

Malawi

## Land Act

### Chapter 57:01

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# Land Act

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# Malawi

## Land Act

### Chapter 57:01

Commenced on 7 June 1965

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[Repealed by [Land Act \(Act 16 of 2016\)](#) on 1 September 2017]*

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

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Land Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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

“**existing laws**” means any law contained in the Schedule or any law which was repealed or replaced by any such law;

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

*[Schedule]*

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

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

“**traditional court**” means a traditional court established under section 3 of the Traditional Courts Act;

*[Cap. 3:03]*

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

“**magistrate’s court**” means any subordinate court constituted under section 54 of the Courts Act;

*[Cap. 3:02]*

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

*[6 of 2004]*

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

*[Cap. 58:01]*

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

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

*[5 of 1976]*

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

**“public road”** means a public road as defined in and by section 3 of the Public Roads Act;

*[Cap. 69:02]*

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

- (a) the maintenance of the land (whether arable, woodland or pasture) free from harmful weeds, clean and in a good state of cultivation and fertility and in good condition;
- (b) the maintenance and clearing of drains, earthworks and access roads;
- (c) the maintenance and proper repair of fences, hedges and field boundaries;
- (d) the execution of repairs to any building upon the land; and
- (e) such rules of good husbandry as may be prescribed or required under this Act or under any other law.

### 3. Protection of authorized officer

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

## Part II – General

### 4. Powers of corporations to hold land

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

Provided that this section shall not apply to a body corporate incorporated in Malawi in accordance with the Companies Act or a body corporate coming within the terms of section 275 of the Companies (Consolidation) Act, 1908, of the United Kingdom in its application to Malawi, or a body corporate established by or under a written law which empowers it to hold land.

*[Cap. 46:03]*

*[8 Edw. 7.]*

*[c.69]*

- (2) A disposition of any estate or interest in land in Malawi to or for the benefit of a body corporate shall, unless such body corporate is authorized in accordance with subsection (1) to hold lands in Malawi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registrable in Malawi.
- (3) The Minister may make rules prescribing the particulars to be furnished, the forms to be used and the fees to be paid in relation to applications for and grants of licences for the purposes of subsection (1).
- (4) The issue of licences for the purposes of subsection (1) shall be in the absolute discretion of the President and the decision of the President whether or not to issue a licence shall be final and shall not be questioned in any court.

## 5. Minister's power to dispose of public land or customary land

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

Provided that the Minister shall not make a grant of—

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

Provided that—

- (a) the Minister may, in his discretion, reserve a rent which is less than a rack-rent in leases granted under this section to local government or public utility bodies, statutory corporations, Chiefs, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertakings;
- (b) where, having regard to all the circumstances of the case the Minister is satisfied that it is neither expedient, equitable or necessary to reserve a rack-rent in any lease granted, or to be granted, under this section, he may, in his discretion, reserve in any such lease a rent which is less than a rack-rent.

[6 of 2004]

### 5A. Prohibition against disposal of state and official residences

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

[27 of 1994]

## 6. Financial penalty for delay in payment of rent

- (1) If any moneys due to the Government in respect of any rent payable under any lease or right to occupancy of land or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety days after the same became

due and payable, the amount so remaining unpaid shall, at the end of such period, be increased by a penalty equal to one-tenth of the sum so remaining unpaid, or by a penalty of ten shillings, whichever is the greater, and the penalty imposed under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

- (2) The imposition of a penalty under this section shall not affect the powers conferred upon the Minister by [section 14](#) to enforce forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.
- (3) The exercise by the Minister of the powers conferred by [section 14](#) to enforce a forfeiture and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).
- (4) The Minister may in any case or class of cases, if he considers that the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

## **7. Minister may appoint duly authorized officers**

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

## **Part III – Public land**

### **8. Vesting of public land**

All public land is vested in perpetuity in the President.

### **9. Use and occupation of Government land**

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

### **10. Unlawful use of public land to be an offence**

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

## **Part IV – Private land**

### **11. Minister may accept surrenders**

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

### **12. Minister may relieve from liability to perform covenants, etc.**

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



### 13. Implied covenants in leases

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

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

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

*[Cap. 23:01]*

*[26 of 1988]*

### 14. Minister's power of re-entry

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

### 15. Exceptions and reservations

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

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

*[Cap. 61:01]*

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

- (c) Right of way with or without vehicles, or animals across the demised premises to and from any public land or land in the occupation of any lessee, tenant or licensee of the Minister.
  - (d) A right for any authorized officer with or without others to enter upon the demised premises and every part thereof including buildings thereon at all reasonable times for all reasonable purposes.
- (2) Nothing in this section shall prejudice, or be deemed ever to have prejudiced, the vesting of the minerals in the President or a Minister under any law relating to minerals for the time being in force (whether before or after the commencement of the Mines and Minerals Act).

*[Cap. 61:01]*

*[1 of 1981]*

## **16. Revision of rent**

- (1) There shall be implied in every lease granted by the Minister a right on the part of the Minister to revise the rent thereby reserved.
- (2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this section, in respect of all leases, whether made before, on or after the commencement of this section, the Minister may, at any time, by order published in the *Gazette*, revise the rents thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents.
- (3) In the case of leases for agricultural estates, the rent payable may, in respect of such crops as the Minister may specify by order published in the *Gazette*, be deducted from the proceeds of the sales of such crops at the auction floors or at other source of payment in accordance with such arrangements as the Minister may agree with the authorities of the auction floors or other source of payment.

*[22 of 1989]*

*[6 of 1990]*

*[19 of 1995]*

## **17. Matters not to be taken into account**

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

## **18. Procedure on alteration of rent**

- (1) If the Minister decides to alter a rental on revision, he shall cause the lessee to be notified in writing of the amount of the revised rental and the date from which it shall become payable, which date shall not be less than three months from the date of such notice.
- (2) If the rental shall be increased on such revision, and if, within six months of the date of the notice, the lessee does not notify the Minister in writing that he objects to the revised rental and intends to terminate his lease in accordance with [section 19](#), the revised rental shall become payable as from the date specified.

*[19 of 1995]*

## **19. Surrender in lieu of revision of rent**

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

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

## **20. Compensation for improvements on surrender**

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

## **21. Acceptance of rent not to waive breach of covenant**

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

## **22. Authorized officer may distrain**

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

## **23. Service of notices**

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

## **24. Fees**

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

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

### **24A. Prior written notification to Minister of intention to sell, etc., private land**

- (1) Any person who intends to offer for sale or otherwise to convey, lease, transfer or assign any private land shall, not less than thirty days before he makes such offer or otherwise conveys, leases, transfers or assigns, give notice in writing to the Minister of his intention. In this subsection "sale" includes any manner of selling or letting by bids.
- (2) Any person who acts, or attempts to act, in contravention of the provisions of subsection (1) shall be liable to a fine of K1,000 and to imprisonment for a term of twelve months.
- (3) Nothing in this section shall apply to—
  - (a) any offer of sale, conveyance, lease, transfer or assignment by or direct to the Government;
  - (b) any agreement to lease, or any lease, for a nonrenewable term of not more than three years;
  - (c) any sale pursuant to any order of court or by any officer in the public service acting in his official capacity and pursuant to any written law;
  - (d) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good faith:

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

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

[7 of 1974]

#### **24B. Grants of private land to persons who are not citizens of Malawi**

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

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

[6 of 2004]

#### **24C. Restriction of sale of private land to persons who are not citizens of Malawi**

- (1) Without prejudice to the requirements of [section 24A](#) or any other provision of this Act, no person shall sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless—
- (a) the intention to sell the private land has been published in a newspaper in daily circulation in Malawi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land;
  - (b) following the publication referred to in paragraph (a), no person who is a citizen of Malawi has made an offer, or has been able, to purchase the private land at a price that is not lower than the published price; and
  - (c) the purchaser, if not a citizen of Malawi, has purchased the private land at a price that is not lower than the published price.
- (2) Notwithstanding any provision to the contrary in any other written law, no title to private land shall pass under any sale made or purportedly made in contravention of subsection (1), but registration of title upon such sale shall be *prima facie* evidence of validity of title to the land.

[6 of 2004]

#### **24D. Freehold land held by non-residents who are not citizens of Malawi**

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

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

- (b) in the event that there is no voluntary surrender as demanded under paragraph (a)—
    - (i) acquire the land under the Lands Acquisition Act; and  
[Cap. 58:04]
    - (ii) consult with the Minister responsible for the Town and Country Planning Act for the exercise of the powers under section 55 of that Act.  
[Cap. 23:01]
- [6 of 2004]

#### **24E. Gifts of private land between persons who are not citizens of Malawi**

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

[6 of 2004]

### **Part V – Customary land**

#### **25. Vesting of customary land and mineral rights thereof in President**

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

[1 of 1981]

#### **26. Minister to administer and control customary land and mineral rights thereof**

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

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

#### **27. Acquisition of customary land for public purposes**

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

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

[Cap. 69:02]

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

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

[1 of 1969]

## 28. Compensation to individuals for loss, damage or disturbance

Any person who, by reason of—

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

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

## 29. Land no longer needed for public purpose

- (1) Whenever it appears to the Minister that any public land is surplus to the requirements of the Government, he shall so declare by notice made under his hand and published in the *Gazette*, and thereupon such land shall become customary land.
- (2) Notwithstanding any other provision of this Act, the Minister may give to any Chief directions relating to the disposition of customary land, or the occupation thereof by any persons or classes of persons specified in such directions, and may by such directions restrain any native authority or other person from procuring the removal of any such persons or classes of persons from customary land.
- (3) The Minister may take such action as he may deem necessary to ensure compliance with any directions given by him under this section.

*[1 of 1969]*

## 30. Conversion of customary land to registered land

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

*[Cap. 59:01]*

*[Cap. 58:01]*

## Part VI – User of land

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

- (1) Subject to this Act, the Minister may, from time to time, by Order under his hand and published in the *Gazette*, or by regulations made under [section 39](#), or by directions or instructions made or given by him in writing in any individual case, make provision for regulating, managing and controlling the user of all land other than public land or private land situate within a Municipality or Township:

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

*[Cap. 23:01]*

- (2) Without derogation from the generality of subsection (1), any such Order, regulation, direction or instruction, may make provision regulating and controlling the use to which land may be put, the method of cultivation and growing of crops and keeping livestock, the maintenance of proper

drainage of such land and the fencing, hedging and modes of access to such land, the preservation and protection of the source, course and banks of streams and generally for the good management and conservation of the soil, water, woodland, pasture and other natural resources thereof. Different Orders, regulations, directions or instructions may be made or given by the Minister in respect of different areas of land.

- (3) If any person contravenes this section, or any regulation, direction or instruction made or given thereunder, he shall be liable to a fine of K200 and to imprisonment for six months, and, in the case of a continuing offence, to a further fine of K10 for every day during which the offence continues.
- (4) If any person is convicted of an offence under this section, the Minister may by notice under his hand terminate that person's right (however arising) to occupy land in respect of which such offence was committed and such person shall, not more than thirty days after being given such notice, vacate the land. If he fails, omits or refuses so to vacate the land his use and occupation of it shall be unlawful.

*[1 of 1969]*

*[26 of 1988]*

### **32. Failure to comply with regulations, directions or instructions**

- (1) If any person fails to comply within a reasonable time with the terms of any Order or with any regulation, direction or instruction made or given under [section 27](#) (1) the Minister may by notice in writing under his hand require such person to make such compliance within such time as the Minister may specify in the notice.
- (2) If any person to whom notice has been given under subsection (1) fails to comply with the terms thereof within the time specified the Minister may by further notice under his hand terminate that person's right (howsoever arising) to occupy the land to which the regulation, direction or instruction in question related and such person shall, not more than thirty days after being given such further notice, vacate the land. If he fails, omits or refuses to vacate the land his use and occupation of it shall be unlawful.

*[1 of 1969]*

### **33. Powers of entry on land**

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

### **34. Obstruction and penalties**

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

### **35. Vesting of land after termination of right to occupy**

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

- (a) if it is held by such person directly under a grant, lease or other disposition of public or customary land made under this Act or the existing laws, revert in the President as public land;
- (b) if it is held by such person under a lease, licence or other disposition of private land, revert in the person entitled to the land on the termination of the lease, licence or interest created by such other disposition;
- (c) in any other case, become vested in the President as public land.

**35A. \*\*\***

*[Repealed by 21 of 1970]*

**Part VII – Trespass or encroachment upon, or unlawful occupation of, land****36. Summons in a Magistrate's Court for trespass, encroachment or unlawful occupation**

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

If any person trespasses or encroaches upon any customary land or is deemed under this Act to be, in unlawful use or occupation of any such land then the Traditional Court having jurisdiction in the area where the land is situated may, upon a sworn complaint being made to it by, or on behalf of, the Minister, or by, or on behalf of, the Chief having jurisdiction in that area, issue a summons requiring such first-named person (hereinafter referred to as “the defendant”) to attend before the Traditional Court to answer the complaint. Upon the hearing of the summons the Traditional Court may, if it is satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be, in unlawful use or occupation thereof, make an order requiring the defendant, his family or other dependants (if any) to vacate the land within seven days, or such other longer period as the Traditional Court may determine, from the date of the making of the order by the Traditional Court. If such person fails to comply with the order, he may be removed from the land by any authorized officer, police officer or officer of the Traditional Court authorized by the Traditional Court in that behalf.
- (3) Right of the defendant to remove from the land any property legally or equitably belonging to him  

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

  - (a) to take down, disassemble and remove from the land, or any part thereof, any buildings, structure, fence or improvement of any kind whatsoever which he may have erected upon or made to the land;
  - (b) to harvest, collect, take-in and remove from the land or any part thereof, any crops, plants, trees, shrubs or other matter which he may have sown, planted or cultivated on the land during his occupation thereof; and
  - (c) to remove from the land any chattels belonging to him.
- (4) The provisions of this section shall be in addition to, and not in substitution for, the provisions of any other law relating to ejectment from land.



### 37. Procedure

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

[Cap. 3:02]

[Cap. 3:03]

## Part VIII – Miscellaneous

### 38. Minister to act subject to the directions of the President

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

### 39. Minister empowered to make regulations

Subject to this Act, the Minister may, from time to time, make regulations for any of the purposes of this Act and to give effect thereto and, in particular, may by such regulations prohibit the unlawful or unauthorized use or occupation of land, and may prescribe as penalties for the breach of any such regulation a fine not exceeding K200, or imprisonment for a term not exceeding six months, or both such fine and imprisonment and, in the case of a continuing breach, a further fine not exceeding K10 for everyday during which the breach continues.

### 40. Certificate of Minister to be *prima facie* proof

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

### 40A. Proof of citizenship in relation to land transactions

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

[Cap. 15:01]

[6 of 2004]

### 41. Minister's powers of delegation

- (1) The Minister may, by notice published in the *Gazette*, depute any authorized officer to exercise and perform such of the Minister's powers or duties under this Act as he may specify in the notice.
- (2) Any authorized officer deputed under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under [section 5](#) or to administer any lease so granted, consult with and take into account the views of the Commissioner for Town and Country Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

[26 of 1988]

[1 of 1969]

**42. Minister's power to adapt or modify other laws**

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

**43. Saving**

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

**44. Saving with respect to mining**

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

[Cap. 61:01]

**Schedule****Part 1**

The Nyasaland Protectorate (African Trust Land) Orders in Council, 1950 to 1963.

[G.N. 180/1950 to G.N. 251/1963]

The Malawi (African Trust Land) (Modification) Order, 1964.

**Part II**

The Public Lands Ordinance.

[G.N. 114/1964(M)]

[8 of 1951]