

Malawi

## Monuments and Relics Act

### Chapter 29:01

Legislation as at 31 December 2014

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# Malawi

## Monuments and Relics Act

### Chapter 29:01

Commenced on 14 March 1991

*[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 repeal the Monuments Act; to make provision for the conservation, preservation and study of cultural heritage including places of distinctive natural beauty and of sites, buildings and objects of archaeological, palaeontological, geological, anthropological, ethnological, historical, prehistorical and other interests; and to provide for the declaration of protected monuments and relics and acquisition thereof by the Government and the acquisition by the Government of rights and trusteeship over monuments and relics and for the preservation thereof by agreement with the owners; and to provide for the listing of monuments and the registration of monuments and relics; and to provide for the procedure to be followed in relation to the discovery, excavation, removal, sale, exportation and importation of monuments, relics and collections of cultural heritage; and to establish an advisory council to advise the Minister on matters aforesaid; and to provide for matters connected therewith or incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Monuments and Relics Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Chief Antiquities Officer**" means the person appointed as such pursuant to [section 3](#) and includes any officer subordinate to him;

"**collection**", in relation to relics, means a permanent collection thereof;

"**conservation**" means measures taken to prevent destruction, deterioration or loss of cultural and natural heritage of Malawi;

"**Council**" means the Monuments and Relics Advisory Council established under [section 5\(1\)](#);

"**excavation**" means the removal of any overburden deposit or the exposure of any buried or partially buried material in Malawi;

"**listed monument**" means a monument which is included in a list compiled under [section 22](#) or [23](#);

"**local authority**" means the owner of a monument or relic, or an institution or organization, whether a company, or a district, municipal or city council, a church or other religious body or any other organization, whether corporate or unincorporate, which has a claim to ownership of a monument or relic;

"**maintenance**" includes the fencing, covering, repairing, restoring and cleansing of any monument or relic and the surroundings thereof, and the doing of any act which may be necessary for the purpose of maintaining a monument or relic or securing convenient access thereto;

"**monument**" means—

- (a) any area of land which has distinctive scenery or which contains rare or distinctive vegetation;

- (b) any structure, building, erection, ruin, stone, circle, monolith, altar, shrine, pillar, statue, memorial, fortification;
- (c) any grave, tumulus, cairn, place of interment, pit dwelling, trench, excavation, working, rock, rock-shelter, midden, mound, cave, grotto, rock sculpture, rock painting and wall painting;
- (d) inscription or any other site or article of a similar kind or associated therewith which is of archaeological, palaeontological, ethnological, prehistorical, historical, artistic or scientific value or interest;
- (e) any remains of the matters and items referred to in paragraphs (a) to (d), including—
  - (i) the site on which any monument or group of monuments was discovered or exists; and
  - (ii) such portion of land adjoining such site as may be required for the maintenance of or otherwise for the conservation and preservation of such monument or group of monuments;

**"preservation"** means the taking of such actions, including salvage, as are designed to record and maintain the cultural and natural heritage of Malawi;

**"protected monument"** means a monument which is protected under [section 11](#) and includes a group of monuments protected under that section and any single monument in such group;

**"protected relic"** means a relic which is protected under [section 11](#) and includes a collection of relics protected under that section and any single relic in such collection;

**"qualified person"** means any person who has demonstrated competence to study archaeological sites or monuments, ethnology, social and physical anthropology and oral history;

**"relic"** means—

- (a) any fossil of any kind;
- (b) any artifact, implement, coin, document and manuscript;
- (c) any chiefly, religious or war regalia;
- (d) ornament or article (not being a monument),

which is of archaeological, palaeontological, geological, anthropological, ethnological, prehistorical, historical, artistic or scientific value or interest;

**"rescue archaeology"** means a systematic examination, including excavation, of any area of land, place, monument or relic threatened to become irretrievably destroyed by natural phenomena or action of man or animal, including development of such land, place, monument or relic, for purposes of assessing the cultural and natural significance of such action before it is taken;

**"site museum"** means a place that has been developed to exhibit material evidence of man and his environment for purposes of study, education and enjoyment;

**"site record"** means documented observations undertaken as an aspect of systematic examination or controlled recovery or discovery of prehistoric or historic places or objects, including locational records, photographs, notes, charts, drawings and descriptions of situations and materials;

**"systematic examination"** means the process by which the information content of prehistoric places or cultural material is realized for the purpose of conservation or preservation.

## Part II – Administration

### 3. Chief Antiquities Officer and other staff

There shall be appointed in the public service an officer to be designated as the Chief Antiquities Officer and other officers subordinate to him who shall be responsible for the administration of this Act subject to any special or general directions of the Minister.

### 4. Duties of the Chief Antiquities Officer

The Chief Antiquities Officer shall, subject to this Act and to any special or general directions of the Minister—

- (a) collect, conserve and preserve all monuments, relics and other objects entrusted to his care as the official custodian for the purpose of this Act;
- (b) establish site museums where and when appropriate;
- (c) liaise with institutions or persons concerned with conservation or preservation of monuments and relics, or with education and research;
- (d) publish or cause to be published research results, guides to monuments and relics, and other matters relating to the activities of, and the facilities provided by, the Government for the purposes of this Act;
- (e) take such steps as he may consider necessary for the erection, in suitable places, of tablets or statues relating to monuments or relics or giving information about historical events which have occurred at or near such monuments or relics;
- (f) undertake archaeological, paleontological, ethnological, oral history, historical and prehistoric research anywhere in Malawi; and
- (g) purchase, lend or borrow cultural material for study or display in any institution, at any commemorative, trade, art, international or other exhibition or for any other purpose.

## Part III – The Monuments and Relics Advisory Council

### 5. Establishment and composition of the Council

- (1) There is hereby established a body to be known as the Monuments and Relics Advisory Council.
- (2) The Council shall consist of—
  - (a) the following *ex officio* members—
    - (i) the Secretary for Education and Culture or his representative;
    - (ii) the Secretary for Local Government or his representative;
    - (iii) the Chief Parks and Wildlife Officer or his representative;
    - (iv) the Chief Tourism Officer or his representative;
    - (v) the Chief Forestry Officer or his representative;
    - (vi) the Commissioner for Lands or his representative;
    - (vii) the Commissioner for Town and Country Planning or his representative;
    - (viii) the Controller of Customs and Excise or his representative;

- (ix) the Government Archivist or his representative;
  - (x) the Chief Arts and Crafts Officer or his representative;
  - (xi) the Chief Curator of Museums of Malawi or his representative; and
- (b) four other members appointed by the Minister.
- (3) The Minister shall designate one of the members to be Chairman of the Council.
- (4) A member of the Council appointed under subsection (2) (b) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for reappointment.
- (5) The names of all members of the Council as first constituted and every change in the membership of the Council shall be published in the *Gazette*.

## 6. Secretary to the Council

The Chief Antiquities Officer shall act as secretary to the Council.

## 7. Functions of the Council

The functions of the Council shall be to advise the Minister in all matters affecting the collection, protection, conservation and preservation of monuments and relics.

## 8. Meetings of the Council

- (1) The Council shall meet not less than twice a year at such places as the chairman may determine.
- (2) The Council shall further meet at any time at the request, in writing, of more than one-third of its members.
- (3) The Council may at the discretion of the chairman invite any person or persons to attend any meeting of the Council and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.
- (4) In the absence of the chairman from any meeting of the Council the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.
- (5) Two-thirds of the members of the Council shall constitute a quorum.
- (6) The Council shall determine its own procedure.
- (7) At all meetings of the Council the chairman or other person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.
- (8) The chairman of the Council shall report to the Council at each meeting thereof the action taken in respect of any matter on which the Council has advised the Minister.

## 9. Members not deemed public officers

A member of the Council shall not, by virtue only of his membership to the Council, be deemed to be an officer in the public service.

## 10. Allowances

A member of the Council, who is not an officer in the public service, shall be paid an honorarium determined by the Minister and shall be paid his reasonable travelling expenses and subsistence allowance while engaged upon the business of the Council at the rate prescribed by the Minister.



## Part IV – Declaration, conservation and preservation of protected monuments and relics

### 11. Protected monuments and relics

- (1) Subject to subsection (2), the Minister may from time to time, on the recommendation of the Council, by notice in the *Gazette*, declare any monument or group of monuments or any relic or collection of relics to be a protected monument or a protected group of monuments or to be protected relic or protected collection of relics for the purpose of this Act.
- (2) Before making a declaration under subsection (1), the Minister shall—
  - (a) cause to be published in the *Gazette* notice of his intention so to do and stating that representations in writing with respect to such proposal may be submitted to the Minister within one month of the publication of such notice, by any person who considers that he has interest in the monument, group of monuments, relics; and
  - (b) consider any representations with respect to such proposals which may have been received by him within the period specified in paragraph (a).
- (3) The Minister may from time to time by notice in the *Gazette* cancel his intention to declare any monument, group of monuments, relic or collection of relics.

### 12. Acceptance of monuments and relics

The Minister may, on behalf of the Government, accept any monument or relic, or relics or any estate or interest therein, which the owner desires to give or has bequeathed to the Government.

### 13. Prohibition on alteration, etc.

- (1) No person shall without the prior written consent of the Minister—
  - (a) make any alteration to, or destroy or damage, any monument or relic or any part thereof; or
  - (b) carry out any cultivation or mining project or other work so as to cause, or likely to cause, damage or disturbance to any protected monument or protected relic.
- (2) A person who contravenes subsection (1) shall be guilty of an offence.

### 14. Structures, buildings, erected in contravention of this Act

Any structure, building or other work erected, established, or planted in contravention of the provisions of this Act or of any regulations made under this Act shall, at the directions of the Minister, be demolished or otherwise determined removed at the expense of the offender and the cost of repairing any damage caused to any monument or relic shall be bore by the offender.

### 15. Agreements for conservation and preservation of monuments and relics

- (1) The Minister may enter into a written agreement with the owner of any monument or relic for the conservation and preservation of such monument or relic.
- (2) An agreement under this section may provide for all or any of the following matters—
  - (a) the maintenance of such monument or relic;
  - (b) the custody of such monument or relic and the duties of any person who may be employed in connexion therewith;

- (c) the restriction of the owner's right to develop, alter, use, destroy, remove or deface any such monument or relic or to build on or near the site of such monument or relic;
  - (d) the facilities for the access by the public or any part of the public to such monument or relic and for the access thereto for the purpose of inspection and maintenance thereof by persons deputed by the owner, the Chief Antiquities Officer or a local authority;
  - (e) the notice to be given to the Minister in case the land on which is situated such monument or relic is offered for sale by the owner and the right to be reserved to the Government to purchase within two years such land or any specified portion of such land at its market value;
  - (f) the payment of any expenses incurred by the owner or by the Government or by a local authority in connexion with the conservation and preservation of such monument or relic;
  - (g) the procedure relating to the settlement of any dispute arising out of the agreement;
  - (h) the removal, subject to the provisions of this Act, of such monument or relic to a place of safe custody; and
  - (i) any matter connected with the conservation or preservation of such monument or relic which is the subject of agreement between the owner and the Minister.
- (3) The terms of an agreement under this section may be altered from time to time as agreed between the Minister and the owner of the monument or relic which is the subject of the agreement.
  - (4) The Minister or the owner of any monument or relic may terminate an agreement under this section by giving six months notice in writing to the other party of his intention to do so.
  - (5) An agreement under this section shall be binding on every person claiming to be the owner of any monument or relic to which it relates through or under a party by whom or on whose behalf the agreement was executed.
  - (6) Any rights acquired by the Minister in respect of expenses incurred in conserving or preserving any monument or relic under an agreement under this section shall not be affected by the termination of the agreement.

## 16. Owners who are under disability

If the owner of any monument or relic is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon such owner by [section 15](#).

## 17. Enforcement of agreements

- (1) If the Minister apprehends that the owner or occupier of a protected or listed monument or a protected relic intends to act or to permit any other person to act in breach of any restriction imposed under an agreement made under [section 15](#) the Minister may by directions in writing prohibit any such action.
- (2) If an owner of any monument or relic or other person who is bound by an agreement under [section 15](#) refuses to do any act which, in the opinion of the Minister, is necessary for such conservation, preservation or maintenance of a protected or listed monument or protected relic, or neglects to do any such act within such time as may be fixed by the Minister, or fails to comply with the requirements of an order made under subsection (1), the Minister may authorize any person to do such act and the attendant costs may be recovered from such owner or such other person.

## 18. Compulsory acquisition of monuments or relics

- (1) If the Minister apprehends that a monument or relic is in danger of being destroyed, injured or allowed to fall into disrepair or decay, or that a monument or relic is threatened by any proposed change of use or development of land, he may make a report in that behalf to the Minister

responsible for land matters and it shall be lawful for that Minister to acquire the monument or relic under the provisions of the Land Act or the Land Acquisition Act as if the conservation or preservation of such monument or relic were a public purpose within the meaning of that Act.

[Cap. 57:01]

[Cap. 58:04]

- (2) If the Minister apprehends that a monument or relic is in danger of being destroyed, damaged or allowed to fall into disrepair or decay, he may—
- (a) where the owner can reasonably be ascertained, compulsorily purchase the monument or relic from the owner at such price as the Minister shall consider appropriate having regard to the state of preservation, conservation or maintenance of the monument or relic;
  - (b) where the owner cannot reasonably be ascertained, acquire the monument or relic,
- and upon the purchase or acquisition the Government shall have good title to such monument or relic.

## 19. Limitation on powers of compulsory purchase or acquisition of monuments and relics

The powers of compulsory purchase or acquisition of monuments and relics pursuant to [section 18](#) shall not be exercised—

- (a) in respect of any monument or relic which is the subject of a subsisting agreement entered into under the provisions of [section 15](#); and
- (b) unless the owner of the monument or relic or other person competent to enter into an agreement under [section 15](#) has failed, within such period as the Minister may fix in that behalf, to enter into an agreement under that section or has terminated or given notice of his intention to terminate such agreement.

## 20. Custody of monuments and relics

The Minister may remove or cause to be removed to a museum or place of safe custody any monument or relic acquired or purchased under [section 18](#), which is not the subject of a subsisting agreement entered into under [section 15](#).

## 21. Maintenance of monuments and relics

- (1) Every monument or relic in respect of which the Minister has acquired any of the rights mentioned in [section 15](#), or which has been compulsorily purchased or acquired under [section 18](#), shall, unless the Minister otherwise decides, be maintained by the Minister who may delegate such responsibility to a local authority within whose area such monument or relic is situated:

Provided that where such monument or relic has been removed to a place of safe custody pursuant to [section 20](#), the person in whose custody it is shall be responsible for its maintenance.

- (2) Where the maintenance of a monument or relic is delegated under subsection (1) to a local authority, the local authority shall maintain that monument or relic under the supervision of the Chief Antiquities Officer.

## Part V – Listing of monuments of national or local importance

### 22. List of national monuments

- (1) The Minister shall compile a list of national monuments (other than those protected under [section 11](#)) of exceptional or special interest or of particular importance.

- (2) In compiling a list under subsection (1), the Minister shall pay due regard to group value of monuments.
- (3) The Minister shall serve notice on every owner or occupier of a listed monument to inform such occupier or owner that the monument is a listed monument.

### **23. List of monuments of local importance**

- (1) A local authority may, and where so requested by the Minister, compile a list of monuments of local importance.
- (2) Upon compiling a list of monuments of local importance, the local authority concerned shall submit the list to the Minister for approval and monuments on such list shall not be regarded as listed for the purposes of this Act, unless the list has been approved by the Minister.

### **24. Demolition, etc., of listed monuments**

- (1) Any demolition, alteration or extension of a listed monument shall be undertaken only with the written consent of the Minister which may be granted subject to such conditions as the Minister may impose.
- (2) In the case of demolition, the owner or occupier of the listed monument shall give two months notice in writing to the Minister of his intention and, upon receipt of such notice, the Minister may arrange for a record of the listed monument concerned to be made.
- (3) Conditions attaching to a consent granted under subsection (1) may relate to—
  - (a) preservation of the features in situ or as salvage;
  - (b) making good any damage caused by the works;
  - (c) reconstruction of all or part of the monument including re-use of the original material;
  - (d) prohibition of demolition prior to the signing of a contract for the work of re-developing the site; and
  - (e) the period within which the works shall be commenced, which period shall, in no case, exceed three months from the date the consent was granted.
- (4) In determining applications for demolishing, altering or extending a listed monument, the Minister shall have special regard to the desirability of preserving the monument or its setting or any special features it possesses.
- (5) A person who contravenes subsection (1) or any condition of a consent granted under subsection (1) shall be guilty of an offence.
- (6) It shall be a defence to an offence under subsection (5) if the person accused proves that the unauthorized works of demolition, alteration or extension were urgently required in the interest of health or safety and the Minister was notified as soon as was reasonably practicable.

## **Part VI – Ownership, discovery, collection, excavation and removal of monuments and relics**

### **25. Ownership of monuments and relics**

- (1) All monuments and relics, whether movable or immovable, lying on or beneath the surface of the ground or in a river, a lake or other waters are hereby declared to be the absolute property of the Government, except the following—
  - (a) privately-owned monuments whose owners establish title thereto;

- (b) privately-owned monuments or relics which have been registered by the owners with the Minister; and
  - (c) monuments or relics which, in the opinion of the Minister expressed in writing, need not be registered but which have been shown to the Minister pursuant to subsection (2).
- (2) An organization or an individual shall have the right to own monuments or relics and keep them in private collections provided that the monuments or relics have been shown to the Minister for registration of such items.
  - (3) Every person in possession of monuments or relics, whether or not registered, shall keep them safe and preserve them and shall refrain from modifying them in any way, and whenever such monuments or relics are, or are likely to be, lost or damaged, he shall immediately notify the Minister.
  - (4) A monument or relic imported into Malawi shall be part of the absolute property of the Government if it remains in Malawi for two or more years, unless it was declared on entry.
  - (5) The Minister may seize any privately-owned monument or relic which has not been registered with the Minister or shown to him for registration.

## 26. Transfer of ownership, etc., of protected monuments or relics

- (1) Whenever a person transfers the ownership, control or possession of any protected monument or protected relic, he shall—
  - (a) within fourteen days of the transfer, notify the Minister, in writing, the fact of the transfer; and
  - (b) inform the transferee that the monument or relic being transferred is a protected monument or protected relic.
- (2) A protected monument or protected relic shall continue to enjoy the protection available under this Act irrespective of the person in possession or control of it.
- (3) Ownership of any protected monument or protected relic belonging to the Government shall not be transferrable.
- (4) A protected monument or protected relic belonging to a public body or public utility service may only be disposed of with the authorization of the Minister, and the ownership thereof may be transferred only to the Government, or to another public body or public utility service.
- (5) Ownership of any land shall not, in itself, entitle the owner of the land to dispose of the monuments or relics on or under the surface of that land.
- (6) In an action brought by the Government or by the original owner, which action may be brought at any time notwithstanding any provision to the contrary in any written law regarding limitation of actions, a court may, upon proof that the acquisition of a monument or relic by any person was effected in contravention of subsection (1), (2) or (3), declare such acquisition to be void and, upon such declaration, shall order that the monument or relic in question be restored to the Government or to its original owner:

Provided that where the person from whom the monument or relic in question was recovered was *bona fide* purchaser thereof the Minister shall pay to him the purchase money proven to the satisfaction of the Minister to have been paid by such person to the seller and the Minister shall be entitled to recover the amount from the seller.

## 27. Notification of discovery of monuments or relics

- (1) Any person who discovers a monument or relic, or is informed of such discovery, shall notify the Minister, in writing, within fourteen days following the discovery or the date he was informed of the

discovery setting forth the fact of the discovery together with the circumstances of the discovery and such other details of such monument or relic as may be prescribed.

- (2) The Minister may give to any person who has discovered a monument or relic, or has reported the discovery of a monument or relic, a cash reward of an amount which the Minister may, in his own discretion, consider to be appropriate in the circumstances.

## 28. Authorization for archaeological research

- (1) Archaeological excavations for monuments, relics or any other items of archaeological value may be undertaken only by—

- (a) the Chief Antiquities Officer; and
- (b) organizations or individuals holding a valid excavation permit issued by the Minister:

Provided that the Minister shall not issue an excavation permit to an organization or an individual, unless he is satisfied that the organization or the individual has the financial and scientific capability to undertake the excavation.

- (2) A person, not being a person authorized in accordance with subsection (1), who excavates on any land, including his own, for monuments or relics or for any other item of archaeological value shall be guilty of an offence.

## 29. Rescue archaeology

- (1) A person in charge of any survey, excavation, exploration, construction or new development shall, at the earliest stages of planning for such activities, give notice to the Minister to enable, where necessary, rescue archaeology to be carried out in accordance with subsection (2).
- (2) Rescue archaeology of a monument or relic under subsection (1) shall be carried out by the Chief Antiquities Officer or any qualified person with an excavation permit issued by the Minister, and the cost of such work shall, unless the Minister otherwise directs, be borne by the person in charge of any survey, excavation, exploration, construction or other development.

## 30. Archaeological permits

- (1) An application for an excavation permit shall be made to the Minister through the Chief Antiquities Officer and shall specify—
  - (a) particulars of the applicant, including his qualifications and experience as an excavator or researcher and the scientific association, institute or organization to which he is attached;
  - (b) the boundaries of the area intended for excavation or research;
  - (c) a general programme of the work to be followed in the excavation or research; and
  - (d) the funding of the programme.
- (2) The Chief Antiquities Officer shall examine the application and submit it, together with his recommendations, to the Minister who may—
  - (a) grant the application and issue the permit; or
  - (b) refuse the application.
- (3) The Minister shall not be obliged to assign any reasons for his decision under subsection (2).

### 31. Obligations of the holder of an excavation permit

The holder of an excavation permit shall have the following responsibilities—

- (a) to form a team of scientists to carry out the required research and provide the team with all the equipment needed to accomplish the works, and for the making of photographic records and for the handling of monuments and relics in accordance with recognized and acceptable methods and such a team may use the laboratories, workshops, equipment implements and other facilities of the Chief Antiquities Officer, subject to payment of an appropriate fee;
- (b) to carry out the excavations each year during the validity period of the permit, unless the excavation is sooner completed;
- (c) to send to the Minister, at intervals specified in the permit or otherwise in writing, a report on the excavations and their results together with full details of all monuments and relics discovered;
- (d) to prepare maps, section plans and photographs of all discovered monuments and relics and such maps and plans shall be prepared to recognized scientific standards and shall contain detailed descriptions of the conditions of the objects at the time of their discovery;
- (e) to refrain from demolishing or removing any part of the structures or buildings without the approval of the Minister which may be given only after the work referred to in paragraph (d) has been completed;
- (f) to keep on the excavation site two numbered registers bearing the stamp of the Chief Antiquities Officer, one of which registers shall be used for recording progress in the work and shall be signed by the person directing the excavations at the end of each working day and the other shall be used for recording details of any monument and relic discovered;
- (g) to take necessary measures for maintaining and protecting the excavations, monuments and relics against any damage, theft or loss resulting from natural phenomena or encroachment by any person or animal;
- (h) to present to the Minister at the end of the excavation a complete set of maps, section plans, drawings and photographs required under paragraph (d) and a copy of each of the registers kept pursuant to paragraph (f);
- (i) to reimburse the Government for the travel and accommodation expenses of any of its officials who may be assigned to the excavation team during the period of excavation;
- (j) to submit, within six months of the end of each excavation, a general report setting out the most important findings of the investigation and drawn up in such a way that makes it suitable for publication in scientific and archaeological journals;
- (k) to arrange, within two years of the excavation, or within such extended period not exceeding a further two years as the Minister may accept in writing, publication of a detailed scientific report giving precise information on their findings, the provenance and archaeological value of such findings and the results of the research, if such publication has not been done within such period the permit holder shall forfeit his publication to the Government;
- (l) to provide the Minister with three copies of each of the works, publications or articles prepared by the holder of the permit on the excavations and their findings or part thereof;
- (m) to pack any relics discovered and take them to such places as have been designated for the purpose by the Minister; and
- (n) to restore and repair the excavation site and the most important findings that it contains in such a way as to indicate the stratigraphy of the site and the Government may contribute to the cost of restoring and repairing archaeological monuments and relics discovered at the site if justified by the archaeological value of such items and the resources of the excavation team which discovered them are insufficient to cover such costs.

### 32. Excavation permits not transferrable

An excavation permit shall not be transferrable without the consent of the Minister.

### 33. Government to refrain from certain acts of publication, etc.

The Minister shall—

- (a) refrain from publishing the notes, maps and plans deposited by the holder of an excavation permit until after the expiry of the period specified in [section 31](#) (k);
- (b) refrain from permitting photographs to be taken of any discovered monument or relic for the purposes of publication before the holder of an excavation permit has exercised or forfeited his right of publication; but so, however, that the Chief Antiquities Officer may, in guides or information publications, make reference to, and insert photographs of, the items discovered.

### 34. Cancellation of excavation permit

- (1) The Minister may cancel an excavation permit if—
  - (a) the holder of the permit suspends excavation or is otherwise inactive without reasons accepted as valid by the Minister;
  - (b) the holder of the permit fails to comply with the requirements of this Act;
  - (c) the Minister considers it in the public interest so to do.
- (2) Notwithstanding that a permit has been cancelled the Minister may require the permit holder to restore or repair the excavation site in accordance with [section 31](#) (n) and a person who fails to comply with such requirement of the Minister shall be guilty of an offence.
- (3) The cancellation of an excavation permit shall not preclude the grant of another excavation permit—
  - (a) to any other qualified person in respect of the same area or site;
  - (b) to the holder of the cancelled permit in respect of the same or any other area or site if he satisfies the Minister of his ability to comply with the requirements of this Act in that behalf.

### 35. Research co-operation

- (1) The Minister may co-operate with foreign and local scientific institutions, archaeological missions or individual researchers in the conduct of any research.
- (2) For the purpose of research co-operation under subsection (1), the Minister, on behalf of the Government, may enter into written agreements with such institutions, missions or individual researchers setting out the terms and conditions of such co-operation and such terms and conditions may relate to matters of a scientific, technical or financial nature.

## Part VII – Dealing in monuments and relics

### 36. No dealing in monuments and relics unless licensed

- (1) No person shall trade in any monument or relic whether or not such monument or relic is registered, unless he is a holder of a valid licence issued under this Act.
- (2) A person who contravenes subsection (1) shall be guilty of an offence.



### 37. Dealer's licence

- (1) The Minister may, in accordance with regulations made under this Act, issue to any person a licence authorizing that person to trade in monuments or relics.
- (2) Every licence issued under subsection (1) shall be subject to such conditions as may be prescribed by regulations or specially endorsed on the licence and to the following general conditions that is to say that the licensee shall—
  - (a) keep official records provided for the purpose by the Minister in which he will record a detailed inventory of the monuments or relics constituting his stock and all his daily sale and purchase transactions;
  - (b) submit for inspection by the Chief Antiquities Officer and other persons duly authorized by the Minister every monument or relic in his possession, and extend to them all necessary assistance;
  - (c) if so requested by the Chief Antiquities Officer, provide him with a photograph of any monument or any relic in his possession, or permit him to photograph the monument or relic;
  - (d) submit to the Minister a monthly report showing all the monuments or relics he has bought or sold, and give details pertaining to the description of the monuments or relics in question and the identity of the respective seller or buyer;
  - (e) place at the entrance of his registered place of business a sign showing that he is licensed to deal in monuments or relics, and post in a prominent place therein a notice, in both the English and Chichewa languages, to the effect that no monuments or relics may be exported without a licence issued under this Act.
- (3) The Chief Antiquities Officer may at any reasonable time inspect the premises of a licensee and examine the records kept thereat and further may enter, for such inspection, the licensee's personal residence if, according to the licence granted to the dealer, his residence is to be used for storing or for dealing in monuments or relics.

### 38. Cancellation of licence

- (1) The Minister may cancel, or refuse to renew, a licence issued under this part if—
  - (a) he is satisfied that the licensee has not complied or is not capable of complying, with any condition of the licence;
  - (b) he considers it to be in the public interest so to do having regard to the nature of the monuments or relics which the licensee deals in.
- (2) Where a licence has been cancelled or has not been renewed, the licensee shall be allowed to continue in business for such period not exceeding one year as the Minister shall direct in writing to enable him dispose of the stock.
- (3) Any monument or relic remaining unsold after the period allowed under subsection (2) shall be treated as privately-owned monuments or relics of the licensee and be deemed to have been registered with the Minister for the purposes of [section 25](#).

### 39. Prohibition of fraud in monuments and relics

- (1) No person shall without the written consent of the Minister—
  - (a) reproduce, retouch, rework or forge any monument or relic deriving its principal value from a monument or relic which is twenty-five or more years old, or any monument or relic which is less than twenty-five years but deemed by the Minister to be of national importance or interest;

- (b) make any object, whether copied or not, or falsely label, describe, identify, or offer for sale or exchange any object, with the intention to represent the same to be an original and genuine monument or relic;
  - (c) offer for sale or exchange any object with the knowledge that it has previously been collected or excavated in contravention of this Act; and
  - (d) being a licensed dealer in monuments or relics, encourage any other person to excavate for monuments or relics without an excavation permit issued under this Act.
- (2) A person who contravenes subsection (1) shall be guilty of an offence.

## **Part VIII – Exportation and importation of monuments and relics**

### **40. Export licence**

No person shall export any monument or relic, whether or not such monument or relic is registered, unless he is a holder of a valid licence issued under this Part.

### **41. Applications for an export licence**

- (1) A person who desires to export any monument or relic may apply, in writing or in such form as may be prescribed, to the Minister through the Chief Antiquities Officer.
- (2) Subject to any regulations made under this Act, which may require further or other particulars to be furnished by an applicant, every application for a licence to export any monument or relic shall specify the following particulars—
  - (a) the name, occupation, address and nationality of the applicant;
  - (b) the port, station or border point from which the monument or relic will be exported;
  - (c) the name, address and other relevant particulars of the intended consignee;
  - (d) the method by which, and the place in Malawi from where, the monument or relic was obtained;
  - (e) in the case of a registered monument or relic particulars of its registration;
  - (f) in the case of an unregistered monument or relic particulars of the documentation evidencing that it was shown to the Minister for registration;
  - (g) description of the monument or relic with particulars as to quantity, type, dimension and estimated local price in Malawi.
- (3) The applicant shall make available to the Chief Antiquities Officer for verification of the particulars stated in the application and for assessment of value, every monument or relic he intends to export.
- (4) After examining an application received under this section and the monuments or relics intended for export, the Chief Antiquities Officer shall forward the application, together with his recommendation thereon, to the Minister who may, without being obliged to assign any reason—
  - (a) grant the application and issue the licence; or
  - (b) refuse to grant the application.
- (5) An export licence issued under this Part shall be in such form and subject to such conditions as the Minister may prescribe.

#### **42. Validity and duration of an export licence**

An export licence issued under this Part may—

- (a) authorize the licensee generally to export monuments or relics for such period as may be specified in the licence and which may be renewed from time to time; or
- (b) be limited to a particular consignment or a number of consignments.

#### **43. Export levy**

The Minister may, by order published in the *Gazette*, impose a levy on exports of monuments or relics and the rate of such levy may relate to the estimated local or export value of the monuments or relics or to the quantity of the monuments or relics.

#### **44. Value of monuments and relics for purpose of export levy**

The value of monuments or relics for the purposes of an export levy under [section 43](#) shall be the value declared by the exporter:

Provided that where the Chief Antiquities Officer considers, upon reasonable grounds, that the value declared by the exporter is markedly lower than the actual or potential value, he may make his own determination of the value and the export levy on those monuments or relics shall be computed on the basis of the value determined by the Chief Antiquities Officer.

#### **45. Parking of monuments or relics for export**

A person licensed to export monuments or relics shall pack the monuments or relics and seal the packages thereof in the presence of the Chief Antiquities Officer and shall affix on the sealed packages a manifest bearing the official stamp of the Chief Antiquities Officer and stating the number and date of issue of his export licence.

#### **46. Seizure of monuments or relics exported without a licence**

A customs officer or a police officer shall seize any monument or relic being exported in contravention of the provisions of this Part and shall send the items seized to the Chief Antiquities Officer indicating—

- (a) the name and address of the exporter;
- (b) the place where, and the date when, the items were seized.

#### **47. Offence for illegal exports**

A person who exports any monument or relic without a valid licence or otherwise in contravention of this Part shall be guilty of an offence.

#### **48. Temporary export and import permits**

Notwithstanding any other provision of this Act to the contrary, the Minister may grant permission for temporary exportation or importation of monuments or relics for purposes of study or official exhibition of such objects.

#### **49. Recovery of smuggled monuments or relics**

The Minister shall within the terms laid down in agreements, treaties and recommendations of international organizations, arrange to recover monuments or relics smuggled or otherwise taken out of Malawi and may assist in returning those brought into Malawi from other countries.

## Part IX – General

### 50. Right of access

Subject to the provisions of any regulations made under this Act, members of the public shall have a right of access to any monument or any relic which is kept in a place of safe custody under the provisions of [section 20](#).

### 51. Relinquishment of control over monuments and relics

The Minister may, where rights have been acquired by the Government in respect of any monument or relic under this Act relinquish the rights so acquired to the person who would for the time being be the owner of such monument or relic as if such rights had not been acquired.

### 52. Removal of protection

The Minister may, by notice in the *Gazette*, declare that any protected or listed monument or a protected relic shall cease to be a protected or listed monument or protected relic.

### 53. Publication in the *Gazette*

The Minister shall cause to be published in the *Gazette*—

- (a) once every year, lists of monuments compiled under sections [22](#) and [23](#); and
- (b) the declaration of any monument or relic as a protected monument or a protected relic.

### 54. Public donations

- (1) There may be raised, from the public or private persons in or outside Malawi, for the conservation, preservation and protection of any monument or relic or for any other purposes of this Act, money and other assets by way of grants, bequests, gifts, and subscriptions or other donations.
- (2) Any money raised pursuant to subsection (1)—
  - (a) may be held on an account including an interest bearing account in a bank or other institution in or outside Malawi approved by the Minister; and
  - (b) shall not be appropriated for any of the purposes for which it was raised except upon the recommendation of the Council and with the approval of the Minister.

### 55. General offences

- (1) Save as is provided in this Act, any person who—
  - (a) without authority, knowingly alters, destroys, defaces, damages, demolishes, removes from the original site, reproduces a protected monument or protected relic or a listed monument whether in the possession of the Government or a private organization or an individual;
  - (b) possesses an unregistered monument or relic without having shown it to the Minister for registration;
  - (c) in any application to the Minister under this Act, makes any statement which he knows or ought reasonably to know to be false in any material respect,shall be guilty of an offence.

**56. General penalty**

Any person guilty of an offence under this Act shall be liable to a fine of K10,000 and to imprisonment for three years.

**57. No suit against public officers, etc.**

No suit for compensation and no criminal proceedings shall lie against any public officer, local authority or officer of a local authority in respect of any act done or intended to be done, in good faith in the exercise of any power or performance of any duty conferred under the provisions of this Act.

**58. Regulations**

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

- (a) regulating the access of the public to any monument or relic and prescribing the fees, if any, which may be charged for such access;
- (b) safeguarding monuments or relics from disfigurement alteration or destruction;
- (c) regulating the excavation and exploration of monuments and relics and research in general;
- (d) regulating trade, transfer, export, import, and temporary export and import of monuments or relics;
- (e) establishment and running of site museums; and
- (f) anything which is required to be prescribed under this Act.

**Part X – Repeal and savings****59. Repeal and savings**

- (1) The Monuments Act is hereby repealed.
- (2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—
  - (a) shall, unless in conflict with this Act continue in force and be deemed to be subsidiary legislation made under this Act; and
  - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.
- (3) Any subsisting agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.