

MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT

No. 5 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 63:01
3. Amendment of s. 26 of the principal Act
4. Amendment of s. 30 of the principal Act
5. Amendment of s. 32 of the principal Act

An Act to amend the Forestry Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Forestry (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
Short title and commencement
2. Section 2 of the Forestry Act (hereinafter referred to as the "principal Act") is amended by inserting therein, in the correct alphabetical order, the following definitions—

"customary land committee" bears the meaning ascribed to it in the Customary Land Act, 2016;
Act No.19 of 2016

"local government authority" bears the meaning ascribed to it in the Local Government Act."
Cap. 22:01
3. Section 26 of the principal Act is amended in subsection (1) by inserting the words "the Minister responsible for physical planning." immediately after the words "the Minister responsible for land matters".
Amendment of s.26 of the principal Act

Amendment of
s.30 of the
principal Act

4. Section 30 of the principal Act is amended by deleting the words "any village headman" and inserting the words "a customary land committee".

Amendment of
s.32 of the
principal Act

5. Section 32 of the principal Act is amended in subsection (2) paragraph (c) by deleting the words "District Councils" and inserting the words "local government authorities".

Passed in Parliament this twenty ninth day of November, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament

MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT

No. 6 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Replacement of s.12 to Cap. 32:02

An Act to amend the Malawi Housing Corporation Act

ENACTED by the Parliament of Malawi as follows:—

1. This Act may be cited as the Malawi Housing Corporation (Amendment) (No. 2) Act, 2017 and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and commencement

2. Section 12 of the Malawi Housing Corporation Act is repealed and replaced as follows:—

Replacement of s. 12 of Cap. 32:02

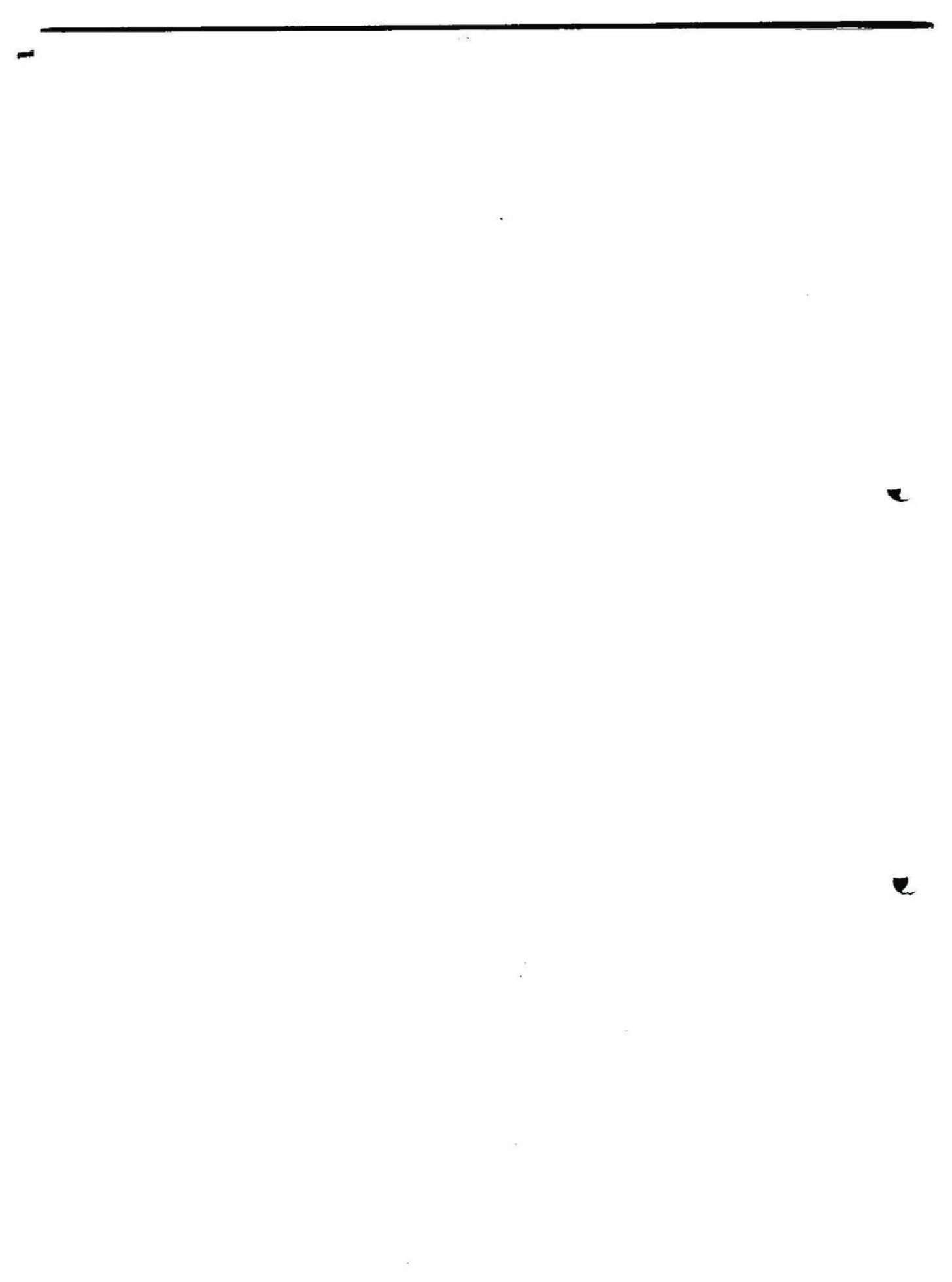
"Acquisition of customary land

12. If the Corporation requires any customary land for the purposes of carrying into effect any of the provisions of this Act, it may apply for a grant, lease or other disposition in accordance with the Customary Land Act, 2016."

Act No.19 of 2016

Passed in Parliament this twenty second day of November, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament



MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT

No. 7 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 58:01
3. Repeal of s. 4 of the principal Act
4. Amendment of s. 10 of the principal Act
5. Amendment of s. 11 of the principal Act
6. Amendment of s. 12 of the principal Act
7. Amendment of s. 15 of the principal Act
8. Amendment of s. 16 of the principal Act
9. Amendment of s. 17 of the principal Act
10. Amendment of s. 19 of the principal Act
11. Amendment of s. 20 of the principal Act
12. Amendment of s. 21 of the principal Act
13. Amendment of s. 25 of the principal Act
14. Amendment of s. 27 of the principal Act
15. Amendment of s. 31 of the principal Act
16. Amendment of s. 32 of the principal Act
17. Amendment of s. 34 of the principal Act
18. Amendment of s. 66 of the principal Act
19. Amendment of s. 91 of the principal Act
20. Repeal of s. 101 of the principal Act
21. Amendment of s. 108 of the principal Act
22. Amendment of s. 119 of the principal Act
23. Repeal of s. 121 of the principal Act
24. Repeal of s. 122 of the principal Act

SECTION

25. Amendment of s.134 of the principal Act
26. Amendment of s.137 of the principal Act
27. Amendment of s.140 of the principal Act
28. Amendment of s.144 of the principal Act

An Act to amend the Registered Land Act

ENACTED by the Parliament of Malawi as follows—

- Short title and commencement **1.** This Act may be cited as the Registered Land (Amendment) Act, 2017, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.
- Amendment of s. 2 to Cap 58:01 **2.** Section 2 of the Registered Land Act (hereinafter referred to as the “principal Act”) is amended—
- (a) by deleting the definitions of the terms “Allocation Officer” and “Allocation Record”;
- (b) by deleting the definition of the word “court” and substituting therefor the following definition—
- ““court” means any court of competent jurisdiction.”;
- (c) by inserting the following new definition immediately after the definition of the word “court”—
- ““customary estate” has the meaning ascribed to that term in the Land Act, 2016”;
- Act No. 16 of 2016 **(d)** by deleting the definition of the words “to file” and substituting therefor the following—
- ““to file” means to place in the relative file or electronic file.”;
- (e) by deleting the definition of the word “land” and substituting therefor the following—
- ““land” has the meaning ascribed to it in the Land Act, 2016”;
- Act No. 16 of 2016 **(f)** by inserting the following new definition of the term “land clerk” immediately after the definition of the word “land”—
- ““land clerk” has the meaning ascribed to that term in the Customary Land Act, 2016.”and
- Act No.19 of 2016 **(g)** by deleting the definition of the term “registration district” and substituting therefor the following—
- ““registration district” means the area under the jurisdiction of a local government authority.”;

3. Section 4 of the principal Act is repealed.
- Repeal of
s. 4 of the
principal Act
4. Section 10 of the principal Act is amended—
- (a) in subsection (1), by inserting, immediately after the word “lease”, the words “or customary estate”;
- (b) by deleting subsection (2) and substituting therefor the following—
- “(2) Each register shall show whether the land registered is public land or private land and shall indicate the relevant class of such land”; and
- (c) in subsection (3), by deleting paragraph A and substituting therefor the following new paragraph—
- “A—the property section, containing a brief description of the land, lease or customary estate, together with particulars of its appurtenances, and a reference to the registry map and filed plan, if any”;
- Amendment
of s. 10 of the
principal Act
5. Section 11 of the principal Act is amended, in subsection (1), by deleting—
- (a) the words “under section 27 of the Customary Land (Development) Act”; and
- (b) the term “Allocation Officer” and substituting therefor the term “land clerk”.
- Amendment
of s. 11 of the
principal Act
6. Section 12 of the principal Act is amended by deleting subsection (3) and substituting therefor the following—
- “(3) No subsequent registration shall be made with respect to a customary estate or a lease of customary land within a Traditional Land Management Area unless the Registrar is satisfied that the dealing in such land or lease, which requires registration, has the written consent of a land committee responsible for the area, and the Traditional Authority in whose jurisdiction the land is situated and the Registrar shall file a copy of the consent given by the committee.”.
- Amendment
of s. 12 of the
principal Act
7. Section 15 of the principal Act is amended, by deleting the term “Director of Surveys” and substituting therefor the term “Surveyor General”, wherever the words appear in the section.
- Amendment
of s. 15 of the
principal Act
8. Section 16 of the principal Act is amended—
- (a) by deleting the words “Director of Surveys” and substituting therefor the term “Surveyor General” wherever the words appear in the section; and
- Amendment
of s. 16 of the
principal Act

(b) in subsection (1), in the Proviso thereto, by deleting the word "Director" and substituting therefor the term "Surveyor General".

- Amendment of s. 17 of the principal Act **9.** Section 17 of the principal Act is amended by deleting the words "Director of Surveys" and substituting therefor the term "Surveyor General" wherever the words appear in the section.
- Amendment of s. 19 of the principal Act **10.** Section 19 of the principal Act is amended in subsection (3), by deleting the words "Director of Surveys" and substituting therefor the term "Surveyor General".
- Amendment of s. 20 of the principal Act **11.** Section 20 of the principal Act is amended in subsections (2) and (3), by deleting the words "£10" and substituting therefor the words "K100,000.00".
- Amendment of s. 21 of the principal Act **12.** Section 21 of the principal Act is amended in subsection (1)—
 (a) by deleting the words "£100" and substituting therefor the words "K500,000.00"; and
 (b) by deleting the words "two months" and substituting therefor the words "six months".
- Amendment of s. 25 of the principal Act **13.** Section 25 of the principal Act is amended, in paragraph (b) (i) by deleting the words ", or as a family representative".
- Amendment of s. 27 of the principal Act **14.** Section 27 of the principal Act is amended by deleting the word "country" appearing in the first line, and substituting therefor the word "contrary".
- Amendment of s. 31 of the principal Act Act No. ... of 2015 **15.** Section 31 of the principal Act is amended in subsection (1), by deleting the words "Local Land Board Act" and substituting therefor the words "Customary Land Act, 2016".
- Amendment of s. 32 of the principal Act **16.** Section 32 of the principal Act is amended in subsection (2), by deleting the words "or family representative".
- Amendment of s. 34 of the principal Act **17.** Section 34 of the principal Act is amended in subsection (2), by deleting the words "£25" and substituting therefor the words "K100,000.00".
- Amendment of s. 66 of the principal Act **18.** Section 66 of the principal Act is amended—
 (a) in subsection (4), by inserting, at the end of the subsection, the following new proviso—
 "Provided that where the subject of the charge is a customary estate, the amount payable shall be paid into the Special Fund.";

and

(b) inserting, immediately after subsection (4), a new subsection as subsection (5) as follows—

“(5) For the purpose of this section, “Special Fund” means a fund established in accordance with section 46 (2) of the Local Government Act.”. Cap. 22:01

19. Section 91 of the principal Act is amended in subsection (1), by deleting the words “Mining Act” and substituting therefor the words “Mines and Minerals Act”. Amendment of s. 91 of the principal Act
Cap. 61:01

20. Section 101 of the principal Act is repealed. Repeal of s. 101 of the principal Act

21. Section 108 of the principal Act is amended in subsection (1), by deleting the words “twenty-one” and substituting therefor the words “eighteen”. Amendment of s. 108 of the principal Act

22. Section 119 of the principal Act is amended by deleting subsection (3) and substituting therefor the following— Amendment of s. 119 of the principal Act

“(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights and interests to which it is subject by virtue of the instrument creating the trust, and for the purpose of registered dealings, a person having dealings in such land shall be deemed to have notice of the trust and breach of the trust shall create a right to indemnity under this Act.”.

23. Section 121 of the principal Act is repealed. Repeal of s. 121 of the principal Act

24. Section 122 of the principal Act is repealed. Repeal of s. 122 of the principal Act

25. Section 134 of the principal Act is amended subsection (1), by deleting the proviso thereto and substituting therefor the following— Amendment of s. 134 of the principal Act

“Provided that no person shall so acquire the ownership of public land”.

26. Section 137 of the principal Act is amended in subsection (1), by deleting the words “customary or public land” and substituting therefor the words “public land”. Amendment of s. 137 of the principal Act

Amendment of
s. 140 of the
principal Act

27. Section 140 of the principal Act is amended in subsection (1), by inserting, at the end of the subsection, the words "or by the local government authority in whose jurisdiction that area falls."

Amendment of
s. 144 of the
principal Act

28. Section 144 of the principal Act is amended in subsection (1), by deleting the words "Subject to the proviso to section 28 (2) of the Customary Land (Development) Act" and substituting therefor the words "Subject to the Customary Land Act, 2016".

Act No. 19 of
2016

Passed in Parliament this twenty eighth day of November, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament

MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT

No. 8 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 to Cap. 69:02
3. Amendment of s. 3 of the principal Act
4. Amendment of s. 4 of the principal Act
5. Amendment of s. 5 of the principal Act
6. Amendment of s. 5A of the principal Act
7. Amendment of s. 10 of the principal Act
8. Amendment of s. 11 of the principal Act
9. Amendment of s. 12 of the principal Act
10. Amendment of s. 24 of the principal Act
11. Amendment of s. 25 of the principal Act
12. Amendment of s. 26 of the principal Act
13. Amendment of s. 28 of the principal Act
14. Amendment of s. 29 of the principal Act
15. Amendment of s. 44 of the principal Act
16. Amendment of s. 45 of the principal Act
17. Amendment of s. 46 of the principal Act
18. Amendment of s. 47 of the principal Act
19. Replacement of s. 48 of the principal Act
20. Replacement of s. 49 of the principal Act
21. Repeal of s. 50 of the principal Act
22. Amendment of s. 51 of the principal Act
23. Amendment of s. 53 of the principal Act

An Act to amend the Public Roads Act

ENACTED by the Parliament of Malawi as follows—

- Short title and commencement **1.** This Act may be cited as the Public Roads (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
- Amendment of s.2 of Cap.69:02 **2.** Section 2 of Public Roads Act (hereinafter referred to as the "principal Act") is amended by—
- Act No. 16 of 2016 (a) inserting therein, in the correct alphabetical order, the following definitions—
- Act No. 19 of 2016 "customary estate" bears the same meaning ascribed to it in the Land Act, 2016;
- Cap. 22:01 "customary land committee" bears the meaning ascribed to it in the Customary Land Act, 2016;
- Amendment of s.3 of the principal Act "local government authority" bears the meaning ascribed to in the Local Government Act.
- Amendment of s.4 of the principal Act (b) deleting the definition of the words "surface rights" and substituting therefor the following—
- Amendment of s.5 of the principal Act "surface rights", in relation to land in respect of which compensation is claimed, means the rights of the claimant to any interest in the crops, structures and other improvements on the land:".
- 3.** Section 3 of the principal Act is amended in subsection (2), by deleting the word "President" and substituting therefor the word, "Republic".
- 4.** Section 4 of the principal Act is amended—
- (a) in subsection (2) and (3), by deleting the words "City, Municipality or Township" wherever they appear and substituting therefor the words "local government authority"; and
- (b) in the proviso to subsection (3), by deleting the words "City Council, Municipal Council or Town Council" and substituting therefor the words, "local government authority".
- 5.** Section 5 of the principal Act is amended—
- (a) in subsections (2) and (3), by deleting the words "City, Municipality or Township" wherever they appear and substituting therefor the words "local government authority"; and
- (b) in the proviso to subsection (3), by deleting the words "City Council, Municipal Council or Town Council" and substituting therefor the words "local government authority".

6. Section 5A of the principal Act is amended—

Amendment
of s.5A of the
principal Act

(a) in subsections (2) and (3), by deleting the words “City, Municipality or Township,” wherever they appear and substituting therefor the words “local government authority”; and

(b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” and substituting therefor the words “local government authority”.

7. Section 10 of the principal Act is amended—

Amendment
of s.10 of the
principal Act

(a) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) A local government authority shall have power to declare by notice published in the *Gazette*, the width, not exceeding sixty metres (60 m), of any road reserve or class or classes of road reserve in its area”; and

(b) in the second proviso to subsection (6), by deleting the words “Town and Country Planning” and substituting therefor the words “Physical Planning”.

8. Section 11 of the principal Act is amended in subsection (4), by deleting the word “President” and substituting therefor the word “Republic”.

Amendment
of s.11 of the
principal Act

9. Section 12 of the principal Act is amended in subsection (2), by deleting the words “Town and Country Planning” and inserting the words “Physical Planning”.

Amendment
of s.12 of the
principal Act

10. Section 24 of the principal Act is amended—

Amendment
of s.24 of the
principal Act

(a) in subsection (3), by deleting the words “Town and Country Planning Act” and substituting therefor the words “Physical Planning Act”; and

Cap. 23:01
Act No. 17
of 2016

(b) in subsection (5), by deleting the word “Deeds” and substituting therefor the word “Land”.

11. Section 25 of the principal Act is amended—

Amendment
of s.25 of the
principal Act

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“reservation of a steep of land not exceeding 60m wide”; and

(b) in subsection (3)—

(i) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”; and

(ii) by deleting the word “Deeds” and substituting therefor the word “Land”.

Amendment of
s.26 of the
principal Act

12. Section 26 of the principal Act is amended—

(a) by deleting the word “Deeds” and substituting therefor the word “Land”; and

(b) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”.

Amendment of
s.28 of the
principal Act

13. Section 28 of the principal Act is amended, in subsection (1), by deleting the word “President” and substituting therefor the word “Republic”.

Amendment of
s.29 of the
principal Act

14. Section 29 of the principal Act is amended by deleting the first and second proviso to subsection (5).

Amendment of
s.44 of the
principal Act

15. Section 44 of the principal Act is amended—

(a) in subsection (1), by deleting the words “Whenever, under this Act” and substituting therefor the word “Where”;

(b) by deleting subsection (2) and substituting therefor the following new subsection (2)—

“(2) In any case in which such compensation is limited to compensation in respect of surface rights, if the land on which such surface right exists, is private land, the amount of compensation shall be based on the loss or damage suffered by the claimant arising from the damage to or destruction of, his interest in the surface rights on such land valued at the valuation date and shall include—

(a) the damage, if any, sustained by the person interested at the valuation date by reason of the severance of such land from his other land or other injurious matter affecting his other property, movable or immovable, by reason of the exercise of the powers conferred by this Act; and

(b) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, but shall not include any sum in respect of improvements on land in a road reserve effected since the land became a road reserve.”.

Amendment of
s.45 of the
principal Act

16. Section 45 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting paragraph (a) and substituting therefor with the following new paragraph (a)—

“(a) in the case of a customary estate, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance and the amount of such compensation shall be assessed using open market value based on the loss suffered by the

claimant arising from damage to or destruction of his interest in the land, and surface rights on such land may include compensation for other disturbance—

(i) where he has to move his residence or place of business;

(ii) where alternative land cannot be made available to him and the land remaining to him for any purposes is not an economic unit; or

(iii) where alternative land is made available to him, and where the making of the alternative land equally as fit for use as the land of which he has been deprived of, is likely to involve a loss in terms of money, materials or work, however, in assessing compensation under this paragraph, the total compensation for disturbance shall not in any case exceed the total of—

A. what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition;

B. the damage, if any, sustained by the occupier by reason of severing such land from other land occupied by him; or

C. the reasonable expenses, if any, incidental to a change of residence or place of business if, in consequence of the matters giving rise to the claim, he is compelled to effect such change;”;

(b) in subsection (2) (b), by inserting the words “and to interest in the land itself” immediately after the words “surface rights”.

17. Section 46 of the principal Act is amended—

(a) in subsection (1), by deleting the words “and no others”;

(b) in subsection (1) (c), by inserting the words “and good-will thereof” immediately after the word “change” appearing in the last line; and

(c) in subsection (2) (a), by deleting the words “within two (2) years before the valuation date” and substituting therefor the words “, after the notice to acquire,”.

Amendment
of s.46 of the
principal Act

18. Section 47 of the principal Act is amended—

(a) by deleting the words “compensation board” wherever they appear in that Section and substituting therefor the words “Land Tribunal”;

(b) in subsection (1), by deleting paragraph (a) to the proviso and substituting therefor the following new paragraph (a)—

Amendment
of s.47 of the
principal Act

“(a) in the case of a customary estate, the claim may be made orally to a customary land committee which shall be required to record the claim in writing through the assistance of the land clerk who shall forward the claim to the officer responsible for land matters within the local government area and such officer shall in turn forward the claim to the relevant highway authority;”;

(c) in subsection (4)—

(i) by deleting the word “Minister” and substituting therefor the phrase “Judicial Service Commission, on the recommendation of the Ministry responsible for land matters”; and

(ii) by deleting the word “board” and substituting therefor the word “tribunal”; and

(d) in subsection (5) by deleting the words “Chief of such land” and substituting therefor the words “customary land committee of such area”.

Replacement
of s.48 of the
principal Act

19. Section 48 of the principal Act is repealed and replaced by the following new section—

“Procedure
before
Land Tribunals **48.** The Chief Justice may make rules to regulate the procedure to be followed before a Land Tribunal and for constituting the Land Tribunal.”.

Replacement
of s.49 of the
principal Act

20. Section 49 of the principal Act is repealed and replaced by the following new section—

“Procedure
before
Land
Tribunals **49.** Where the claimant or the highway authority is not satisfied with the amount of compensation awarded, he may apply to the High Court for judicial review within one month from the date of the award by the Land Tribunal in accordance with the rules made by the Chief Justice under the Court’s Act.”

Cap 3:02

Repeal of s.50
of the
principal Act

21. Section 50 of the principal Act is repealed.

Amendment
of s.51 of the
principal Act

22. Section 51 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “customary land” and substituting therefor the words “a customary estate”; and

(ii) by deleting the word “the Chief” and substituting therefor the words “a customary land committee”; and

(b) in subsection (4), by deleting the word “District Council” and substituting therefor the words “local government authority”.

23. Section 53 of the principal Act is amended by deleting the words "K500" and substituting therefor the words "K50,000".

Amendment
of s.53 of the
principal Act

Passed in Parliament this twenty second day of November, two thousand and sixteen.

FIONA, KALEMBA
Clerk of Parliament



(Published 27th January, 2017)

ACT

No. 9 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Replacement of long title to Cap. 58:04
3. Amendment of s. 1 of the principal Act
4. Amendment of s. 2 of the principal Act
5. Replacement of s. 3 of the principal Act
6. Replacement of s. 4 of the principal Act
7. Insertion of new part title as Part IIA into the principal Act
8. Replacement of s. 9 of the principal Act
9. Replacement of s. 10 of the principal Act
10. Insertion of a new s. 10A into the principal Act
11. Amendment of Part III of the principal Act
12. Amendment of s. 16 of the principal Act
13. Amendment of s. 17 of the principal Act.

An Act to amend the Lands Acquisition Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Lands Acquisition (Amendment) Act, 2017, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Short title and commencement

2. The Lands Acquisition Act (hereinafter referred to as the "principal Act") is amended by repealing the long title thereto and replacing it as follows—

Replacement of long title to Cap. 58:04

"An Act to provide for the acquisition of land and compensation: and for incidental matters".

Amendment of
s.1 of the
principal Act

3. Section 1 of the principal Act is amended by inserting, immediately after the word "Acquisition", the words "and Compensation"

Amendment
of s.2 of the
principal Act

4. Section 2 of the principal Act is amended by—

(a) deleting the definition of the word "land" and substituting therefor the following—

"land" has the meaning as ascribed to that term under section 2 of the Land Act, 2016;"

(b) inserting, in the correct alphabetical order, a new definition of the word "court" as follows—

"court" means a court of competent jurisdiction;"

Act No. 16 of
2016

Replacement of
s.3 of the
principal Act

5. Section 3 of the principal Act is repealed and replaced as follows—

"Power to
acquire land

3. Subject to the provisions of this Act, the Minister may acquire land for public utility either compulsorily or by agreement, and pay compensation therefor as may be agreed or determined under this Act."

Replacement of
s.4 of the
principal Act

6. Section 4 of the principal Act is repealed and replaced as follows—

"Preliminary
investigation

4.—(1) Where there is need to acquire land under this Act for public utility, it shall be lawful for any person authorized by the Minister under section 3 in that behalf, and for his servants and agents to—

(a) enter upon any land in question or any land in the vicinity thereof and survey and take levels;

(b) dig or bore under the subsoil;

(c) do all other acts necessary to ascertain whether the land is or may be suitable; or

(d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of work, if any, proposed to be done on it.

(2) Any entry upon land under this section shall be preceded by a notice of not less than seven days to the occupier.

(3) The Minister shall pay for any damage done by persons entering any land pursuant to this section."

7. The principal Act is amended by inserting, immediately after section 8, the following new part title as Part II A—

Insertion of new part title as Part II A into the principal Act

“PART II A—COMPENSATION”.

8. Section 9 of the principal Act is repealed and replaced as follows—

Replacement of s.9 of the principal Act

“Compensation 9.—(1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act, the Minister shall pay in respect thereof, appropriate compensation agreed or determined in accordance with the provisions of this Act.

(2) Any compensation payable under this section shall be paid in one lump sum.”.

9. Section 10 of the principal Act is repealed and replaced as follows —

“Assessment of appropriate compensation

10.—(1) Unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.

(2) An assessment of compensation shall be calculated based on any of the following grounds—

(a) loss of occupational rights;

(b) loss of land;

(c) loss of structure;

(d) loss of business;

(e) relocation costs;

(f) loss of good will;

(g) costs of professional advice;

(h) nuisance;

(i) loss or reduction of tenure; or

(j) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.”.

10. The principal Act is amended by inserting, immediately after section 10, the following new section as section 10A—

Insertion of a new s.10A into the principal Act

"Matters to be taken into consideration in assessing compensation for alienated land"

10A.—(1) In assessing the amount of compensation under section 10, the following matters, and no other matters, shall be taken into consideration—

(a) the market value of the land, or interest therein of the claimant at the valuation date;

(b) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his land by reason of the exercise of the powers conferred by this Act;

(c) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, reasonable expenses, if any, incidental to such change;

(d) any increase in the value of the land or other benefit likely to accrue at the valuation date from the proposed development to the person interested; and

(e) the relief obtained by the claimant as a result of the taking of the land against the necessity of carrying out, in whole or in part, any order or direction against the land made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purposes of subsection (1) (a)—

(a) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two years before the valuation date, such increase shall be disregarded unless it is proved that the improvement was made in good faith and not in contemplation of the acquisition;

(b) the following matters shall not be taken into consideration—

(i) any enhancement of the market value due to the proposal to change use of the land;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to the law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for the proposed development;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purposes of subsection (1) (d), the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(a) not less than one hundred sixty hectares in extent and not more than four hundred hectares in extent, be deemed equal in value to two per centum of the total area of the estate;

(b) exceeding four hundred hectares in extent, be deemed equal in value to four per centum of the total area of the estate:

Provided that—

(i) where the land taken is improved land, this subsection shall not operate to deprive the person interested of compensation in respect of damage to, or destruction of, surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than one hundred and sixty hectares in extent, it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

(4) For the purposes of this section, "estate" means an undivided area of land for commercial agricultural purposes or otherwise, the legal right to occupy which is vested in a person other than the Government."

11. Part III of the principal Act is amended—

(a) in the title thereto, by deleting the word "TRANSFER" and substituting therefor the word "REVERSION";

(b) by repealing section 12 and replacing it as follows—

Amendment
of Part III of
the principal
Act

"Reversion
to the
Government

12.—(1) Where a notice to acquire any land under this Act has been published in terms of section 5, such land shall revert to the Government as public land within two months of the publication of such notice.

(2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is removed or the court decides in favour of the Minister; and

(c) by repealing section 13 and section 14.

Amendment
of s.16 of the
principal Act

12. Section 16 of the principal Act is amended by deleting the word "President" and substituting therefor the word "Republic".

Amendment
of s.17 of the
principal Act

13. Section 17 of the principal Act is amended—

(a) in subsection (1), by deleting the words "two hundred kwacha" and substituting therefor the words "one hundred thousand Kwacha"; and

(b) by deleting subsection (2) and substituting therefor the following new subsection as subsection (2)—

"(2) The court may issue an order of ejection in addition to penalties under subsection (1), or upon application to such court."

Passed in Parliament this twenty second day of November, two thousand and sixteen.

FIGNA KALEMBA
Clerk of Parliament

MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT**No. 10 of 2017**

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 22:01
3. Amendment of s. 15 of the principal Act
4. Amendment of s. 34 of the principal Act
5. Replacement of s. 35 of the principal Act
6. Repeal of s. 36 of the principal Act
7. Replacement of s. 61 of the principal Act
8. Amendment of s. 62 of the principal Act
9. Amendment of s. 63 of the principal Act
10. Amendment of s. 66 of the principal Act
11. Replacement of s. 67 of the principal Act
12. Amendment of s. 68 of the principal Act
13. Amendment of s. 73 of the principal Act
14. Amendment of s. 75 of the principal Act
15. Amendment of s. 76 of the principal Act
16. Insertion of new ss. 78A, 78B, 78C into the principal Act
17. Amendment of s. 79 of the principal Act
18. Amendment of s. 83 of the principal Act
19. Replacement of s. 84 of the principal Act

An Act to amend the Local Government Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Local Government (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

Amendment
of s. 2 of
Cap. 22:01

2. The Local Government Act (hereinafter referred to as the "principal Act") is amended, in section 2, by deleting the words "Local Authority" and substituting therefor the words "local government authority".

Amendment of
s. 15 of the
Cap. 22:01

3. Section 15 of the principal Act is amended in subsection (1) by deleting the proviso thereto and substituting thereto the following—

"Provided that the Council shall not delegate its powers to—

(a) make by-laws and Standing Orders;

(b) borrow money;

(c) levy a rate; and

(d) acquire and dispose of land."

Amendment
of s. 34 of the
principal Act
Cap. 58:04

4. Section 34 of the principal Act is amended by deleting subsection (2) and substituting it with the following new subsection as subsection (2)—

Cap 58:04
"(2) Subject to the provisions of the Lands Acquisition Act, the Council may acquire land for any purpose for which the Council is authorized by this Act to acquire land, notwithstanding that the land is not immediately required for that purpose; and until it is required for the purpose for which it was acquired under this subsection, the land may be used for the purpose of any of the Council's functions."

Replacement of
s. 35 of the
principal Act

5. Section 35 of the principal Act is repealed and replaced with the following new section—

"Disposal of
land Act No. 16
of 2016
Cap. 58:01
35. The Council may dispose of land held by it in accordance with the provisions of the Land Act, 2016 and the Registered Land Act."

Repeal of s. 36
of the principal
Act

6. Section 36 of the principal Act is repealed.

Replacement of
s. 61 of the
principal Act

7. Section 61 of the principal Act is repealed and replaced with the following new section—

"Application

61.—(1) This Part shall apply to areas or parts thereof which the Minister shall designate by notice published in the *Gazette* as rateable areas.

(2) The Minister shall, before designating an area as a rateable area, be satisfied that—

(a) the following aspects are such that they justify an area to be designated a rateable area—

(i) physical size of the area;

(ii) population size of the area;

(iii) economic activities;

(iv) available infrastructure; and

(v) potential to generate revenue locally;

(b) the Council has the capacity and ability to provide basic essential services; and

(c) there is rateable property in the area.”.

8. Section 62 of the principal Act is amended by inserting therein, in the correct alphabetical order, the definition of the words “Valuation Tribunal” as follows—

Amendment
of s.62 of the
principal Act

“Valuation Tribunal” means the Tribunal appointed under section 78A.”.

9. Section 63 of the principal Act is amended—

Amendment
of s.63 of the
principal Act

(a) in paragraph (c) by adding, at the end of the paragraph, the words,..... “, but shall not include those which are privately owned”;

(b) in paragraph (e) by inserting the word “public” immediately before the word “railway”;

(c) by inserting, immediately after paragraph (e), a new paragraph, to be paragraph (f), as follows—

“(f) rivers, streams and buffer zones except those which are privately owned.”.

10. Section 66 of the principal Act is amended—

Amendment
of s.66 of the
principal Act

(a) in subsection (2), by deleting the word “excluded” and substituting therefor the word “demolished”; and

(c) in subsection (3), by deleting the words “may estimate the value of the property as if it had been completed or occupied and may levy a rate calculated on such estimated value which” and substituting therefor the words “shall use the estimated value of the property for rating purposes and such rates”.

11. Section 67 of the principal Act is repealed and replaced with the following new section—

Replacement
of s.67 of the
principal Act

“Valuer
Cap. 53:08

67.—(1) Each valuation and preparation of valuation rolls and supplementary valuation rolls shall be undertaken by a valuer registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.

(2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with remuneration and other expenses as may be agreed upon between the local government authority and the valuer.”

Amendment
of s.68 of the
principal Act

12. Section 68 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection, as subsection (2)—

“(2) The total valuation of an assessable property shall represent the fair amount of income in rental which the property is likely to realize at the time of the valuation if the property were in a reasonable state of repair, having regard to the type of property and the area in which it is situated.”

Amendment of
s.73 of the
principal Act

13. Section 73 of the principal Act is amended in subsection (2) by deleting the words “K5,000” and “K1,000” and substituting therefor the words “K50,000” and “K10,000”, respectively.

Amendment of
s.75 of the
principal Act

14. Section 75 of the principal Act is amended in subsection (2) by deleting the word “one” immediately after the words “at least” and substituting therefor the word “two”.

Amendment of
s.76 of the
principal Act

15. Section 76 of the principal Act is amended in subsection (1) paragraph (b) by—

(a) deleting the word “valuer” appearing in the fourth line and substituting therefor the word “Council”; and

(b) adding the words “and the Council shall in turn advise the valuer of the objection.”, at the end of the paragraph.

Insertion of ss.
78A, 78B and
78C into the
principal Act

16. The principal Act is amended by inserting, immediately after section 78, the following new sections, as sections 78A, 78B and 78C—

“Valuation
Tribunal

78A.—(1) The Minister shall appoint a Valuation Tribunal which shall consist of—

(a) a Resident Magistrate or a legal practitioner of not less than five years’ experience, who shall be the Chairperson of the Valuation Tribunal, recommended by the Judicial Service Commission;

"Valuation
Tribunal

(b) three valuers recommended by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers; and

(c) a person conversant with issues of land economy.

(2) A local government authority having jurisdiction in the area where an issue arises for the consideration of the Valuation Tribunal shall be responsible for the payment of expenses, fees and allowances for the members of the Valuation Tribunal as may be prescribed.

(3) A member of the Valuation Tribunal shall not, by reason only of the payment to him of a fee or allowance under this Act, be deemed to be an officer of the local government authority or to have a pecuniary interest in any contract or proposed contract or other matter of the local government authority.

Proceedings
of a valuation
Tribunal

78B.—(1) The Chief Executive Officer or other person appointed by a local government authority, shall act as clerk to the Valuation Tribunal.

(2) At each sitting of the Valuation Tribunal, three members present shall constitute a quorum, and a decision of the Valuation Tribunal shall be arrived at by a vote of a majority of the members present and voting; and, in case of an equality of votes, the Chairperson or a member acting as a Chairperson shall have a casting vote.

(3) A member of the Valuation Tribunal shall not sit on a hearing of a matter in which he is directly or indirectly interested or concerned as being liable to pay the rates or a part of the rates in question.

(4) In case of a vacancy in the Valuation Tribunal or incapacity to act by a member, so that a quorum cannot be formed, the local government authority may at once, appoint a suitable person temporarily or otherwise to fill up the vacancy or the place of a member incapable of sitting.

(5) The clerk shall publish notice of a sitting of the Valuation Tribunal not later than seven days before the fixed date of its first sitting.

(6) The Valuation Tribunal shall determine its own procedures.

(7) Proceedings before the Valuation Tribunal shall be deemed to be judicial proceedings as defined under section 4 of the Penal Code.

Consideration
of objectives by
the Valuation
Tribunal

78C.—(1) An aggrieved person who is not satisfied with the decision of the valuer under section 76, may appeal against the decision of the Valuer to the Valuation Tribunal.

(2) The Valuation Tribunal shall, at a sitting duly called by the clerk, consider the appeal made under subsection (1).

(3) The clerk shall send a notice of the date to the persons mentioned in subsection (3) not less than seven days before the day fixed for the consideration by the Valuation Tribunal of the appeal; but the Valuation Tribunal may hear the appeal at shorter notice if all the persons entitled to be heard on the appeal consent.

(4) On the consideration of the appeal, the local government authority, the person who lodged the appeal and a rateable owner of the property, which is the subject of the appeal, may appear and be heard, either in person or by legal practitioner or an accredited representative, and may call and examine witnesses before the Valuation Tribunal.

(5) After hearing the persons mentioned in subsection (3), or such of them as desire to be heard, the Valuation Tribunal shall confirm, or may amend the draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as it may consider appropriate.

(6) Where the Valuation Tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), the Valuation Tribunal may make further amendments to the roll, as it may consider appropriate, in consequence of the first-mentioned amendment:

Provided that—

(a) the further amendment by way of increase or addition shall not be made unless the rateable owner concerned has been given at least fourteen days' prior notice of the proposed amendment and of the date of the sitting of the Valuation Tribunal at which such amendment will be considered; and

(b) the rateable owner may lodge an objection to such further amendment in writing, so as to reach the clerk not less than three days before the date of the sitting of the Valuation Tribunal at which such amendment will be considered.

(7) The Valuation Tribunal shall consider the objections made under paragraph (b) of the proviso to subsection (5), and the provisions of subsection (3) shall apply, *mutatis mutandis*, in respect of those objections.”.

17. Section 79 of the principal Act is amended in subsection (1) by deleting the word “all” and substituting therefor the word “some”.

Amendment
of s. 79 of the
principal Act

18. Section 83 of the principal Act is amended in subsection (1)—

Amendment
of s. 83 of the
principal Act

(a) in paragraph (d), by adding, at the end of the paragraph, the words “that is not operating on a commercial basis”;

(b) in paragraph (e) by adding, at the end of the paragraph, the words “that is not operating on a commercial basis.”.

19. Section 84 of the principal Act is repealed and replaced with the following new section—

Replacement
of s. 84 of the
principal Act

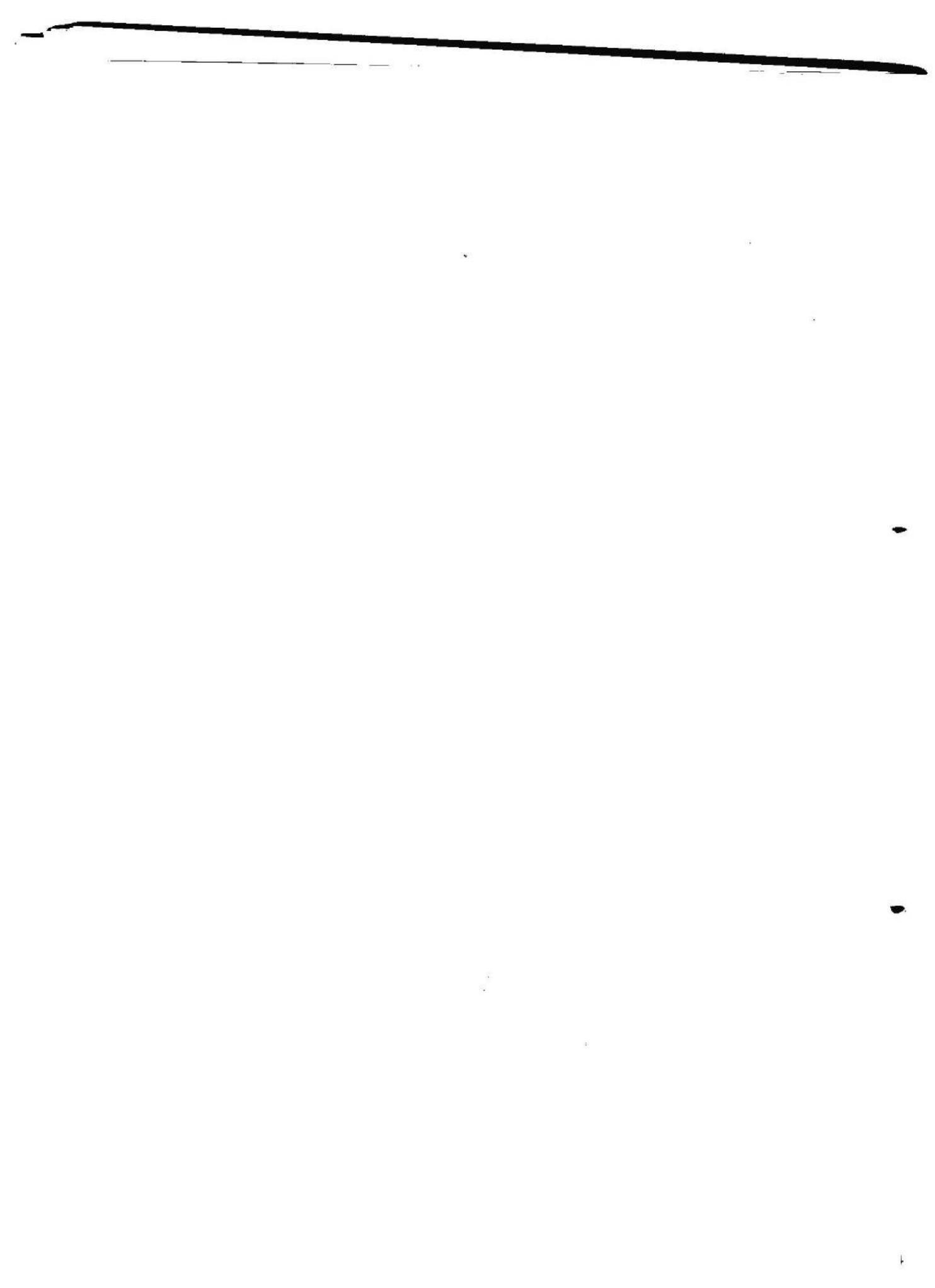
“Exempted
properties

84. — (1) A rate shall not be made or levied in respect of assessable property owned by a diplomatic mission as may be approved by the Minister responsible for foreign affairs.

(2) The decision of the Minister shall be based on existing reciprocal agreement with the State of the relevant diplomatic mission.”.

Passed in Parliament this twenty fifth day of November, two thousand and sixteen.

FIONA. KALEMBA
Clerk of Parliament



MALAWI GOVERNMENT

(Published 27th January, 2017)

ACT

No. 11 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title
2. Amendment of s. 2 of Cap. 66:07
3. General amendment of the principal Act
4. Amendment of s. 23 of the principal Act
5. Amendment of s. 24 of the principal Act
6. Amendment of s. 33 of the principal Act
7. Amendment of s. 35 of the principal Act
8. Amendment of s. 43A of the principal Act
9. Amendment of s. 44 of the principal Act
10. Amendment of s. 45 of the principal Act
11. Replacement of s. 54 of the principal Act
12. Amendment of s. 54A of the principal Act
13. Amendment of s. 74 of the principal Act
14. Amendment of s. 82 of the principal Act
15. Amendment of s. 86 of the principal Act
16. Amendment of s. 87 of the principal Act
17. Amendment of s. 95 of the principal Act
18. Replacement of s. 97 of the principal Act
19. Amendment of s. 99 of the principal Act
20. Replacement of s. 107 of the principal Act
21. Replacement of s. 108 of the principal Act
22. Replacement of s. 109 of the principal Act
23. Replacement of s. 110 of the principal Act
24. Insertion of ss. 110A and 110B into the principal Act
25. Replacement of s. 111 of the principal Act

An Act to amend the National Parks and Wildlife Act

ENACTED by the Parliament of Malawi as follows—

- Short title and commencement
1. This Act may be cited as the National Parks and Wildlife (Amendment) Act, 2017.
- Amendment of s.2 of Cap. 66:07
2. Section 2 of the National Parks and Wildlife Act, (hereinafter referred to as the “principal Act”) is amended by—
- (a) deleting the definition of “endangered species” and substituting therefor the following new definition—
- “endangered species” means any plant or animals occurring within or outside a protected area declared as such pursuant to section 43A”; and
- (b) deleting the definition of “protected species” and substituting therefor the following new definition—
- “protected species” means any plant or animal within a protected area and declared as such pursuant to section 43”.
- General amendment of the principal Act
3. The principal Act is amended by—
- (a) inserting, immediately after the words “protected species” wherever they appear throughout the Act, the words “endangered species or listed species”;
- (b) deleting the words “protected animals” wherever they appear throughout the Act, and substituting therefor the words “protected species, endangered species or listed species”;
- (c) deleting the words “game animals” wherever they appear throughout the Act and substituting therefor the words “game species”;
- (d) deleting the words “national parks, wildlife reserves and nature sanctuaries” wherever they appear throughout the Act and substituting therefor the words “protected area”; and
- (e) deleting the words “shall be guilty of an offence” wherever they appear throughout the Act and substituting therefor the words “commits an offence”; and
- Amendment of s.23 of the principal Act
4. Section 23 of the principal Act is amended—
- (a) by deleting the marginal note and replacing therefor the following new marginal note—
- “Request to conduct an environmental and social impact assessment”; and
- (b) in subsection (1) by inserting, immediately after the words “environmental”, the words “and social”.

5. Section 24 of the principal Act is amended in subsection (1) by inserting, immediately after the words "environmental", the words "and social". Amendment of s.24 of the principal Act
6. Section 33 of the principal Act is amended in subsection (1) by inserting, immediately after the words "section 40", the words "or under a valid hunting licence issued pursuant to Part VII". Amendment of s.33 of the principal Act
7. Section 35 of the principal Act is amended—
- (a) in the main paragraph by inserting, immediately after the words "section 40", the words "or under a valid hunting licence issued pursuant to Part VII"; and
- (b) in paragraph (c) by inserting, immediately after the word "cultivation", the words "or settlement". Amendment of s.35 of the principal Act
8. Section 43A of the principal Act is amended by inserting, immediately after the words "endangered species", the words "or listed species". Amendment of s.43A of the principal Act
9. Section 44 of the principal Act is amended by inserting, immediately after the words "animals", the words "other than endangered species or listed species". Amendment of s.44 of the principal Act
10. Section 45 of the principal Act is amended by—
- (a) inserting immediately before the word "animals", the word "wild"; and
- (b) inserting immediately before the words "protected species", the words "game species or". Amendment of s.45 of the principal Act
11. Section 54 of the principal Act is repealed and replaced by the following new section— Replacement of s.54 of the principal Act
- 54.**—(1) A hunting licence shall authorize the licensee to hunt wild animals which are protected species, endangered species, or listed species.
- (2) A hunting licence for hunting wild animals which are protected species, endangered species and listed species shall—
- (a) outside a protected area, be issued only, in connection with a professional hunter's licence and, subject to, and, in accordance with the conditions prescribed generally for such class of licence or specially endorsed on the professional hunter's licence; and
- (b) inside a protected area, be issued subject to the granting of a special permit by the Director, issued

"Hunting
licence

only in connection with a professional hunter's licence and, subject to, and, in accordance with the conditions prescribed generally for such class of licence or specially endorsed on the professional hunter's licence.”.

- Amendment of s. 54A of the principal Act **12.** Section 54A of the principal Act is amended by inserting immediately after subsection (2), a new subsection (3) as follows—
 “(3) The Minister shall, from time to time, publish in the *Gazette* a set of standards for the keeping of wild animals in captivity.”.
- Amendment of s. 75 of the principal Act **13.** Section 75 of the principal Act is amended—
 (a) by deleting the marginal note and replacing therefor the following new marginal note—
 “Killing a game species in defence of property.”
- Amendment of s. 82 of the principal Act **14.** Section 82 of the principal Act is amended—
 (a) in the marginal note by inserting, immediately after the word “provoking”, the word “wild”;
 (b) in subsection (a) by deleting the words “protected or game animal” and substituting thereof the words “wild animal”; and
 (c) in subsection (b) by deleting the words “any protected or game animal” and substituting therefor the words “such wild animal”.
- Amendment of s. 86 of the principal Act **15.** Section 86 of the principal Act is amended by deleting subsection (1) and replacing therefor the following new subsection—
 “Except as otherwise provided by subsection (2), any person who possesses, buys, sells, transfers or receives in transfer, or who attempts to possess, buy, sell, transfer or receive in transfer any specimen of a game species, protected species, endangered species or listed species commits an offence.”.
- Amendment of s. 87 of the principal Act **16.** Section 87 of the principal Act is amended in paragraph (1) subparagraph (a) by inserting, immediately after the word “skins”, the words “and other specimens”.
- Amendment of s. 95 of the principal Act **17.** Section 95 of the principal Act is amended by deleting the words “protected or game animals” and substituting therefor the words “any wild animal which is a protected species, endangered species, listed species or game species”

18. Section 97 of the principal Act is repealed and replaced as follows—

Replacement of s. 97 of the principal Act

"Import, export or re-export permits

97. The Director may issue to any person a permit in the prescribed form, to import or to export, or to re-export any specimen of a game species, protected species, endangered species or listed species:

Provided that—

(a) in the case of a protected species the Director shall first require the person to produce a valid certificate of ownership in respect thereof; and

(b) in the case of endangered species or listed species, the Director shall require the person, in addition to a valid certificate of ownership, to produce evidence of compliance with the requirements of any international, regional or bilateral agreement relevant to such species to which Malawi is Party to, or the requirements of this Act, or any other Regulations made under this Act."

19. Section 99 of the principal Act is amended by—

Amendment of s. 99 of the principal Act

(a) inserting, immediately before the words "protected species", the words "game species"; and

(b) inserting, immediately after the word "agreement" the words "relevant to such species".

20. Section 107 of the principal Act is repealed and replaced with the following new section—

Replacement of s. 107 of the principal Act

"Financial year of the fund
Cap. 37:02

107. The Financial year of the Fund shall be the Financial Year as defined in the Public Finance Management Act."

21. Section 108 of the principal Act is repealed and replaced with the following new section—

Replacement of s. 108 of the principal Act

"General penalty

108. Subject to the provisions of this Act, a person who is convicted of an offence under this Act for which no other penalty is provided for shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years."

22. Section 109 of the principal Act is repealed and replaced with the following new section—

Replacement of s. 109 of the principal Act

"Offences relating to game species"

109. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting or reducing into possession any game species; or

(b) possession of, selling, buying, transferring, or receiving in transfer, or attempting to possess, sell, buy, transfer or receive in transfer any specimen of game species,

shall be liable to a fine of K2,000,000 and to imprisonment for a term of four years."

Replacement of s. 110 of the principal Act

23. Section 110 of the principal Act is repealed and replaced with the following new section—

"Offences relating to protected species other than game species"

110. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting, or reducing into possession any protected species other than game species;

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of protected species other than game species,

shall be liable to a fine of K5,000,000 and to imprisonment for a term of ten years and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence".

Insertion of s. 110A and 110B into the principal Act

24. The principal Act is amended by inserting immediately after section 110, new sections 110A and 110B as follows—

"Offences relating to endangered species"

110A.—Any person who is convicted of an offence involving—

(a) taking, hunting, molesting, or reducing into possession any endangered species;

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of endangered species;

(c) the contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or

(d) the contravention of sections 33, 35 (c) and 38 of this Act,

shall be liable to a fine of K15,000,000 and to imprisonment for a term of thirty years" and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence."

"Offences relating to listed species

110B. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting, or reducing into possession any listed species;

(b) possession of, selling, buying, transferring or receiving in transfer or attempting to possess, sell, buy, transfer or receive in transfer any specimen of listed species; or

(c) contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence,

shall be liable to imprisonment for a term of thirty years".

25. Section 111 of the principal Act is repealed and replaced with the following new section—

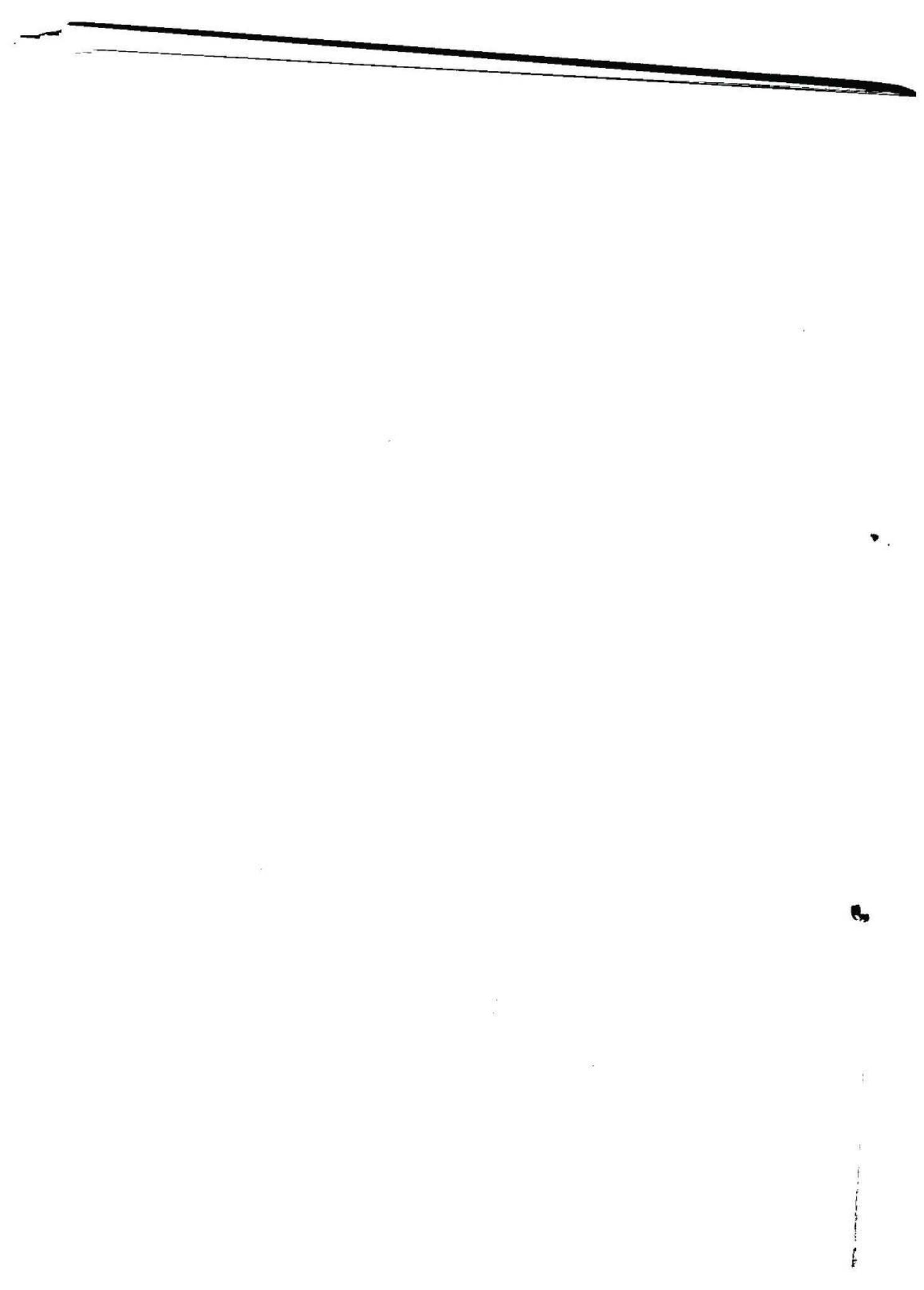
Replacement of s. 111 of the principal Act

"Offences under section 98

111. Any person who is convicted of an offence under section 98 or under regulations made pursuant to section 99 shall be liable to imprisonment for a term of thirty years".

Passed in Parliament this seventh day of December, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament



(Published 27th January, 2017)

ACT

No. 12 of 2017

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—NATIONAL PLANNING COMMISSION

3. Establishment of National Planning Commission
4. Board of the Commission
5. Tenure of office
6. Vacancies
7. Committees of the Board
8. Allowances and expenses
9. Independence of the Commission
10. Functions of the Commission
11. Powers of the Commission
12. Approval of plans and strategies
13. Meetings
14. Personal attendance of meetings
15. Disclosure of interest
16. Oath of secrecy
17. Protection from liability

PART III—ADMINISTRATION

18. Secretariat of the Commission
19. Director General
20. Duties and responsibilities of Director General

SECTION

21. Removal of Director General
22. Secretary to the Commission
23. Other staff of the Commission

PART IV—FINANCIAL PROVISIONS

24. Funds of the Commission
25. Accounting and audit

PART II—MISCELLANEOUS

26. Duty to co-operate
27. Offences
28. Obstruction, an offence
29. Annual reports
30. Powers of the Minister

An Act to provide for the establishment of the National Planning Commission and matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

- | | |
|------------------------------|---|
| Short title and commencement | 1. This Act may be cited as the National Planning Commission Act, 2017, and shall come into operation on a date the Minister may, by notice published in the <i>Gazette</i> , appoint. |
| Interpretation | 2. In this Act, unless the context otherwise requires— <p style="margin-left: 20px;">“chairperson” means the chairperson of the Board of the Commission appointed under section 4 of this Act;</p> <p style="margin-left: 20px;">“Commission” means the National Planning Commission established under section 3 of this Act;</p> <p style="margin-left: 20px;">“committee” means a committee of the Board of the Commission established under section 7 of this Act,</p> <p style="margin-left: 20px;">“Director General” means the Director General appointed under section 19 of this Act;</p> <p style="margin-left: 20px;">“member” means a member of the Board of the Commission appointed under section 4 (1) of this Act.</p> |

PART II—THE NATIONAL PLANNING COMMISSION

3. There is hereby established a Commission to be known as the National Planning Commission (hereinafter referred to as "the Commission") which shall be a body corporate with perpetual succession and a common seal and be capable of—

Establishment
of National
Planning
Commission

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued in its own name; and

(c) doing or performing all such acts and things as bodies corporate may by law do or perform.

4.—(1) The Board of the Commission shall consist of—

Board of the
Commission

(a) a chairperson appointed by the President;

(b) five other members appointed by the President in consultation with relevant professional and other bodies; and

(c) the Secretary responsible for planning and development.

(2) The appointment of members of the Board of the Commission under subsections 1 (a) and (b) shall be confirmed by the Public Appointments Committee of the National Assembly.

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

(4) The Minister shall publish names of all members of the Commission, as first constituted, and every change in the membership, in the *Gazette*.

(5) A person, other than an *ex-officio* member shall not be qualified for appointment as a member of the Board of the Commission if he—

(a) does not possess—

(i) a minimum educational qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree from a recognized and reputable educational institution; and

(ii) expertise and experience in a field relevant to the functions and responsibilities of the Commission;

(b) holds a political office or is an active member of a political party;

(c) is an officer, member or employee in a public institution;

(d) is adjudged or declared bankrupt; and

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

(6) The Commission may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend a meeting of the Commission or any of its committees and participate in the deliberations or to make a presentation or to be asked questions, on any matter, but the person so invited shall not be entitled to vote.

(7) The Secretary responsible for planning and development shall be the deputy chairperson of the Commission.

(8) At least three members of the Commission appointed under section 4 (1) shall be women.

Tenure of office 5.—(1) A member of the Board of the Commission, other than an *ex-officio* member shall hold office for a period of five years and shall be eligible for re-appointment for a further and final term of five years.

(2) When making an appointment after the expiry of five years, the President shall have regard to the need for continuity in the membership of the Board of the Commission so that at least half of the appointed members shall be re-appointed for the next term of office.

Vacancies 6.—(1) A vacancy in the office of a member of the Board of the Commission shall occur if the member—

(a) dies;

(b) is adjudged or declared bankrupt;

(c) is convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(d) fails, without good and justifiable reasons, to attend three consecutive meetings of the Board of the Commission of which he had notice;

(e) is certified by a medical practitioner to be incapacitated by reason of physical or mental disability;

(f) resigns in accordance with subsection (2);

(g) is removed by the President in accordance with subsection (3);

(h) if a situation arises that if the person was not appointed, would have disqualified him from being appointed as a member of the Board of the Commission.

(2) A member of the Board of the Commission, other than an *ex-officio* member, may at any time resign his office by giving one

month written notice to the Chairperson, who shall then forward the resignation to the President, through the Minister.

(3) The President may remove any member of the Board of the Commission, except an *ex-officio* member, of the Commission on any of the following grounds—

(a) misconduct or misbehaviour that brings the office of the member into disrepute;

(b) incompetence in the execution of the functions of his office as a member of the Board of the Commission;

(c) in circumstances where the member is compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question:

Provided that—

(a) before a member is removed from office, he shall be given an opportunity to be heard; and

(b) the Public Appointments Committee of the National Assembly shall confirm the removal of a member of the Board of the Commission.

(4) A vacancy in the membership on the Board of the Commission shall be filled by the appointment of a new member by the President in accordance with section 4 (1) (b).

(5) A person appointed to fill a vacancy shall serve for the remainder of the term of office but no person may 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) The period served by a person appointed under subsection (4) shall not be regarded as a term for the purposes of section 5 (1).

(7) Subject to section 13(4), a vacancy in the membership of the Board of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

7.—(1) For the better carrying into effect of its functions, the Board of the Commission may establish such number of committees as may be considered necessary to perform such functions and responsibilities as may be determined by the Commission.

Committees
of the Board

(2) A committee may consist of either members of the Board of the Commission only or members of the Board of the Commission and such other suitably qualified persons other than members of staff of the Commission as the Commission may deem fit.

(3) The Board of the Commission shall appoint the chairperson and deputy chairperson of each committee from only amongst the members of the Board of the Commission.

(4) The provisions of this Act relating to the meetings of members of the Board of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee shall act in accordance with any directions given to it in writing by the Board of the Commission.

Allowances
and expenses

8.—(1) Members of the Board of the Commission and of any of its committees shall be paid sitting and other allowances as the Minister responsible for finance may determine.

(2) The Board of the Commission may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board of the Commission or a member of a committee or a person invited under section 4 (6) in connection with the business of the Commission or a committee.

Independence
of the
Commission

9. Every member and employee of the Commission and every member of a committee shall perform the functions and exercise the powers provided for in this Act independent of the direction, undue influence or interference of—

- (a) any public office;
- (b) any organ of the Government;
- (c) any political party; or
- (d) any person whatsoever or organisation whatsoever.

Provided that solely for purposes of accountability, the Commission shall be answerable, and report bi-annually and directly to the President who shall, through the Minister responsible for planning and Development, present such reports to the National Assembly on the overall fulfilment of the functions and powers of the Commission.

Functions
of the
Commission

10. The functions of the Commission shall be to—

- (a) identify Malawi's socio-economic development priorities and formulate the national vision and strategy for social and economic goals taking into account the country's resource potential and comparative advantage;
- (b) oversee the implementation of long-term national vision and strategies and the medium-term development plans;
- (c) formulate innovative and progressive flagship projects and programmes for implementation in line with the national vision and strategies for the country;

(d) identify and commission research on any matter the Commission deems relevant to the attainment of the objects of this Act;

(e) engage relevant individuals and institutions in all sectors of the economy in the conduct of its functions under this Act;

(f) apprise the President and the National Assembly annually on the progress made with regard to the implementation of plans, programmes and projects; and

(g) perform any other functions in relation to national planning as it may deem appropriate for achieving the purposes of this Act.

11. The Commission shall, in the discharge of its functions, have power to—

Powers of the Commission

(a) engage persons of suitable qualifications and experience as consultants to the Commission;

(b) request the production by any person, of any document or information which, in the opinion of the Commission, is necessary for the execution of its functions under this Act;

(c) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organisation of conferences, workshops or meetings;

(d) receive donations of funds, materials and technical assistance for the furtherance of its work;

(e) 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

(f) 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.

12. The Commission shall prepare and submit a long-term national vision and strategy or a medium-term development plan to Cabinet, through the Minister, for its consideration and approval.

Approval of plans and strategies

13.—(1) The Commission shall meet at least once every three months at a place and at a time as the Chairperson may determine.

Meetings

(2) The Chairperson shall convene ordinary meetings of the Commission by giving the members of the Commission not less than fourteen days written notice and may, on his own motion, convene an extraordinary meeting of the Commission at a place and time as he may determine in consultation with the Director General.

(3) The Chairperson or in the absence of the Chairperson, the Deputy Chairperson shall at the written request of more than three

members of the Commission and within seven days of a request, call for an extraordinary meeting of the Commission, at a place and time as the Chairperson or Deputy Chairperson may determine, in consultation with the Director General.

(4) The quorum at every meeting of the Commission or a committee shall be constituted by a simple majority of the members.

(5) The Chairperson or, in his absence, the Deputy Chairperson, shall preside at all meetings of the Commission:

Provided that in the absence of both the Chairperson and Deputy Chairperson at a particular meeting of the Commission, the members of the Commission present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.

(6) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all the meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to a deliberative vote.

(7) Minutes of each meeting of the Commission or a committee shall be kept by the Director General and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

(8) Subject to the provisions of this Act, the Commission may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

Personal
attendance of
meetings

14. A member of the Board of the Commission or committee shall not attend a meeting of the Commission or committee by proxy and where a member of the Board of the Commission is unable to attend any meeting of the Commission, he may request that his apologies for failure to attend be recorded.

Disclosure of
interest

15.—(1) If a member of the Board of the Commission or a committee is present at a meeting of the Commission or at a meeting of a committee at which any matter which is the subject of consideration is a matter in which that member or his immediate family member or his professional or business partner is directly or indirectly interested, he shall, as soon as practicable, after the commencement of the meeting, disclose his interest and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member of the Board of the Commission or a committee shall be recorded in the minutes of the meeting at which it is made.

16. Every—

- (a) member of the Board of the Commission;
- (b) member of a committee;
- (c) member of staff or service provider of the Commission; or
- (d) person invited under section 4 (6),

Oath of
secrecy

shall, upon assumption of his office, 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 of oaths.

17.—(1) A court action or other proceedings shall not be brought personally against any member, a member of a committee or member of staff of the Commission 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 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.

PART II—ADMINISTRATION

18. The secretariat of the Commission shall consist of the Director General and other employees of the Commission appointed under this Act.

Secretariat

19.—(1) The Director General shall be appointed by the Commission through an open, strenuous and competitive process on terms and conditions as the Commission may, in consultation with the Minister, determine.

Director
General

(2) The office of the Director General shall be a public office.

(3) The Director General shall be the chief executive officer of the Commission and the chief economic adviser to the Commission on all matters pertaining to planning and development.

(4) A person shall not be appointed as Director General, unless he—

(a) possesses a minimum qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree obtained from a recognized and reputable educational institution;

(b) has proven and shown demonstrable expertise and experience in executive management, administration and economic or development planning, or in a field relevant to the functions and responsibilities of the Commission; and

(c) does not hold and has not held in the past a political office.

(5) The Director General shall hold office for a term of five years and shall be eligible for re-appointment for one final term of five years

Duties and responsibilities of Director General

20.—(1) Subject to the general and special directions of the Commission and without prejudice to the generality of section 19 (3), the Director General shall be responsible for—

(a) the day to day operations and management of the Commission;

(b) the effective management of the funds, property and business of the Commission;

(c) the administration, organization and control of the other officers and staff of the Commission; and

(d) the effective administration and implementation of the provisions of this Act.

(2) The Director General shall devote his full time to the duties of his office and shall ensure that the Commission is provided with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Commission of its functions and responsibilities under this Act or any other written law.

Removal of Director General

21.—(1) The Commission may remove the Director General from office on the following grounds—

(a) misbehaviour or misconduct that brings the office of the Director General into disrepute;

(b) incompetence in the execution of his functions as Director General;

(c) incapacity by reason of physical or mental illness as certified by a medical practitioner or medical board;

(d) if he is declared or adjudged bankrupt by a competent court;

(e) if he is sentenced for an offence against any written law to any term of imprisonment without the option of a fine.

(2) The Commission shall notify the Minister in writing of its decision to remove the Director General from office under subsection (1) and the reason or reasons therefor:

Provided that before the Director General is removed from office, the Commission shall give him an opportunity to be heard.

Secretary to the Commission

22.—(1) The Director General shall be the secretary to the Commission.

(2) The Director General shall have custody of the common seal of the Commission.

(3) The Director General may, with the approval of the Chairperson, delegate senior members of staff of the Commission to act as secretaries to the committees of the Commission.

23.—(1) There shall be employed in the service of the Commission, subordinate to the Director General, other management, professional, research, technical, administrative and other support staff as the Commission shall consider necessary for the exercise of its powers and performance of its duties and functions.

Other staff
of the
Commission

(2) The staff of the Commission referred to in subsection (1) shall be appointed by the Board of the Commission on terms and conditions as the Commission shall determine in consultation with the Government department responsible for human resource management and development:

Provided that the Commission may, by directions in writing, delegate to the Director General, the appointment of its staff in specified junior ranks and the Director General shall report to the Board of the Commission every appointment made pursuant to this subsection.

(3) Every member of staff of the Commission shall, on first appointment, take an oath of secrecy in the form set out in the Schedule to this Act and a Commissioner of Oaths shall administer the oath.

(4) The Director General or other officer of the Commission as the Commission or the Director General may designate, may attend meetings of the Commission and of any of its committees and may address the meetings, but shall not vote on any matter.

(5) Where, in any meeting, the deliberations of the Commission or any of its committee concerns the Director General or any officer of the Commission designated to attend the meeting, the Commission or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

(6) Section 14 shall apply mutatis mutandis, to the Director General and any other officer referred to in this section.

PART IV—FINANCIAL PROVISIONS

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

(a) sums appropriated by Parliament for purposes of the Commission:

Funds of the
Commission

(b) sums or assets that may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(c) sums or assets that may accrue to or vested in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(d) sums that are received by the Commission by way of voluntary contributions; and

(e) sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons.

(2) The Commission may receive the sums or assets referred to in subsection (1) from a source other than the Government provided that no sums or assets so received shall jeopardise or compromise the independence of the Commission.

(3) The Commission shall, within a reasonable period not exceeding one month, provide the Minister responsible for finance in writing details of the sums or assets received by the Commission under subsection (1) from a source other than the Government.

(4) For the purposes of this section, "an external body of persons" means any body of persons, incorporated or unincorporated, formed under or by virtue of the laws of any country other than Malawi.

(5) The Government shall adequately fund the Commission to enable it exercise its powers and perform its functions and duties so as to ensure its independence.

(6) The funds and assets of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

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

Cap. 37:01
Cap. 37:02
Cap. 37:03

Accounting
and audit

25.—(1) The Commission shall be liable to account to the National Assembly in the manner applicable to Government departments.

(2) The accounts of the Commission shall be liable to audit annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

PART V—MISCELLANEOUS

26. Every relevant or competent public officer and public or private entity shall accord the Commission, any assistance or co-operation as may be reasonably required for the exercise of its powers and performance of its functions and responsibilities and for the protection of its independence.

Duty to co-operate

27. A person who—

Offences

(a) without reasonable excuse, refuses to produce any information or documentation when required by the Commission to do so under this Act;

(b) makes any statement knowing it to be false, or provides any information or documentation that is materially incorrect with the intention of misleading the Commission;

(c) without a written permission of the Commission, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents of any document, communication or information of any kind which has come to his knowledge in the course of his duty under this Act.

commits an offence and shall, upon conviction, be liable to a fine of K7,000,000 and to imprisonment for seven years.

28. Any person who obstructs or interferes with the Commission, a member, employee, agent or service provider in the performance of any function under this Act or other written law, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

Obstruction, an offence

29.—(1) The Commission shall—

Annual reports

(a) from time to time and in consultation with the Minister, apprise the Cabinet, Members of Parliament, Principal Secretaries and Local Government Authorities and Councillors on the work of the Commission and in particular on matters that could affect the national development policy and on the priorities to be set by the Commission;

(b) prepare and submit to the President within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year;

(c) prepare and submit to the National Assembly, through the Minister, within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year.

(2) The Minister shall lay a copy of every annual report referred to in subsection (1) (c) in Parliament.

Powers of the Minister

30. The Minister may, by notice published in the *Gazette*.—
(a) on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act; and
(b) amend any Schedule to this Act.

SCHEDULE

(s. 16)

OATH OF SECRECY

I....., being a member/having been employed in the service, of the National Planning Commission, do hereby swear/affirm that I will freely without fear or favour, affection or ill will, discharge the functions of a member/an employee, of the Commission, and that I will not directly, or indirectly reveal any matters related to such functions to any unauthorized person or otherwise than in the course of my duty.

SWORN at this day of 20

Signature:

Before:

Commissioner for Oaths

Passed in Parliament this sixteenth day of December, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament

11

