaders; and
- (v) two persons representing religious groups.

(3) A representative of an *ex-officio* member referred to in subsection (2) (a) shall be designated by, or on behalf of, the *ex-officio* member by notice in writing to the National Steering Committee to attend the meetings thereof, and upon such designation the *ex-officio* member shall not himself or herself attend to the business of the Committee in person unless the designation is rescinded.

(4) The Minister shall, in making appointments under subsection (2) (b)—

(a) take into account the provisions of the Gender Equality Act; Cap. 25:06
and

(b) have regard to the need for continuity in the membership of the National Steering Committee so that at least two members of the immediate past shall be retained.

(5) A member of the National Steering Committee, other than an *ex-officio* member, shall not, by virtue of the appointment, be deemed to be an officer in the public service.

(6) The Minister shall cause to be published, in the *Gazette*, names of all members of the National Steering Committee, as first constituted, and every subsequent change in the membership.

50.—(1) A member of the National Steering Committee appointed under section 49 (2) (b) shall serve for a term of three years from the date of appointment and shall be eligible for re-appointment at the expiry of that period for another term of three years. Tenure of office and vacancies

(2) The office of a member of the National Steering Committee appointed under section 49 (2) (b) shall become vacant—

(a) on the expiry of the term of office of the member;

(b) upon the member being adjudged bankrupt;

(c) upon the member being sentenced to any term of imprisonment for an offence, without the option of paying a fine, against any written law;

(d) if the member is absent, without valid reason, from three consecutive meetings of the Committee of which the member has had notice;

(e) upon the member becoming mentally or physically ill, where upon a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Committee;

(f) if the member resigns from office by giving one month's notice in writing to the Minister;

(g) in the case of a member appointed under paragraph (ii) or (iii), if the member is no longer able to represent the relevant sector; and

(h) upon the death of the member.

(3) A vacancy in the membership of the National Steering Committee shall be filled by the appointment of a new member by the Minister in accordance with the criteria set out in section 49 (2)(b).

(4) A person appointed to fill a vacancy under subsection (3) shall serve for the remainder of the term, but the Minister shall not appoint a person to fill the vacancy where the remainder of the term is a period of less than six months.

(5) The period served by a person appointed under subsection (3) shall not be regarded as a term for purposes of subsection (1) unless the period served is two years or more.

Co-opted
persons

51. The National Steering Committee may, in its discretion, at any time and for any period, co-opt any person to be a member of the Committee, and such member shall attend any meeting of the Committee and take part in the deliberations thereof, but shall not be eligible to vote.

Chairperson
and Vice-
Chairperson of
the National
Steering
Committee

52.—(1) The Principal Secretary responsible for Gender, Community Development and Social Welfare shall be the Chairperson of the National Steering Committee.

(2) The members of the National Steering Committee shall, at their first meeting, elect one of their number to be Vice-Chairperson who, subject to subsection (3), shall hold office for the duration of his or her tenure of office.

(3) The office of the Vice-Chairperson shall become vacant if—

(a) the holder resigns from office by giving notice in writing to the Chairperson;

(b) the holder of the office ceases to be a member of the National Steering Committee; and

(c) the Committee so decides by simple majority or the Minister so directs.

(4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his or her office, the Vice-Chairperson shall discharge the functions of the Chairperson.

Functions of
the National
Steering
Committee

53.—(1) The National Steering Committee shall—

(a) advise the Government on all aspects of ageing and the welfare of older persons, either on its own initiative or upon the request of the Minister, and in particular on—

(i) the measures to promote the health, wellbeing and social inclusion of older persons;

(ii) the implementation of the recommendations contained in the national policy on ageing;

(iii) any action, based on research required to plan and develop services for older people;

(iv) the means of meeting the needs of the most vulnerable older persons;

(v) the methods of ensuring co-ordination between the public, private and community sectors at the national and the local level, in the planning and provision of services for older persons; and

(vi) the mobilization of resources for investment in programmes and services for the empowerment of older persons; and

(vii) the allocation of financial resources for elderly services;

(b) provide advice and guidance in the development and implementation of national policies and strategies designed to produce health and social gain for older persons;

(c) promote—

(i) the autonomy of older persons by supporting international conventions, and protocols on the rights of older persons;

(ii) the economic and financial security of older persons; and

(iii) multi-sectoral collaboration and co-ordination in the planning, provision and evaluation of programmes and services for older persons;

(d) regulate and monitor the activities of organizations providing services to older persons to ensure transparency and adherence to regional and national policies on ageing;

(e) review and approve policies, guidelines, regulations and any other programme implementation documents pertaining to older persons programmes;

(f) inspect any institutions and facility registered under this Act or purporting to pursue any activities related to this Act or its objectives;

(g) provide oversight functions in the administration of grants for older persons;

(h) recommend to the Minister measures necessary for ensuring the inclusion of older persons in all aspects of the design and implementation of social protection programmes in Malawi;

(i) oversee the implementation of the provisions of this Act and other elderly related laws, policies and plans; and

(j) conduct inquiries, including public inquiries, into any matter relating to the dignity, welfare, care and protection of older persons.

(2) The National Steering Committee shall, in the performance of its functions, consult and collaborate with Government institutions, private sector entities and civil society organizations.

54. The National Steering Committee shall, in the discharge of its functions, have power to—

(a) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organization of conferences, workshops or meetings;

(b) receive donations of funds, materials and technical assistance for the furtherance of its work;

(c) carry out consultations regarding any matter under its consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(d) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

55.—(1) The National Steering Committee shall meet for the transaction of its business once in every three months, at such places and times as the Chairperson may determine.

(2) The Chairperson shall convene ordinary meetings of the National Steering Committee by giving the members not less than seven days' written notice.

(3) The Chairperson may, on his or her own motion and at any time, convene an extraordinary meeting of the National Steering Committee by giving the members not less than twenty-four hours' written notice.

(4) The Chairperson shall convene an extraordinary meeting of the National Steering Committee within three days of receipt of a request in writing signed by not less than eight members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the National Steering Committee shall be constituted by ten members.

(6) The Chairperson or, in the absence of the chairperson, the Vice-Chairperson shall preside over a meeting of the National Steering Committee and, in the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

Powers of the
National
Steering
Committee

Meetings of
the Steering
National
Committee

(7) A decision of the National Steering Committee on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to a deliberative vote.

(8) A member of the National Steering Committee, other than an *ex-officio* member, shall attend meetings of the National Committee in person.

(9) The National Steering Committee may, where necessary and taking into account the nature of the matter to be deliberated, invite any person to attend its meeting and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall have no right to vote.

(10) The National Steering Committee may make rules to regulate its proceedings and business or the proceedings and business of the Technical Sub-Committee and other sub-committees of National Committee.

(11) The Commissioner shall be secretary of the National Steering Committee and shall record and keep minutes of meetings of the National Steering Committee and the minutes shall be confirmed at the subsequent meeting.

(12) The Director or other officer as the Director may designate, may attend meetings of the National Steering Committee and the Technical Sub-Committee, and of any of its committees, and may address the meetings, but shall not vote on any matter.

(13) Where, in any meeting, the deliberations of the National Steering Committee and the Technical Sub-Committee, or any of its committee concerns the Director or any officer designated to attend the meeting, the Director or the designated officer, as the case may be, may be excluded from the meeting.

56.—(1) There shall be a National Technical Sub-Committee on Older Persons (in this Act referred to as the "Technical Sub-Committee") which shall be the main technical forum on technical direction and recommendations on programme implementation.

Establishment and membership of the National Technical Sub-Committee on Older Persons

(2) The Technical Sub-Committee shall consist of designated senior officers of—

(a) the Ministry of Gender, Community Development and Social Welfare;

(b) the Ministry of Finance, Economic Planning and Development;

(c) the National Planning Commission;

(d) the Malawi Police Service;

(e) the Judiciary;

(f) the Ministry of Justice;

(g) the Ministry of Local Government and Rural Development;

(h) the Ministry of Homeland Security;

(i) Ministry of Information;

(j) the Ministry of Agriculture;

(k) the Ministry of Health;

(l) the Department of Disaster Preparedness and Management;

(m) the Human Rights Commission;

(n) an association of older persons; and

(o) academic institutions.

(3) Members of the Technical Sub-Committee under subsection (2) (c) and (d) shall be appointed by the National Committee and shall serve for a term of three years, and may be re-appointed once for another term of three years.

(4) The Director, or any other senior officer designated by the Principal Secretary responsible for Elderly Affairs, shall be the chairperson of the Technical Sub-Committee

57.—(1) Subject to provisions of this Act, the Technical Sub-Committee shall serve as a national technical advisory body to the National Committee on all matters relating to the promotion and protection of the rights of older persons.

(2) Without prejudice to the generality of subsection (1), the Technical Sub-Committee shall provide technical support to the National Committee on —

(a) the establishment, registration, licensing and inspection, of providers of community-based care and support services, and residential facilities, for older persons;

(b) the administration, management and provision of grants to older persons;

(c) resource mobilization and allocation for elderly services;

(d) surveys, investigations and research concerning older persons;

(e) matters relating to care, violence, abuse and protection of older persons; and

(f) the development, implementation and monitoring of a national public awareness strategy for elderly issues.

58.—(1) The National Steering Committee may establish any number of sub-committees, in addition to the Technical Sub-Committee, to carry out any special or general functions determined by the Committee and may delegate to the sub-committees any of its functions as the Committee may consider expedient.

Sub-
committees

(2) The National Steering Committee shall appoint a chairperson for each sub-committee from amongst its members.

(3) 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 such allowances as the Minister may determine.

59. A member of the National Steering Committee or Technical Sub-Committee shall not attend a meeting of the Committee or the Sub-Committee by proxy, and where a member of the Committee or the Sub-Committee is unable to attend any meeting of the Committee or the Sub-Committee, he or she may request that his apologies for failure to attend be recorded.

Personal
attendance of
meetings

60.—(1) If a member of the National Steering Committee or Technical Sub-Committee is present at a meeting of the Committee or Sub-Committee at which any matter which is the subject of consideration is a matter in which that member, or his or her immediate family member, or his or her professional or business partner, is directly or indirectly interested, he or she shall, as soon as practicable, after the commencement of the meeting, disclose his or her interest, and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

Disclosure of
interest

(2) A disclosure of interest by a member of the National Steering Committee or Technical Sub-Committee shall be recorded in the minutes of the meeting at which it is made.

61. Members of the National Steering Committee or Technical Sub-Committee, other than *ex-officio* members, and of any of its committees, and persons invited under section 51 in connexion with the business of the National Committee or Technical Sub-Committee, or any committee, shall be paid travelling, subsistence, sitting and other allowances, and be reimbursed for reasonable expenses incurred, as the Minister may determine.

Allowances
and expenses
of members
of the
National
Steering
Committee
and the
Technical
Sub-
Committee

Secretariat

62.—(1) The Ministry of Gender, Community Development and Social Welfare shall serve as the secretariat for the National Steering Committee and Technical Sub-Committee.

(2) The Director shall be the secretary to the National Steering Committee.

(3) The Principal Secretary responsible for Elderly Affairs shall designate a senior officer to be the secretary to the Technical Sub-Committee.

PART XI—ADMINISTRATION

Implementation and monitoring of programmes

63.—(1) The Ministry of Gender, Community Development and Social Welfare shall deliver, implement and monitor elderly policy programme under this Act in close collaboration with structures at district and local council level, which shall be responsible for co-ordination all stakeholders in the implementation and monitoring of programmes at district and local levels.

(2) For purposes of subsection, there shall be established, in each district—

(a) a District Technical Committee of Older Persons, which shall include community-based organizations, faith-based organizations, and other community and civil society organizations;

(b) a District Elders Committee, which shall include representatives of Older Persons in the District; and

(c) Community Elders Committees, which shall include representatives of Older Persons in the community.

Director for Elderly Affairs

64.—(1) There shall be a Director for Elderly Affairs (in this Act referred to as the “Director”) whose office shall be a public office.

(2) The Director shall be responsible for all matters pertaining to older persons.

Duties and functions of the Director

65.—(1) Without prejudice to the generality of section 65 (2), the Director shall be responsible for and shall have power to—

(a) request the production by any person, of any document or information which, in the opinion of the Director, is necessary for the execution of its functions under this Act;

(b) inquire into any matter concerning the provision of older person’s grants, and may for that purpose—

(i) subpoena any person who can furnish information of material importance concerning the matter under investigation, or who is reasonably assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear within a reasonable period before it and to furnish the information or to produce the book, document or thing, as the case may be;

(ii) administer an oath to that person or cause that person to make an affirmation if that person was or could have been subpoenaed under paragraph (a) and he or she is present at the enquiry; and

(iii) cross-examine any person referred to in paragraph (ii);

(c) issue, review, approve or revoke licences pursuant to this Act;

(d) inspect any site or premises in connexion with the implementation of this Act or any written law; and

(e) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

PART XII—MISCELLANEOUS

66. Every—

(a) member of the National Steering Committee or Technical Sub-Committee; and

(b) member of a committee of the National Steering Committee or Technical Sub-Committee,

shall, upon assumption of office and before attending a meeting, take an oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a commissioner for oaths.

Oath of
secrecy

67.—(1) No court action or other proceedings shall be brought personally against any member of the National Steering Committee or Technical Sub-Committee or member of staff of the Ministry in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

Protection
from liability

(2) Where, in any court action or other proceedings, a question arises on whether or not an act or an omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or the omission was not done in good faith in the course of carrying out the provision of this Act shall be on the person alleging that it was not so done.

Annual
reports

68.—(1) The Director shall, as soon as practicable, but not later than three months after the end of each financial year, cause to be prepared and submitted to the Minister an annual report detailing activities implemented during the year.

(2) The Minister shall, as soon as practicable after the end of each financial year, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report received under subsection (1).

Offences and
penalties

69.—(1) Any person who—

(a) hinders or obstructs any person in the performance of his functions under this Act;

(b) refuses or fails to comply with a requirement or request which the Director or an employee of the Director has lawfully set or made in the performance of his functions under this Act;

(c) intentionally furnishes the Director, or an authorized officer, with false or misleading information;

(d) has been subpoenaed under this Act and fails or refuses, without sufficient cause—

(i) to appear at the time and place specified in the subpoena;

(ii) to remain in attendance, until excused by the person presiding at the enquiry, from further attendance; or

(iii) to take an oath or to make an affirmation as a witness, commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

(2) Any person who contravenes this Act for which no specific penalty has been prescribed under this Act shall be liable to a fine of five million Kwacha and to imprisonment for two years.

Regulations

70.—(1) The Minister may make regulations regarding—

(a) any matter which shall or may be prescribed under this Act;

(b) the form of any application, authority, certificate, consent, notice, order, register, process or subpoena which is to or may be made, granted, given, issued or kept under this Act, and any other form required in administering this Act;

(c) the procedure to be followed and the conditions which may be imposed in connexion with the registration of residential facilities, and the minimum standards with which such residential facilities are to comply;

(d) the books, accounts and registers which are to be kept by the managers of residential facilities, the manner in which such books, accounts and registers are to be kept and dealt with, and

the returns and reports to be furnished in connexion with such facilities;

(e) the records to be kept by any person who cares for or accommodates for remuneration, whether by way of money or goods, any older or frail person in any place other than a residential facility;

(f) measures to—

(i) prevent, combat and deal with the abuse of older persons;

(ii) be taken to advance persons disadvantaged by unfair discrimination;

(iii) promote the rights of residents of residential facilities;

(iv) promote the rights of older persons that are not in residential facilities;

(g) the form and content of service level agreements between the residents and the residents' committee of a residential facility;

(h) the minimum norms and standards for admission of older persons to residential facilities;

(i) service standards for older persons;

(j) the levels of community-based care and support services for older persons;

(k) the keeping of registers under this Act; and

(l) generally, any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation of this Act.

(2) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of five million Kwacha and imprisonment for two years, for an offence committed in contravention of the regulations.

(3) Any regulation made under subsection (1) which affects a department or agency outside the responsibility of the Minister, shall be made after consultation with the relevant Minister.

SCHEDULE

(s. 66)

OATH OF SECRECY

OATH OF SECRECY FOR A MEMBER OF THE NATIONAL STEERING COMMITTEE/TECHNICAL SUB-COMMITTEE

I,, being a member/person invited to attend a meeting, of the National Steering Committee/Technical Sub-Committee, do hereby solemnly and sincerely swear/ affirm that I will freely

without fear or favour, affection or ill-will, discharge the functions of a member/co-opted member/invited person of the National Steering Committee/Technical Sub-Committee, and that I will not, directly or indirectly, communicate or reveal to any unauthorized person or persons any matter or business of the National Steering Committee/Technical Sub-Committee which shall be brought under my consideration or shall become known to me as a member/co-opted member/person attending a meeting of the National Steering Committee/Technical Sub-Committee except as may be required for the due discharge of my duties as such member/person attending the meeting. So, help me God.

.....
Signature of the person making the oath [or affirmation]

Sworn [or affirmed] by the said

at this ... day of, 20....

Before me:

.....
Commissioner for Oaths

Passed in Parliament this fifth day of April, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament