

Malawi

## Tobacco Act

### Chapter 65:02

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# Malawi

## Tobacco Act

### Chapter 65:02

Assented to on 24 August 1970

Commenced on 24 August 1970

*[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.]*

**An Act to amend and to consolidate the law relating to the production, manufacture and marketing of tobacco and matters incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Tobacco Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Corporation**” means the body corporate established by section 3 of the Agricultural Development and Marketing Corporation Act;

*[Cap. 67:03]*

“**domestic tobacco grower**” means a person who grows tobacco within the scheduled areas for his own use or consumption by himself or his family;

“**economic crop**” means a crop grown for the purpose of commerce and not for use or consumption by the grower or his family;

“**manufactured tobacco**” means tobacco made into cigarettes, snuff, pipe mixture, roll, twist, cigars, cigarillos, cake, plug or stick;

“**owner**” includes the agent, manager, overseer or other person in charge of any land;

“**scheduled area**” means an area declared as such by the Minister by notice in the *Gazette*,

“**sell**” with its grammatical variations and cognate expressions, includes “barter”;

“**tenant**” means any person who is cultivating tobacco on his own behalf on private or public land to which he himself has no title;

“**tobacco**” means unmanufactured tobacco, whether cured or uncured, but does not include “*nicotiana rustica*”;

“**tobacco grower**” means a person who, within the scheduled areas, grows tobacco as an economic crop, on his own behalf, by his own labour or by the labour of his servant.

*[16 of 1971]*

*[9 of 1986]*

## Part II – The uprooting of tobacco, tobacco seed

### 3. Tobacco plants to be uprooted at direction of Minister

- (1) The Minister may, by notice published in the *Gazette*, fix dates prior to which all tobacco of the preceding planting shall be uprooted.
- (2) Such dates may vary in respect of—
  - (a) tobacco grown in different parts of Malawi;
  - (b) tobacco grown in nurseries, fields or gardens, or for seed;
  - (c) tobacco of different types.
- (3) Any person who fails to uproot tobacco plants prior to any date applicable to such plants which may have been fixed by the Minister under subsection (1) shall be guilty of an offence.

### 4. Persons responsible for uprooting

The persons responsible for uprooting tobacco plants under [section 3](#) shall be—

- (a) in the case of tobacco planted by a tenant, the tenant;
- (b) in the case of tobacco planted on land which is leased or subleased, the lessee or sublessee;
- (c) in the case of tobacco planted on land which is not leased or subleased, the owner of such land;
- (d) in any other case, the person who planted the tobacco or caused it to be planted, or both such persons.

### 5. Tobacco seed

- (1) No person shall use, sell, import into Malawi or issue to any person any seed to be used for growing tobacco unless the seed has been approved by the Minister or by an officer of the Ministry authorized by the Minister in that behalf.
- (2) No person shall grow tobacco for seed production except with the permission in writing of the Minister or of an officer of the Ministry authorized by the Minister in that behalf.
- (3) No person other than an officer of the Ministry shall issue seed to any tobacco grower or domestic tobacco grower, and no such grower shall grow tobacco except from seed issued to him by an officer of the Ministry.

*[16 of 1971]*

*[9 of 1986]*

- (4) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and, in addition to any other penalty, the court shall order that any tobacco—
  - (a) grown from seed which has not been approved under subsection (1);
  - (b) grown for seed production or grown from seed produced contrary to subsection (2); or
  - (c) grown from seed issued otherwise than in conformity with subsection (3),

shall be destroyed, with such time as the court shall direct, by the owner of such tobacco or by his agent, or, in default of his so doing, by such other person as the court shall appoint, or shall order that such tobacco be forfeited.

### Part III – Tobacco registration

#### 6. Registration of tobacco growers

- (1) No person shall grow tobacco within the scheduled areas unless he is registered in accordance with this Act.
- (2) Application for registration shall be made at such time, to such persons, in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.
- (3) Any person who is aggrieved by the refusal of his application for registration may appeal to such person and in such manner as may be prescribed and any regulations made under this Act may provide for a further appeal and that such further appeal may be final.
- (4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.
- (5) Upon the registration of a tobacco grower or domestic tobacco grower under this section, the person keeping the register shall issue to such grower a certificate of registration in such form, valid for such period and subject to such conditions as may be prescribed.
- (6) No person shall be registered to grow tobacco both on customary land and as a tenant.
- (7) Any person who grows tobacco in any scheduled area without being registered as a tobacco grower in accordance with this Act shall be guilty of an offence.

*[8 of 1972]*

#### 7. Selling prohibited without registration certificate

No person required to be registered under this Part shall sell tobacco without first producing to the buyer a valid certificate of registration or, if he is selling on behalf of another person, the written authority and the valid certificate of registration of that other person. Any person who fails to comply with this section shall be guilty of an offence.

#### 8. Endorsement of registration certificate

Every person who buys tobacco from a registered grower shall endorse on the back of the grower's certificate of registration the quantity of tobacco bought, the date of the purchase, and such other particulars as may be prescribed, and shall sign and date the endorsement. Any person who fails to comply with this section shall be guilty of an offence.

#### 9. Registration certificate not transferable

- (1) A certificate of registration issued under this Part shall not be transferable.
- (2) No person shall have in his possession for any purpose a certificate of registration and a written authority which is not his own except when he is selling tobacco as the agent of a registered tobacco grower and, for the purpose of such agency, has in his possession the certificate of registration and the written authority of that registered tobacco grower.
- (3) The Minister or any officer authorized in that behalf may require any person growing tobacco in a scheduled area to produce for his inspection his certificate of registration or, when a person is acting as a selling agent for a registered grower, the written authority and the certificate of registration of his principal.

- (4) Any person who contravenes subsection (1) or (2), or who refuses or neglects to produce for inspection his or his principal's certificate of registration when required to do so under subsection (3) shall be guilty of an offence.

## Part IV – Marketing

### 10. Purchase of tobacco forbidden except by certain persons

- (1) Tobacco shall not be bought elsewhere than on auction floors licensed under the Control of Tobacco Auction Floors Act, except by the following persons—

*[Cap. 65:03]*

- (a) the Corporation;
- (b) a person who holds a valid tobacco-buying licence issued under Part VI;
- (c) a person who is buying tobacco as the agent, duly authorized in writing, of the Corporation; or
- (d) a person specially authorized in writing by the Minister.
- (2) Where the holder of a tobacco-buying licence fails to buy any tobacco in respect of which the licence was issued, he shall report to the Corporation that such tobacco is available for purchase. The Corporation or its authorized agent may buy such tobacco at such price as may appear to the Corporation to be equitable.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

*[16 of 1971]*

### 11. Minister may define tobacco classes and may fix prices

- (1) The Minister may from time to time define the classes and grades in which tobacco may be sold or bought.
- (2) (a) The Minister may from time to time fix the prices to be paid by the persons referred to in paragraphs (a), (b), (c) and (d) of [section 10](#) (1) for different classes and grades of tobacco and may fix different prices in respect of different areas of the country.
- (b) The prices fixed under this subsection shall be published in the *Gazette*.
- (3) The Minister may from time to time fix tobacco quotas in respect of all registered growers selling tobacco to the corporation.

### 12. Restriction on sale of certain tobacco

- (1) A person growing tobacco on customary laud shall sell such tobacco only to the Corporation, unless the Minister specially authorizes another person, in writing, to buy such tobacco.
- (2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.

*[16 of 1971]*

## Part V – Cess

### 13. Meaning of tobacco

For the purposes of this Part—



“tobacco” means manufactured or unmanufactured cured tobacco other than tobacco imported into Malawi by a manufacturer for use by such manufacturer in the manufacture within Malawi of pipe tobacco, cigarettes, cigars, cigarillos, cake, plug or stick tobacco.

#### 14. Imposition of cess

(1) The Minister may, by order, prescribe a cess at an expressed rate per stated unit of net weight to be levied, paid and collected in respect of—

- (a) tobacco sold in Malawi;
- (b) tobacco exported from Malawi;

Provided that—

- (i) such cess shall not be paid twice in respect of the same tobacco;
- (ii) no cess shall be paid by any person in respect of tobacco grown by him and sold to a person authorized to buy tobacco under paragraphs (a), (b), (c) or (d) of [section 10](#) (1).

(2) An order made under subsection (1) may provide for cess at different rates on different types of tobacco, or may exempt any type of tobacco from liability for cess.

[5 of 1975]

#### 15. Tobacco not to be manufactured or exported unless cess paid

- (1) Any person who sells any tobacco and does not immediately upon completion of the sale pay any amount due for cess in respect of such tobacco shall be guilty of an offence.
- (2) Any person who exports any tobacco in respect of which the cess has not been paid shall be guilty of an offence.
- (3) Any person who is guilty of an offence under this section shall be liable to a fine of K200 and to imprisonment for six months.

#### 16. Proceeds of cess to be used for benefit of tobacco industry

The proceeds of the cess paid and collected under this Part shall be used exclusively for the benefit of the tobacco industry in such manner as the Minister may from time to time approve.

### Part VI – Tobacco buying licences

#### 17. Designation of licensing authorities

- (1) The Minister may by notice published in the *Gazette* designate any organization or person to be a licensing authority for the issue of licences to buy tobacco for the purposes of paragraphs (6) and (c) of [section 10](#) (1), in this Act referred to as tobacco buying licences, and may assign to such licensing authority responsibility for any area or areas of Malawi.
- (2) In carrying out their or his duties under this Act, a licensing authority shall act subject to the general or specific directions of the Minister.

#### 18. Application for licence

Application for a tobacco buying licence shall be made to the Minister, or to the licensing authority designated by him to be responsible for the area in which such licence is required:

Provided that where a licence to buy and resell tobacco has been issued to an owner of land in respect of his tenants under the Special Crops Act, no licence to buy tobacco shall be required under this section.

*[Cap. 65:01]*

*[8 of 1972]*

## **19. Exclusive tobacco growing licence**

The Minister may issue an exclusive tobacco buying licence in respect of any area or areas of Malawi or in respect of a particular grade or class of tobacco, and where the Minister has issued such a licence no other tobacco buying licence shall be issued in respect of same area or areas, or in respect of the same grade or class of tobacco.

## **20. Procedure for licensing authority**

In respect of an application for a tobacco buying licence a licensing authority may—

- (a) if the application is approved, issue the licence to the applicant as soon after such approval as possible;
- (b) if the application is refused, advise the applicant in writing of such refusal as soon after such refusal as possible, and forward a copy of such advice to the Minister.

## **21. Grounds for refusal of licence**

- (1) Unless the Minister otherwise directs in any case, a licence shall not be refused by a licensing authority except on one or more of the following grounds—
  - (a) that the applicant has knowingly given false or misleading information or made false or misleading statements in his application;
  - (b) that the applicant has been convicted within five years preceding the date of application of an offence against this Act, or any written law replaced by this Act;
  - (c) that an exclusive tobacco buying licence has been granted in respect of the tobacco or area for which the application was received;
  - (d) that the Minister has determined that for the purpose of maintaining adequate stocks of tobacco within the area for which the licensing authority is responsible, licences may be issued only in respect of a designated quantity of tobacco and licences have been issued in respect of that quantity.
- (2) The Minister may, in his discretion, direct that any application for a licence shall be refused, and his decision shall be final and shall not be questioned in any court.

## **22. Revocation or suspension of licences**

- (1) A tobacco buying licence may be revoked or suspended by a licensing authority when the licensee has—
  - (a) knowingly given false or materially misleading statements or information in his application;
  - (b) violated or failed to comply with the terms or conditions of his licence;
  - (c) been convicted of an offence against this Act.
- (2) The Minister may, in his discretion, revoke or suspend any tobacco buying licence or exclusive tobacco buying licence, and his decision shall be final and shall not be questioned in any court.

### 23. Appeal

Where an application for a tobacco buying licence is refused by a licensing authority, or when such a licence is revoked or suspended by a licensing authority, the person involved may, within thirty days of the receipt of notification of such refusal, revocation or suspension, appeal in writing to the Minister, and the Minister's decision shall be final and shall not be questioned in any court.

### 24. Register

- (1) Each licensing authority shall maintain a permanent register of all licences issued by such licensing authority.
- (2) The register shall be kept as the Minister may direct.
- (3) The register shall be open to inspection by the Minister or by any person authorized by the Minister to inspect such register.

### 25. Condition of licence

It shall be a condition of every tobacco buying licence or exclusive tobacco buying licence that the licensee may not purchase tobacco—

- (a) in excess of any amount specified in his licence;
- (b) which has not been grown on the area of land specified on his licence;
- (c) of a grade or class excluded on his licence.

## Part VII – Miscellaneous

### 26. Evidence

In any prosecution for an offence under this Act—

- (a) any tobacco which is the subject of a charge shall be presumed to be tobacco within the meaning of those expressions as defined in this Act, and the burden of proving the contrary shall be on the accused;
- (b) a certificate under the hand of the Commissioner for Lands that any land is customary land, public land or private land, or that any land is not included in the area of land specified in any licence, shall be admitted as evidence of the facts stated in such certificate, and the burden of proving the contrary shall be on the accused.

### 27. Power of entry

- (1) The Minister, or any person authorized by him in writing, may, during daylight hours, enter upon or into any land, building, vehicle, aircraft or vessel where tobacco is grown, purchased, stored or transported for the purpose of ascertaining that the provisions of this Act or the conditions of any licence or authority issued under this Act are being complied with.
- (2) The Minister, or a person authorized by him under subsection (1), may call upon the owner, occupier or manager of, such land, building, vehicle, aircraft or vessel to—
  - (a) produce books or records relating to such land, building vehicle, aircraft or vessel as is used in connexion with the subject matter of this Act;
  - (b) produce books or records that will enable him to check the accuracy of any return or application made or required under this Act; or

- (c) permit reasonable samples of tobacco to be taken to ascertain that this Act and the conditions of any licence or authority are being complied with.
- (3) Any person who obstructs or refuses entry to a person authorized by the Minister under subsection (1) or fails, neglects or refuses to produce books or records or to permit samples to be taken under subsection (2) shall be guilty of an offence.

## **28. Display of licence, etc., and price list**

A person buying tobacco under the provisions of paragraphs (a), (b), (c) or (d) of [section 10](#) (1) shall, at the beginning of and throughout each day upon which he exercises his right to buy, prominently display at the place of purchase both a copy of his authority to buy and the prices offered for the classes and grades of tobacco which he is authorized to buy. Any person who fails to comply with this section shall be guilty of an offence.

## **29. False statements**

If any person—

- (a) in connexion with an application for registration as a grower of tobacco or for the issue of any licence or permit under this Act; or
- (b) in or in connexion with any return required by this Act or any record or book kept in pursuance of this Act,

knowingly makes any statement or gives any information which is false in any material particular, he shall be guilty of an offence.

## **30. Hindrance of person performing duty**

Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

## **31. Failure to produce document**

Any person who refuses to produce for inspection a licence, certificate, register or other document issued under or required by this Act to any person authorized to inspect such licence, certificate, register or other document, shall be guilty of an offence.

## **32. Order prohibiting sale, etc., where licence, etc., believed violated**

Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence or an authority to buy tobacco issued for the purposes of paragraphs (a), (b), (c) or (d) of [section 10](#) (1) are not being complied with in respect of certain tobacco, he may issue an order prohibiting the sale, exchange or movement of such tobacco or any part thereof for not more than five days. Any person who fails to comply with such an order shall be guilty of an offence.

## **33. Hours during which tobacco may be bought**

The buying of tobacco by persons authorized under paragraphs (a), (b), (c) and (d) of [section 10](#) (1) shall not be undertaken outside such hours of the day as the Minister may, from time to time, by notice published in the *Gazette*, direct, and any such person who buys tobacco outside such hours shall be guilty of an offence.

## **34. Compliance with conditions of licence, etc.**

Any person who buys tobacco contrary to the conditions of his licence or authority to buy tobacco shall be guilty of an offence.

### 35. Penalties

- (1) Any person who is convicted of an offence against this Act for which no special penalty is provided shall be liable to a fine of K1,000 and to imprisonment for one year.
- (2) A court may, in addition to any other penalty, order that any tobacco in respect of which an offence has been committed shall be forfeited.

### 36. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the duties of licensing authorities and other public officers under this Act;
- (b) the forms to be used for any registration certificate, licence, return or application;
- (c) the manner in which any payment for tobacco shall be made;
- (d) the fees for any licence, certificate or application;
- (e) general conditions to be attached to licences required under this Act and further specific conditions which may be imposed by a licensing authority;
- (f) the returns to be made for the purposes of this Act;
- (g) the manner in which tobacco may be cured;
- (h) the movement of tobacco within Malawi;
- (i) any matter to be or which may be prescribed under this Act.

### 37. Special Crops Act to prevail in case of conflict

When any tobacco or any class or grade of tobacco has been declared to be a special crop in relation to the whole or any part of Malawi under the Special Crops Act, then in respect of that area and of that tobacco or class or grade thereof, where the provisions of the Special Crops Act and any order made thereunder conflict with the provisions of this Act or of any regulations made thereunder, then the provisions of the Special Crops Act and any order made thereunder shall prevail.

*[Cap. 65:01]*