

Malawi

## Inland Waters Shipping Act Chapter 71:01

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1995/12/eng@2014-12-31

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# Malawi

## Inland Waters Shipping Act

### Chapter 71:01

Commenced on 1 April 1996

*[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 make provision for the survey, registration, licensing and safety of all vessels used on inland waters of Malawi; for the safety of passengers and cargo, for the competency of masters and crews and for matters incidental thereto and connected therewith**

#### Part I – Preliminary

##### 1. Short title

This Act may be cited as the Inland Waters Shipping Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

"**authorized officer**" means the Chief Surveyor or any person authorized to act as such;

"**board of examiners**" means board of examiners appointed under [section 66](#);

"**boat examiner**" means a boat examiner appointed under Part VI;

"**cargo vessel**" means a vessel which is not a passenger vessel;

"**carrier**" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

"**clearance**" means permission for a vessel to set sail or leave port;

"**certificate of competency**" means a certificate issued to a certificated officer under Part VII;

"**certificate of registration**" in relation to a vessel, means the certificate of registration issued under [section 14](#);

"**certificated officer**" means a member of the crew to whom a certificate of competency is issued under Part VII;

"**Continuous Discharge Book**" means a seaman's record book of service issued by the maritime authorities of Malawi or of any country bordering the inland waters;

"**contracting country**" means any foreign country to which any maritime convention mentioned herein applies;

"**Court of investigation**" means the court of investigation appointed under [section 180](#);

"**Crew**" means any person employed to work on board a vessel on a voyage including an apprentice but excluding a fisherman or any person employed solely in a port or a pilot;

"**delivery account**" means an account of the personal effect and wages of a seaman who is left behind;

"**dangerous goods**" has the meaning assigned to it in [section 145](#);

"**distressed seaman**" means a seaman or apprentice found in distress by reason of having been shipwrecked, discharged or left behind in a port other than his proper return port;

"**existing vessel**" means a vessel other than a new vessel;

"**equipment**" in relation to a vessel includes boats, tackle, pumps, apparel, furniture, life saving appliances of every description, spares, masts, rigging and sails, fog signals, lights, shapes and signals of distress, medicines and medical and surgical stores and appliances, charts, radio installations, appliances for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gears and appliances belonging to or used in connexion with or necessary for the navigation and safety of the vessel;

"**fishing vessel**" means a vessel, irrespective of the method used, which is for the time-being employed in fishing for the purpose of sale or trade and which does not carry passengers or goods other than in connexion with such employment;

"**grain**" means wheat, oats, rye, barley, rice, pulses or seeds, maize, millet, sorghum;

"**freeboard**" means the distance measured vertically downwards, amidships, from the upper edge of the deck line to the upper edge of the related load line;

"**GRT**" means gross registered tonnage;

"**harbour**" means a place or area designated as harbour by the Minister under [section 203](#);

"**hire or reward**" in relation to the use of any vessel, means the use of such vessel in inland waters in return for payment or material advantage on one or more occasions whether or not the vessel is used without the services of a master or crew;

"**home port**" means the port of registration of the vessel or the place at which a vessel is habitually kept when not on voyage;

"**inland waters**" means such waters as may be declared to be inland waters under [section 42](#);

"**inspection certificate**" means an inspection certificate issued under [section 59](#);

"**liability**" in relation to a vessel owner, includes liability of the vessel itself;

"**licence**" means a licence issued under [section 30](#);

"**load line certificate**" means an international load line certificate or local load line certificate issued under [section 86](#) or in the case of a foreign vessel, an international load line certificate issued by a contracting country;

"**load line convention**", where applicable, means the International Convention on Load Lines, 1966 and includes any amendments thereto;

"**load line convention vessel**" means a vessel belonging to a contracting country to the Load Line Convention;

"**load line vessel**" has the same meaning assigned to it under [section 84](#);

"**local safety certificate**" means a certificate issued under [section 60](#);

"**Malawi vessel**" means any vessel registered in Malawi under this Act;

"**master**" means the person having command or in charge of the vessel;

"**navigation mark**" means a lighthouse, beacon, busy traffic separation scheme mark, ships routing mark and any marks used for navigation;

"**near shore limits**" means the limits of the inland waters of Malawi, that is to say ten nautical miles from the nearest baseline from which the territorial waters of Malawi is established in accordance with the bilateral or multilateral agreement;

"**new vessel**" means a vessel the keel of which is laid, or is at an equivalent stage of production, after the commencement of this Act;

"**official log-book**" means the official log-book required to be kept under [section 126](#);

"**owner**", in relation to a vessel, includes the owner's agent in the case of a vessel which is the subject of charter, hire-purchase agreement, the person in possession of the vessel in terms of that agreement;

"**passenger**", in relation to a vessel, means any other person other than the master and the crew, a person employed or engaged in any capacity on board the vessel on the business of the vessel, and a child under the age of one (1) year;

"**passenger vessel**" means a vessel carrying more than 12 passengers;

"**proper return port**", in relation to a seaman, means a port in Malawi or in the country to which he belongs; or the port at which he was embarked; or in the case of a discharged seaman, the port agreed upon at the time of his discharge;

"**medical practitioner**" has the meaning assigned thereto in the Medical Practitioners and Dentists Act; [Cap. 36:01]

"**receiver**" means the receiver of wrecks appointed under [section 153](#);

"**registrar of vessels**" means the registrar of vessels appointed by the Minister under [section 11](#);

"**retention account**" means the account of the expenses incurred by the owner or master of a vessel by reason of the absence without leave of a seaman from the vessel;

"**safety convention**", where applicable, means any International Convention relating to safety of life at sea to which Malawi is a party;

"**safety convention certificate**" means any certificate issued to a vessel which complies with any safety convention to which Malawi is a party;

"**safety convention vessel**" means a vessel registered in a country to which the Safety Convention applies;

"**sailing vessel**" means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion;

"**seaman**" includes an apprentice but excludes a person engaged solely for fishing purposes;

"**Surveyor**" means any person appointed under [section 10](#) (2);

"**surveyor's certificate**" means a certificate issued by a surveyor under [section 10](#);

"**tanker**" means a cargo vessel constructed or adopted for the carriage in bulk of liquid cargoes of an inflammable nature;

"**ton**" means the unit of measurement of the tonnage of a vessel ascertained in the manner prescribed;

"**tropical storm**" means a hurricane, typhoon, cyclone, tornado or other storm of similar nature;

"**wages**" include emoluments;

"**wreck**" includes goods which have been cast into inland waters and then sink and remain under water; goods which have been cast or fall into the inland waters and remain floating on the surface; goods which are sunk in inland waters, but are attached to a floating object in order that they may be found again; goods which are thrown away or abandoned; and, a vessel abandoned without hope or intention of recovery, when found in inland waters or in tidal water or on shores thereof;

"**vessel**" means a ship, drilling rig, production platform, sea plane and includes any vessel, lighter, tug, barge, structure or launch, however propelled, used or intended for use in navigation or mining;

"**young person**" has the meaning assigned thereto in the Children and Young Persons Act.

[Cap. 26:03]

### 3. Application of the Act

- (1) Unless otherwise expressly provided, this Act shall apply to—
  - (a) Malawi vessels wherever they may be;
  - (b) all other vessels alike in a port on, or place in, or within the inland waters; and
  - (c) any structure, in or on inland waters and used for exploration or production operations under the Petroleum (Exploration and Production) Act, and to the person in charge of such structure.
- (2) The provisions of Part II of this Act relating to the survey and registration of vessels shall also apply to vessels owned by the Government.
- (3) Nothing in this Act shall be considered as exempting the master or owner or user of a vessel from compliance with the provision of the Fisheries Act or of any subsidiary legislation made thereunder.

[Cap. 61:02]

[Cap. 66:05]

## Part II – Survey and registration

### 4. Application of Part II

- (1) Subject to the provision of subsection (2) the provisions of this Part shall apply to every vessel used on inland waters which is used for hire or reward or whose measurement exceeds such tonnage or measurement as may be prescribed by the Minister.
- (2) There shall be exempted from the provisions of this Part—
  - (a) a dugout canoe;
  - (b) a vessel the home port of which is outside Malawi;
  - (c) any naval vessels of Malawi or of any foreign country;
  - (d) such other vessels or classes of vessels as may be prescribed by the Minister.

### 5. Obligation to register

No person shall use or permit to be used on inland waters a vessel to which the provisions of this Part apply unless—

- (a) such vessel has been surveyed and registered in accordance with the provisions of this Act; and
- (b) there is in force in respect of such vessel a valid certificate of registration.

### 6. Application for registration

- (1) An application for the registration of a vessel shall be made to the Chief Surveyor—
  - (a) where the vessel is owned by one or more physical persons by the person or any one of them owning the vessel as the case may be;
  - (b) where it is owned by a body corporate incorporated in Malawi, by the duly authorized agent of the body corporate.

- (2) The application shall be accompanied by the fees prescribed for the registration of the vessel.

## 7. Declaration of ownership

- (1) No application for the registration of a vessel shall be entertained unless there is attached to the application a declaration by the person applying for the registration of the vessel stating—
- (a) that the vessel is owned by—
    - (i) a citizen of Malawi; or
    - (ii) a body corporate incorporated in Malawi which is under effective control of citizens of Malawi;
  - (b) that the vessel is in a seaworthy condition;
  - (c) the names of the master and crew of the vessel and full particulars of their certificates of competency; and
  - (d) that any foreign marine document relating to the vessel has been surrendered to the Government which issued it or has been cancelled by the Government and that satisfactory proof of the surrender or cancellation has been attached to the declaration.
- (2) A declaration under this section shall be made in the presence of the Chief Surveyor or an officer authorized by him.

## 8. First registration

- (1) Subject to the provisions of subsection (2), where a vessel is to be registered for the first time, the applicant for the registration of the vessel shall attach to the declaration required under [section 7](#)—
- (a) a builder's certificate, signed by the builder of the vessel;
  - (b) a true account of the proper denomination of the tonnage of the vessel as estimated by him;
  - (c) the time and place where it was built; and
  - (d) the name of the person on whose account the vessel was built and if there has been any sale, the instrument under which the vessel has become vested in the applicant.
- (2) Where the applicant declares that the time and place of the building of the vessel are unknown to him or that the builder's certificate cannot be procured, the applicant shall attach to the declaration the instrument by which ownership of the vessel has been acquired and a certificate from an approved surveyor at the last port of registration giving the estimated age and condition of seaworthiness of the vessel.

## 9. Marking of vessels

- (1) Every vessel shall, before registration, be marked permanently and conspicuously to the satisfaction of the Chief Surveyor as follows—
- (a) the name of the vessel as approved by the surveyor shall be marked on each of the bows of the vessel and the name of the vessel and the port of registration shall be marked on the stem of the vessel on dark background in white or yellow letters or on a light background in black letters such letters to be of length of not less than 10 centimetres, and of proportionate breadth;
  - (b) the official number and the number denoting registered net tonnage of the vessel shall be cut in on the main beam of the vessel;
  - (c) a scale of 30 centimetres denoting the vessel's draught of water shall be marked on each side of its stem and its stem post in Roman capital letters or in figures of not less than 10

centimetres in length, the lower line of such letters or figures to coincide with the draught line denoted thereby, and those letters or figures shall be marked by being cut in or painted white or yellow on a dark background or in such other way as the Chief Surveyor may approve.

- (2) Where the scale of 30 centimetres showing the vessels draught of water is misleading, the owner of the vessel shall commit an offence.
- (3) The marks required under subsection (1) shall be permanently marked, and no alteration shall be made to them except where any of the particulars of the vessel are altered in the manner provided by this Act.
- (4) Where a Surveyor certifies that a vessel is insufficiently or inaccurately marked, the vessel may be detained until the insufficiency or inaccuracy has been remedied.
- (5) The Chief Surveyor may, where he thinks fit, allow the markings required under subsection (1) (c) to be in a system other than metric system.
- (6) The name of the vessel shall not be changed except with the approval of the Chief Surveyor.
- (7) Where an owner or master of a vessel neglects to cause the vessel to be marked as required by this section or to keep her so marked, or where any person conceals, removes, alters, defaces or obliterates or permits any person under his control to conceal, remove, alter, deface or obliterate any of the marks, except in accordance with this Act, or for the purpose of escaping capture by an enemy, that owner or master or that person shall commit an offence.

## 10. Survey of vessels

- (1) A vessel shall be surveyed in accordance with the provisions of this Act before an application for registration is made.
- (2) For the purpose of this Act the Minister shall, by notice published in the *Gazette*, appoint a surveyor for each port of registry and an application for the survey of a vessel shall be made by the owner of the vessel in the form and manner presented to a surveyor at a port of registry on the inland waters on which the home port of the vessel is situated.
- (3) After receipt of an application under subsection (2) the surveyor concerned shall survey the vessel for the purpose of determining—
  - (a) whether the vessel is seaworthy;
  - (b) whether the vessel is equipped in accordance with the provisions of this Act;
  - (c) the description, tonnage, dimensions, name and method of propulsion;
  - (d) the geographical limits or areas of inland waters, outside which the vessel may not be used having regard to her construction, suitability for navigation and safe operation;
  - (e) the maximum number of passengers and the maximum quantity of cargo to be carried therein;
  - (f) the crew to be carried therein and standards of competency to be attained by members of such crew; and
  - (g) such further matters as may be prescribed by the Chief Surveyor.
- (4) On completion of his survey under subsection (3) the surveyor shall, if he is satisfied that the vessel seaworthy and is equipped in accordance with the provisions of this Act, issue a certificate in such form as may be prescribed, setting out the information and his opinion relating to the matters referred to in subsection (3).
- (5) Where a surveyor, in the course of a survey under subsection (3), finds a vessel to be unseaworthy or to lack equipment required under this Act, he shall make a full list in writing of all such defects

and shall give a copy thereof to the owner of the vessel and shall notify him of the date by which the vessel may be produced for further examination and after all such defects are subsequently remedied to the satisfaction of the surveyor concerned, he shall issue a certificate in accordance with the provisions of subsection (4).

- (6) A surveyor's certificate shall be valid for such period as may be prescribed.

## 11. Register of vessels

- (1) The Minister shall appoint a registrar who shall keep a register in which shall be entered—
- (a) the name of the vessel;
  - (b) the official number of the vessel;
  - (c) details of ownership of the vessel;
  - (d) particulars respecting the origin of the vessel as stated in the declaration required under [section 7](#);
  - (e) the instruments of transfer of the vessel;
  - (f) mortgages, including where the vessel was previously registered in another country, mortgages inscribed in the register of that country;
  - (g) certificates of permanent and provisional registration; and
  - (h) where the vessel was previously registered in another country, evidence that any foreign certificate of the vessel's previous registration has been surrendered to or cancelled by the Government which issued it.
- (2) On payment of the prescribed fee, any person who satisfies the registrar of his interest in a vessel may during hours of official business obtain certified copies of any entry in the register.
- (3) The owner of a vessel shall inform the registrar of his address and that of his agent at the time of the registration of the vessel and shall notify him of any change in the address within seven days of the change.
- (4) On registration the registrar shall retain in his possession—
- (a) the declaration required under [section 7](#);
  - (b) the surveyor's certificate required under [section 10](#);
  - (c) any builder's certificate required under [section 8](#); and
  - (d) the instrument required under [section 11](#).
- (5) The registrar shall not register a vessel which has been brought to inland waters from outside Malawi unless he is satisfied by such proof as he may require that the provisions of the Customs and Excise Act, applicable to the vessel, have been complied with.

[Cap. 42:01]

## 12. Port of registration

- (1) For the purposes of this Act, the Minister shall, by notice published in the *Gazette*, designate ports of registry and shall appoint a registrar for each such port.
- (2) Every registrar shall, in respect of the port of registry for which he is appointed, maintain in the form and manner prescribed a register of vessels registered in the port.

### 13. Liability of registered owners

Where two or more persons are registered as owners of a vessel, each of them shall be jointly and severally responsible for any liability incurred in respect of the vessel under this Act.

### 14. Issue of certificate of registration

- (1) Where the registrar is satisfied that, in relation to an application for the registration of a vessel, this Act has been complied with and that the fees prescribed for the registration of the vessel have been paid, he may grant to the applicant a certificate of registration.
- (2) A certificate issued under subsection (1) shall be in such form as may be approved by the Chief Surveyor and shall contain all the particulars of the vessel entered in the Register.
- (3) Any person who uses for navigation of a vessel a certificate issued otherwise than in accordance with this section, shall commit an offence.

### 15. Custody of certificate of registration

- (1) A certificate of registration shall be used only for the lawful navigation of the vessel for which it is granted and shall not be subject to detention by reason of any title, mortgage, charge or interest claimed in respect of the vessel.
- (2) No person, who has in his possession or under his control the certificate of registration of a vessel, shall refuse to deliver the certificate on demand—
  - (a) to a person entitled to the custody thereof for the purpose of the lawful navigation of the vessel; and
  - (b) to the Chief Surveyor or to any authorized officer.
- (3) Any person who, without reasonable cause, refuses to deliver the certificate as required by subsection (2) shall commit an offence.

### 16. Lost certificate of registration

- (1) Where a certificate of registration of a vessel is mislaid, lost or destroyed, or where the registrar is otherwise satisfied that a new certificate should be granted, the registrar may grant a new certificate.
- (2) A declaration of loss of certificate of registration shall be made by the master of the vessel, or some other person who has actual knowledge of the loss, who shall state to the best of his knowledge and belief, the circumstances of the loss and the name and description of the registered owner of the vessel.
- (3) Pending the issue of a new certificate of registration under subsection (1), an authorized officer may, on receiving a written declaration of loss of certificate under subsection (2), grant a provisional certificate, which shall contain a statement of the circumstances under which it was granted.
- (4) A provisional certificate of registration granted under this section shall be valid for such period not exceeding sixty days or as may be specified in the certificate.

### 17. Surrender of certificate of registration

- (1) Where under this Act the certificate of registration of a vessel is cancelled or suspended, the registrar shall cause written notice of the cancellation or suspension to be served on the master of the vessel.



- (2) On service of a notice under subsection (1) the master of the vessel shall within seven (7) days of the service of the notice deliver the certificate of registration of the vessel to an authorized officer.
- (3) No master of a vessel, the certificate of registration of which has been cancelled or suspended, shall take the vessel out on inland waters.
- (4) Any master of a vessel who contravenes this section shall commit an offence.

#### **18. Duration and renewal of certificate of registration**

- (1) Unless otherwise provided under this Act every certificate of registration shall remain in force and be deemed to be a valid certificate of registration for such period as may be prescribed.
- (2) Application for renewal of a certificate of registration shall be made by the owner of the vessel in the form and manner prescribed at any time not earlier than one month before such certificate expires, and shall in all cases be accompanied by a valid surveyor's certificate.
- (3) Where the owner of a vessel had made an application for renewal of a certificate of registration in accordance with the provisions of subsection (2), the certificate of registration shall be treated as remaining in force and be deemed to be a valid certificate of registration until the owner is notified in writing of the result of his application.

#### **19. Wrecked and abandoned vessels**

- (1) Where a vessel is wrecked, abandoned, taken by the enemy, burnt or broken up or ceases to be a vessel, the owner of the vessel shall, within seven days of obtaining knowledge of that event, give written notice thereof to the registrar.
- (2) The registrar shall, on receiving any notice under subsection (1), make an entry thereof in the register, and the registration of the vessel in the registry shall be cancelled except in so far as it relates to any unsatisfied mortgage.
- (3) Except where the certificate of registration is lost or destroyed, the owner or master of the vessel shall in any of the events referred to in subsection (1) deliver the certificate to the Chief Surveyor—
  - (a) where the event occurs in Malawi waters, within seven days of its occurrence;
  - (b) where the event occurs elsewhere, within seven days of his arrival in Malawi or any other port.

#### **20. Amendments in certificate of registration and register**

- (1) Subject to the provisions of subsection (2), where any particular concerning a vessel in respect of which a certificate of registration is in force is so altered as not to correspond with the particulars concerning such vessel contained in the register of vessels under [section 11\(1\)](#), the owner shall, not later than twenty-one days after such alteration, submit the certificate of registration to the registrar by whom it was issued and notify him of the reasons for such submission and such registrar shall make all necessary amendments in the certificate and in the register of vessels. The registrar may, in his discretion, issue a new certificate of registration instead of amending a certificate under this subsection and may cancel a certificate and delete relevant entries in the register when he is satisfied that a vessel is permanently removed from or is permanently incapacitated for use in inland waters.
- (2) Where an amendment in a certificate of registration is required by reason of—
  - (a) an alteration in the dimensions, superstructure or tonnage of the vessel, or a permanent alteration in the method of propulsion of the vessel, or the addition of a superstructure to the vessel; or

- (b) the use for hire or reward of a vessel which was not used for that purpose when the certificate of registration was last issued or renewed,

the registrar concerned shall not make any such amendment unless the certificate of registration submitted to him under subsection (1) is accompanied by a valid surveyor's certificate issued, as the case may be, after the completion of the alteration described before the use of the vessel for hire or reward.

- (3) Where an owner fails to comply with the provisions of subsection (1) the certificate of registration in question shall, unless, the registrar concerned otherwise directs, be no longer deemed to be a valid certificate of registration.
- (4) Subject to the provisions of this section, the registration of a vessel may be transferred from one port of registry to another on written application by the owner to the registrar at the existing port of registry. Every such application shall be accompanied by the certificate of registration for the vessel in question.
- (5) Upon receiving an application under subsection (4) the registrar concerned shall transmit notice thereof to the registrar at the intended port of registry together with the certificate of registration and a copy of all particulars relating to the vessel as noted in the register under his control. On the receipt of such documents the registrar at the intended port of registry shall, subject to the provisions of subsection (6), enter in his register all the particulars relevant to the vessel in question and shall issue a new certificate of registration and thereafter the vessel shall be considered for the purposes of this Act as being registered at the new port of registry.
- (6) Where, in the case of an application to transfer registration of a vessel under subsections (4) and (5), the intended port of registry is not on the same inland waters as the existing port of registry, the registrar at the intended port of registry may, before complying with the provisions of subsection (5), have regard to the suitability of the vessel for safe navigation on the inland waters on which the intended port of registry is situated and may require a surveyor to survey the vessel and report to him as to such suitability.

If a surveyor so required reports that any alteration in the construction, condition or equipment of the vessel is necessary to make it safe for navigation on the inland waters in which the intended port of registry is situated, the registrar at such port shall not register the vessel under subsection (5) until a surveyor is satisfied that such alteration has been made.

- (7) Where the registration of a vessel is transferred to a new port of registry under subsections (4) and (5), the new certificate of registration issued under subsection (5) shall, unless otherwise provided under this Act, remain in force and be deemed to be a valid certificate of registration until the date of expiry of the certificate which it replaces, so however, that if it has been issued after a survey required under subsection (6), its period of validity shall commence on the date on which it is issued.

## 21. Re-registration of wrecked or abandoned vessel

Where a vessel has been wrecked or abandoned, the registrar may, on application by the owner of the vessel, register the vessel if he is satisfied that the vessel has been surveyed by a surveyor and certified by him to be seaworthy.

## 22. Masters and crews of vessels

The Minister may prescribe classes of vessels described by tonnage, dimension or, either additionally or alternatively, the purpose for which they are used, which shall not be used upon inland waters unless under the command or in the charge of a competent master and may prescribe the numbers and standards of competency of persons to be carried as crew in a vessel of any such class.

## Part III – Mortgages, alterations and transmissions

### 23. Transfer of vessels

- (1) Any transfer of a vessel shall be made in writing in such form as may be approved by the Chief Surveyor.
- (2) The instrument witnessing the transfer shall—
  - (a) contain the same description of the vessel as is set out in her certificate of registration; and
  - (b) be executed by the transferee in the presence of, and be attested by, two witnesses.
- (3) Notwithstanding any other written law, any transfer made otherwise than in accordance with this section shall be null and void.

### 24. Registration of transfer

Every instrument witnessing the transfer of a vessel shall, within twenty-one days of the transfer, be produced to the Chief Surveyor together with the declaration required under [section 7](#) and the registrar—

- (a) shall thereupon enter in the register the name of the transferee as owner of vessel; and
- (b) shall endorse on the instrument of transfer the fact of that entry having been made and the date on which it was made.

### 25. Transmission of vessel

- (1) Where on the death or bankruptcy of the owner of the vessel, or on the distribution of his assets, the ownership of the vessel is vested in a person entitled to own the vessel, that person shall make a declaration in accordance with subsection (2), before a commissioner for oaths in the presence of, and attested by, two witnesses.
- (2) A declaration under subsection (1) shall contain the same description of the vessel as is specified in a certificate of registration and shall be regarded for all purpose as an instrument of transfer of the vessel and be registered as required under [section 24](#).
- (3) Where on the death or bankruptcy of the owner of the vessel, or on the distribution of his assets, the ownership of the vessel is vested in a person who is not entitled to own the vessel, that person shall, within six months of the transmission of the ownership of the vessel to him, sell the vessel and if he fails to do so the ownership of the vessel shall vest in the Administrator General under the Administrator General Act.

*[Cap. 10:01]*

- (4) Where the ownership of the vessel is vested in the Administrator General under subsection (3), the Administrator General shall sell the vessel and pay over to the person in whom the ownership of the vessel was originally transmitted, the price obtained on the sale after deduction of the expenses incurred on the sale.

### 26. Mortgage of vessel

A vessel may be given in mortgage as provided by the law for the time being governing mortgages and liens in Malawi.

### 27. Alterations to vessel

- (1) Where a vessel is so altered as not to correspond with the particulars relating to her tonnage or description in the register, the owner shall, within thirty days after the completion of the alteration,

notify the registrar of the alteration and shall produce a certificate from a surveyor stating the particulars of the alteration.

- (2) On receipt of the notice of alteration under subsection (1), the registrar shall cause the alteration to be registered or direct that the vessel be registered anew.
- (3) Where the owner fails to comply with subsection (1), he shall commit an offence and the registrar may cancel or suspend the certificate of registration of the vessel and detain the vessel until these requirements are complied with.

## 28. Registration of alteration

- (1) For the purpose of registration of an alteration in a vessel, the certificate of registration of the vessel shall be produced to the registrar who shall—
  - (a) retain the certificate of registration and grant a new certificate of registration containing description of the vessel as altered; and
  - (b) endorse and sign on the existing certificate a memorandum of the alterations.
- (2) The registrar shall enter in the register the particulars of the alteration.

## 29. Provisional endorsement of alterations

- (1) Where a vessel is so altered at any port or place outside Malawi as not to correspond with the particulars relating to her tonnage or description in the register the owner of the vessel shall make an application to an authorized officer for provisional endorsement of the particulars of the alterations on the certificate of registration of the vessel.
- (2) On receipt of an application under subsection (1), the authorized officer may grant or refuse the application and where he grants the application the endorsement shall contain a statement that it is provisional.

## Part IV – Licensing arrangements

### 30. Licensing authority

A licensing authority for the purposes of this Act shall be such public officer or public officers as the Minister may, by notice published in the *Gazette*, appoint.

### 31. Licensing of vessels used for water transport

- (1) Subject to subsection (2), no person shall, except under and in accordance with the terms of a licence issued under this Act, use any vessel upon inland waters for the carriage of—
  - (a) any goods or any persons for hire or reward; or
  - (b) any goods for or in connexion with any trade or business:

Provided that fishing gear and fresh fish carried on board a fishing vessel shall not be considered to be goods for the purposes of this subsection.

- (2) The Minister may, by notice published in the *Gazette*, exempt any vessel or class of vessels from the provisions of this section.

### 32. Using vessels in contravention of Section 31

Any person who uses a vessel in contravention of [section 31](#) shall be guilty of an offence and liable to a fine of K500.

### 33. Duration of licence

- (1) Every licence shall, unless revoked, continue to be in force for one year from the date on which it takes effect:

Provided that if on the date of the expiration of a licence proceedings are pending before the licensing authority on an application for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue to be in force until such application is disposed of.

- (2) With a view to enabling any vessel to be used temporarily—
- (a) for the purpose of a seasonal business;
  - (b) for the purpose of the execution of a particular piece of work; or
  - (c) for any other purpose of limited duration,
- a short-term licence may be granted for a period not exceeding three months.

### 34. Licence not transferable

No licence shall be transferable except with the written consent of the licensing authority endorsed on such licence.

### 35. Form of licence

A licence shall be in such form as may be prescribed and a separate licence shall be issued in respect of each vessel.

### 36. Procedure for application for licence

Every person applying for a licence to use any vessel for the carriage of passengers or goods shall submit in writing to the licensing authority indicating—

- (a) the type of vessel to be used;
- (b) the construction and motive power of such vessels;
- (c) the total number of crew to be carried in such vessel;
- (d) the number of passengers such vessel is intended to carry;
- (e) the places between which such vessel is intended to be navigated including places, if any, outside Malawi and the services to be provided thereby;
- (f) such other particulars as the licensing authority may require in relation to the application.

### 37. Objection to application for licence

- (1) A licensing authority shall publish in the *Gazette* notice of every application for a licence and such notice shall specify the time within which, and the manner in which, objections may be made to the grant of the application.
- (2) When considering an application, the licensing authority shall have regard to any objections to the applications which may be made by persons who are already providing transport facilities for the carriage of goods or passengers between the same places which the applicant intends to serve.

### 38. Discretion of the licensing authority to grant or refuse licences

- (1) A licensing authority shall have full powers in its discretion either to grant or to refuse any application for a licence or to issue any licence subject to such conditions as the licensing authority may think fit to attach.
- (2) In exercising its discretion as aforesaid, the licensing authority shall have regard to the following matters—
  - (a) the extent to which the proposed services is necessary or desirable in the public interest;
  - (b) the extent to which it is necessary in the public interest to prevent uneconomic competition with other transport services;
  - (c) the extent to which the route or routes in respect of which the application is made are already served;
  - (d) the desirability of encouraging the provision of adequate and efficient services;
  - (e) the desirability of eliminating and preventing the growth of unnecessary or unremunerative services;
  - (f) the coordination of all forms of passenger and goods transport;
  - (g) the interest or interests of those requiring as well as those providing facilities for transport;
  - (h) the applicant's reliability, financial stability and the facilities at his disposal for carrying out proposed services; and
  - (i) the condition of the vessel in respect of which the application is made and the fitness of such vessel for the purpose for which the applicant intends to use it.

### 39. Condition of licences

- (1) It shall be a condition of every licence issued under this Act—
  - (a) that the vessel in respect of which it is issued is maintained in a fit and serviceable condition;
  - (b) that the provisions of any law for the time being in force relating to prevention and control of pollution, limits of weight, laden and unladen, the loading of vessels and the number of passengers to be carried are complied with in relation to such vessel.
- (2) Without prejudice to the generality of the provisions of section (1) a licensing authority may, in its discretion, attach to a licence all or any of the following conditions—
  - (a) a condition that the vessel in respect of which it is issued shall or shall not be used in a specified area or over specified routes;
  - (b) a condition that certain classes or descriptions of goods shall or shall not be carried;
  - (c) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods and passengers;
  - (d) a condition specifying the maximum laden weight of such vessel;
  - (e) a condition that passengers may or may not be carried; and
  - (f) a condition specifying the maximum number of passengers which may be carried.
- (3) If the applicant has stated in his application for a licence that the vessel to which the application relates is only to be used within Malawi inland waters, it shall be a condition of the licence issued upon such application that the vessel shall not be used outside Malawi inland waters.
- (4) The licensing authority may, from time to time, cancel or vary any of the conditions of a licence.

- (5) Any person who fails to comply with any condition of the licence held by him shall be guilty of an offence and liable to a fine of K200.

#### 40. Power to revoke or suspend licences

- (1) A licence may be revoked or suspended by the licensing authority on the ground that any of the conditions of the licence have not been complied with.
- (2) In any case where a licence is revoked or suspended the licensing authority shall, if requested by the licence holder, state in writing the grounds for the revocation or suspension.

#### 41. Provision for appeals in connexion with licences

Any person who—

- (a) being an applicant for a licence, is aggrieved by the decision of the licensing authority on the application; or
- (b) having duly made an objection to any such application as aforesaid, being an objection to which the licensing authority is bound to have regard, is aggrieved by the decision of the licensing authority thereon; or
- (c) being the holder of a licence, is aggrieved by the revocation or suspension thereof, or by the variation of any of the conditions thereof,

may appeal to the Minister whose decision shall be final.

### Part V – Bilateral and multilateral arrangements

#### 42. Declaration of inland waters

The Minister may, by notice published in the *Gazette*—

- (a) declare any lake or river or area of water or port thereof to be inland waters for the purposes of this Act;
- (b) designate places or areas of inland waters or land as harbours;
- (c) make regulations for the management, control and safety of any such inland waters and harbours and of vessels and persons and cargo within them, the powers of persons to effect such control and the payment of fees for services within such harbours; and
- (d) after consultation with the Minister for the time being responsible for matters of the environment, make regulations for the prevention and control of pollution of the marine environment.

#### 43. Agreements with other countries

- (1) The Minister may, under such conditions as he may deem necessary, conclude agreements with the government of any country which borders on any lake or river of which a part has been declared to be inland waters and in any such agreement may make arrangements—
- (a) for the recognition and effect in such country of documents issued for the purposes of this Act, and for the recognition and effect in Malawi of documents issued in such country in relation to vessels, master and crew;
- (b) for the use on inland waters of vessels registered in such country and the use on the inland waters of such vessels registered under this Act;

- (c) for the recognition and effect of any bilateral or multilateral arrangements and treaties or agreements on regional cooperation entered into or to be entered into by the Government of Malawi;
  - (d) for the safety of passengers, crews and property abroad and the navigation of vessels used on inland waters and on the waters of such country;
  - (e) for access, by commercial vessels, to inland waters and ports of Malawi by vessels registered in such country and by Malawi vessels to inland waters and ports of such country; and
  - (f) for any other matters incidental to this Part.
- (2) Every agreement or treaty or arrangement concluded under subsection (1) shall be published in the *Gazette*.

#### **44. Existing treaty obligations paramount**

Where the Minister is satisfied that the enforcement of any provision of this Act in regard to vessels of any country would be inconsistent with the obligations of the Government of Malawi under any treaty, convention or agreement entered into with that country, the Minister may, by order published in the *Gazette*, suspend the operation of that provision with regard to vessels of that country so far as he may deem necessary to enable the aforementioned obligations to be fulfilled.

## **Part VI – Surveys and inspections**

### **Division A—Surveys**

#### **45. Regulations to implement safety conventions**

The Minister may make such regulations as he may think fit to give effect to any International Convention on Safety or Tonnage to which Malawi is a party.

#### **46. Surveys and inspections**

- (1) Surveyors, boat examiners and other authorized officers appointed under this Act may carry out surveys and inspections of vessels for the purposes of this Act.
- (2) Any person referred to under subsection (1) may carry out other assignments as the Chief Surveyor may direct.

#### **47. Purposes of surveys and inspections**

A survey or inspection shall be in respect of any or all of the following matters—

- (a) the boilers and machinery of motor vessels;
- (b) the equipment of vessels including the tackles, furnishings and appurtenances;
- (d) the life-saving, fire fighting and other safety installations and appliances of vessels;
- (e) the radio-telegraphy and radio-telephony installations of vessels;
- (f) the storage and manner of loading of cargoes and storage of dangerous goods;
- (g) officer, crew and passenger accommodation and facilities; and
- (h) any other matters incidental thereto.



#### 48. Powers of surveyors and boat examiners

- (1) A surveyor, boat examiner and authorized officer may, in the performance of his duties, at all reasonable times, go on board any Malawian vessel or on any foreign vessel on inland waters or at a port in Malawi, and inspect it or any of its machinery or equipment or the certificate of competency of any certificated officer on board.
- (2) Where—
  - (a) a surveyor, boat examiner or authorized officer considers a vessel unsafe or the machinery or equipment defective in such a way as to expose persons on board to danger or in the case of a passenger vessel, unfit to carry passengers; or
  - (b) a surveyor, boat examiner or authorized officer finds that the provisions of this Act have not been complied with in respect of the vessel and considers that the vessel should not sail for that reason,

the surveyor or boat examiner or authorized officer may request the Chief Surveyor to detain the vessel until he is satisfied that the vessel can safely sail.

- (3) Where the surveyor or boat examiner or authorized officer visits a vessel, he may ask the owner or his agent, the master or engineer, or any other person on board and in charge or appearing to be in charge of the vessel, any question concerning any accident that has happened on the vessel, and every such person shall fully and truly answer every such question and any person who fails to do so or who gives an answer which is not true in any particular material shall commit an offence.
- (4) A surveyor, boat examiner or an authorized officer may require that the machinery of a vessel be put in motion so as to satisfy himself on its condition.

#### 49. Records of surveyors and boat examiners

A surveyor or boat examiner or authorized officer shall keep, in such form as the Chief Surveyor may direct, a record of every inspection he makes.

#### 50. Survey of passenger vessels

Every passenger vessel shall be surveyed—

- (a) before the vessel is put into service;
- (b) at intervals of not more than one calendar year; and
- (c) at such other times as may be required by the Chief Surveyor.

#### 51. Initial survey

- (1) The survey made before a passenger vessel is put into service shall include a complete inspection of the hull, machinery and equipment.
- (2) The survey under subsection (1) shall ensure that the arrangements, materials and scantlings of—
  - (a) the hull;
  - (b) the boiler and other pressure systems;
  - (c) the main and auxiliary machinery;
  - (d) the electrical installations;
  - (e) the radio installations;
  - (f) the radio installations in motor life-boats;

- (g) the portable radio apparatus of survival craft;
- (h) the life-saving appliances;
- (i) the fire detecting and extinguishing appliances;
- (j) the pilot ladders; and
- (k) other equipment, including navigation aids,

fully comply with the requirements of any International Safety Conventions to which Malawi is a party and with any regulations which the Minister may make under this Act.

- (3) The survey under subsection (1) shall also ensure that—
  - (a) the workmanship of all parts of the hull and machinery and equipment is satisfactory; and
  - (b) the vessel is provided with such lights w sound signals as are required by any International Conventions to which Malawi is a party.

## 52. Periodic survey

- (1) Any periodic survey under this section shall ensure that the equipment listed, under [section 51](#) atom satisfactory condition and fit for the service for which they are intended and comply with the requirements of any International Safety Conventions to which Malawi is party and any regulations made under this Act.
- (2) Any periodic survey under this section shall also ensure that the light, sound and distress signals of the vessel are in working order.

## 53. Additional survey

- (1) The Chief Surveyor may require additional survey under this section every time—
  - (a) an accident occurs on or to the vessel;
  - (b) a defect is discovered that affects the safety of the vessel or the efficiency or completeness of the life-saving appliances;
  - (c) important repairs or renewals are made to the vessel.
- (2) The survey shall ensure that—
  - (a) the necessary repairs or renewals have been effectively made;
  - (b) the material and workmanship of the repairs or renewals are in all respects satisfactory; and
  - (c) the vessel complies in all respects with any International Safety Conventions to which Malawi is party.

## 54. Cargo vessels and fishing vessels

- (1) The hull, machinery equipment of a cargo vessel and a fishing vessel shall be surveyed before it is put into service and thereafter at intervals of not more than four years or, if the Chief Surveyor so directs, at lesser intervals.
- (2) The survey shall ensure that the arrangements, materials and scantlings of—
  - (a) the hull;
  - (b) the boiler and other pressure systems;
  - (c) the main and auxiliary machinery;

- (d) the electrical installations; and
- (e) other equipment,

are in all respects satisfactory for the service for which the vessel is intended.

#### **55. Life-saving and fire fighting appliances**

- (1) The life-saving appliances and fire fighting equipment of every cargo vessel and every fishing vessel shall be surveyed before they are put into service and thereafter at intervals of not more than two years or, if the Chief Surveyor so directs, at lesser intervals.
- (2) The life-saving appliances; fire fighting and fire control plans in every cargo vessel or every fishing vessel and the pilot ladders light and sound signals and distress signals in every new and existing cargo vessel or fishing vessel shall be surveyed to ensure that they comply fully with the requirements of any International Safety Conventions to which Malawi is a party and any regulations which the Minister may make under this Act.

#### **56. Radio installation**

The radio installation, in a cargo vessel or fishing vessel and any radio-telegraph installation in a motor lifeboat or any portable radio apparatus for survival craft that are carried in compliance with the requirements of any International Safety Conventions to which Malawi is a party or regulations made under this Act shall be surveyed at intervals of not more than one year.

#### **57. Passenger vessels, pleasure crafts and oil tankers**

- (1) The provisions of this Act shall, unless otherwise stated, apply without exception to—
  - (a) passenger vessels;
  - (b) yachts and pleasure crafts; and
  - (c) oil tankers.
- (2) The Minister may make special or additional regulations to apply to vessels in subsection (1).

#### **58. Survey reports to the chief surveyor**

After every survey the surveyor or boat examiner or other authorized officer shall send, or cause to be sent, a report of the survey to the Chief Surveyor.

### **Division B—Inspection**

#### **59. Inspection certificate**

Where, in relation to a vessel being—

- (a) a passenger vessel intended to carry more than twelve passengers;
- (b) a cargo vessel exceeding five hundred GRT intended to be employed on a voyage outside Malawi; and
- (c) a fishing vessel of fifteen metres or more the Chief Surveyor is satisfied, on receipt of the report of a survey that all the relevant provisions of any International Safety Conventions to which Malawi is a party and the regulations made under this Act have been complied with, he shall issue in respect of the vessel, an appropriate safety convention certificate and an inspection certificate.

**60. Safety certificates**

The Minister may make, regulations prescribing safety requirements and providing for the issue of local safety certificates in respect of—

- (a) any vessel or class of vessels to which any International Safety Conventions to which Malawi is a party does not apply;
- (b) for matters for which any International Safety Conventions to which Malawi is a party does not make express safety provisions in respect of any vessel or class of vessels to which the convention applies.

**61. Posting of certificate**

On receipt of an inspection certificate or local certificate or convention certificate, the owner or master of the vessel in respect of which the certificate is issued shall cause the certificate to be posted up in some conspicuous place on board the vessel for the information of all on board.

**62. Alteration to vessel**

An owner or master of the vessel in respect of which an inspection certificate or a local safety certificate or a safety convention certificate, has been issued who, without reasonable cause does or suffers to be done anything to the vessel whereby the certificate becomes inapplicable to the vessel or to other matters to which the certificate relates shall commit an offence.

**63. Foreign safety convention certificates**

- (1) The Minister may request the government of a country to which any International Safety Conventions apply to issue in respect of a Malawian vessel any certificate provided for by the said International Safety Conventions to which Malawi is a party.
- (2) A certificate issued in pursuance of a request under subsection (1) and containing a statement that it has been so issued shall have the same effect as if it has been issued under this Act.

**64. Certification of foreign vessels**

The Minister may, at the request of the government of a country to which any International Safety Conventions apply, cause any certificate provided for by the said International Safety Conventions to which Malawi is a party to be issued in respect of a vessel of that country, if he is satisfied that the certificate can properly be issued.

**Part VII – Manning levels****65. Regulations for grant of certificates of competency and certificated officers**

The Minister may make regulations for—

- (a) the provision of certificated officers;
- (b) the classes of vessels to be provided with certificated officers;
- (c) the grant of certificates of competency; and
- (d) other matters incidental thereto, to be provided under this Act.

## 66. Board of examiners and foreign certificates

- (1) For the purpose of granting certificates of competency to certificated officers, the Chief Surveyor shall appoint a board of examiners which shall—
  - (a) cause examinations to be held at such time and place as he may determine; and
  - (b) cause to be delivered the appropriate certificate of competency to every candidate who passes the examinations and gives satisfactory evidence of his experience, ability and good character.
- (2) Where the law of any other country provides for examinations for, and the issue of certificates to, persons intending to act as certificated officers on board vessels and—
  - (a) the Chief Surveyor is satisfied that all examinations are so conducted as to be equally effective as the examinations conducted for the same purpose in Malawi under subsection (1); and
  - (b) any certificate is granted on principles that show the like qualifications and competency as those granted under this Act,  
the Chief Surveyor may approve the certificate as an equivalent for a certificate granted under subsection (1).
- (3) Where any person holding a certificate under subsection (2) applies to serve on a Malawi vessel, the Chief Surveyor may direct that—
  - (a) where the person is a citizen of Malawi, he shall be granted a certificate of equivalent grade under this Act;
  - (b) where the person is not a citizen of Malawi, he shall be issued with a licence authorizing him to serve on a Malawi vessel.
- (4) Any licence issued under subsection (3) (b) shall be subject to such conditions as the Chief Surveyor may impose.
- (5) The Chief Surveyor may, with the approval of the Minister, regulate the issue of certificate of competency to engine room attendants.

## 67. Loss of certificates

Where the certificated officer satisfies the Chief Surveyor that he has lost a certificate of competency or a licence issued to him under this Act, the Chief Surveyor may, on payment of the prescribed fee, deliver a certified copy of the certificate or the licence to him.

## 68. Production of certificates

- (1) Any person serving or engaged to serve on any Malawi vessel who holds a certificate of competency or a licence shall, on demand, produce the certificate or licence to the Chief Surveyor or his representative.
- (2) Any person who fails, without reasonable cause, to comply with subsection (1) shall commit an offence.

## 69. Records of certificates and licences

The Chief Surveyor shall keep the register in which shall be recorded all matters relating to certificates of competency and licence, including their issue, cancellation, suspension or amendment.

**70. Notification of engagement**

- (1) Where a certificated officer is engaged on board a Malawi registered vessel outside Malawi, the master of the vessel shall, within seven days of the engagement, submit such particulars of the officer to the Chief Surveyor.
- (2) Where the certificated officer ceases to be employed on a Malawi registered vessel outside Malawi, the master of the vessel shall, within seven days of the termination, notify the Chief Surveyor of the termination of the employment.

**71. Sailing undermanned**

- (1) Where a Malawi vessel sails without carrying such officers as are required to be carried in accordance with regulations made under [section 65](#), the owner and the master of the vessel shall each commit an offence.
- (2) The Chief Surveyor may cancel or suspend the certificate of registration of a vessel or detain the vessel until it is properly manned in accordance with regulations made under [section 65](#).

**72. Contracts of apprenticeship**

- (1) Every contract of apprenticeship to be performed on any Malawi vessel shall be signed in the presence of the Chief Surveyor by the apprentice and the owner of the vessel or his authorized representative.
- (2) The Chief Surveyor shall attest the signing of the contract of apprenticeship where he is satisfied that the apprentice—
  - (a) understands the contents and provisions of the contract;
  - (b) freely consents to be bound thereby;
  - (c) has attained the age of 18; and
  - (d) is in possession of a certificate of a medical practitioner to the effect that he is physically fit for sea service.

**Part VIII – Safety provisions****Division A—Safety****73. Manning to ensure safety**

Every vessel shall be manned with a crew both sufficient and efficient to ensure safety of life for the purpose of any intended voyage and shall be kept so manned.

**74. Vessel's stability**

- (1) There shall be carried on board every vessel such information in writing about the vessel's stability as is necessary for the guidance of the master of the vessel in loading and ballasting the vessel.
- (2) The information required under subsection (1) shall be in such form as may be approved by the Chief Surveyor.
- (3) The master of a vessel referred to in subsection (1) which sails in contravention of this section shall commit an offence.

**75. Signalling lamp**

- (1) No vessel which is more than 50 GRT shall set sail on voyage outside Malawi inland waters unless the vessel is provided with an efficient signalling lamp.
- (2) The master of the vessel which sails on such a voyage outside Malawi inland waters in contravention of this section shall commit an offence.

**76. Hazards to navigation**

- (1) The master of the vessel on meeting a dangerous derelict, a tropical storm or any other direct danger to navigation shall report it to a vessel or vessels in the vicinity and to the nearest appropriate station on shore.
- (2) The person in charge of a transmission station in Malawi or on board a vessel shall, on receiving a signal indicating that a message is about to be sent relating to hazards to navigation, refrain from sending messages for a time sufficient to allow other stations to receive the message.

**77. Assistance in distress**

- (1) The master of a vessel sailing on receiving signal from any source that a vessel or aircraft or survival craft is in distress shall proceed with all speed to the assistance of the vessel and any person in distress informing them if possible that he is doing so.
- (2) Where the master is unable, or considers it unreasonable or unnecessary to proceed to the assistance of a vessel or a person in distress he shall enter in the official logbook of the vessel the reasons therefor.
- (3) The master of any vessel in distress may request the master of any vessel which answers his distress signal to render assistance.
- (4) The master of a vessel to whom a request is made under subsection (3) shall comply with the request and proceed with all speed to the assistance of the vessel in distress.

**78. Giving helm orders**

No person in a vessel shall, when the vessel is going ahead—

- (a) give a helm or steering signal containing the word "star-board" or "right" unless he intends that the head of the vessel moves to the right; or
- (b) give a helm or steering signal containing the word "port" or "left" unless he intends that the head of the vessel moves to the left.

**79. Collision regulations**

- (1) The Minister may make regulations, in this Act referred to as "collision regulations"—
  - (a) for the prevention of collision on inland waters;
  - (b) respecting the lights to be carried and exhibited;
  - (c) respecting the signals to be used; and
  - (d) respecting the steering and sailing rules to be observed by a vessel.
- (2) Every owner or master of a vessel, seaplane or other craft who does not comply with the collision regulations shall commit an offence.

## 80. Presumption of fault

Where any damage to property arises from the non-observance of the collision regulations, the damage shall be presumed to have been caused by the wilful default of the person in charge of the vessel, seaplane or other craft not observing the collision regulations.

## 81. Assistance in collision

- (1) Where there is a collision between vessels, the master or person in charge of each vessel, shall so far as he can do so without danger to his own vessel, crew and passengers—
  - (a) render to the other vessel, her crew and her passengers such assistance as is practicable and necessary in order to preserve them from any danger caused by the collision;
  - (b) stay by the other vessel until he has ascertained that she has no need of further assistance; and
  - (c) give to the master or person in charge of the other vessel, the name of his own vessel, her port of registration, and the names of the ports from which she comes and to which she is bound.
- (2) A master or person in charge of the vessel who fails, without reasonable cause, to comply with this section shall commit an offence.

## 82. Reporting of accidents

- (1) Where a vessel has been involved in an accident occasioning—
  - (a) loss of life or serious injury to any person; or
  - (b) any damage affecting her seaworthiness or her efficiency,the owner or master of the vessel shall, within twenty-four hours of the occurrence of the accident or as soon as possible thereafter, transmit to the Chief Surveyor a written report of the accident.
- (2) Every report of accident or damage to a vessel under subsection (1) shall be signed by the owner or master of the vessel and shall state—
  - (a) the particulars of the vessel and her location;
  - (b) the circumstances in which the accident or damage occurred; and
  - (c) the probable cause of the accident or damage.
- (3) Any owner or master of a vessel who fails, without reasonable cause, to comply with this section shall commit an offence.

## Division B—Load lines

### 83. Load line regulations

The Minister may, by regulations published in the *Gazette*, in this Act referred to as "Load Line Regulations", make such provision as he sees fit to give effect to the Load Line Convention and, in particular to provide for—

- (a) survey and determination of load lines, including conditions of assignment of freeboards;
- (b) the stability, loading and ballast of vessels;
- (c) the issue of certificates and the forms of the certificates; and



- (d) any other matter relating to load lines.

#### **84. Load line vessels**

- (1) Load line vessels are all vessels other than—
  - (a) existing vessels of under 150 GRT;
  - (b) new vessels of less than 24 metres in length;
  - (c) naval vessels or police patrol vessels or coast guard vessels;
  - (d) vessels solely engaged in fishing; and
  - (e) pleasure yachts not engaged in trade.
- (2) For the purpose of this Part, load line vessels consist of—
  - (a) international load Imo vessels, where applicable, being load line vessels that carry cargo or passengers between Malawi and other countries; and
  - (b) local load line vessels that are not international load line vessels.
- (3) For purposes of this Part, a vessel shall be deemed to be loaded beyond the limits specified in her load line certificate if she is so loaded as to submerge the appropriate load line on each side in water when she has no list.

#### **85. Compliance with regulations**

The master of a load line vessel shall not take the vessel on Malawi inland waters unless—

- (a) she has been surveyed in accordance with the load line regulations;
- (b) she complies with the conditions of assignment of free-boards as determined in the load line regulations;
- (c) she is marked on each side with—
  - (i) a deck mark, being a mark indicating the position of the uppermost complete deck as defined in the load line regulations; and
  - (ii) load lines, being lines indicating the several maximum depths to which the vessel can be safely loaded in various circumstances prescribed by the load line regulations; and
- (d) it has been issued with a load line certificate by the Chief Surveyor.

#### **86. Load line certificate**

- (1) The Chief Surveyor shall issue a load line certificate to every vessel that complies with the provision of this Act relating to the load line.
- (2) The Minister may request the government of a contracting country to issue a load line certificate to a Malawian load line vessel a certificate so issued shall have the same effect as a certificate issued under subsection (1).

#### **87. Renewal of load line certificate**

- (1) Subject to a vessel being surveyed in accordance with the load line regulations, the load line certificate of a vessel shall be renewed at such intervals as the Chief Surveyor may prescribe.
- (2) A load line certificate in respect of a vessel shall cease to be valid on the transfer of the vessel to the flag of another state, unless the Minister makes an endorsement thereon respecting the validity of the certificate.

**88. Cancellation or suspension of load line certificate**

- (1) Any load line certificate issued under this Part may be cancelled or suspended by the Chief Surveyor, where he has a reason to believe that—
  - (a) any survey on the basis of which the certificate was issued has been made by fraud or error;
  - (b) the certificate has been issued on false or erroneous information;
  - (c) since the making of a survey, material alterations have taken place in the hull or superstructure of the vessel in contravention of this Act; and
  - (d) the fittings and appliances for the protection of openings, the guard-rails, the freeing ports or the means of access to the quarters of the crew have not been maintained on the vessel in as effective condition as they were in when the certificate was issued.
- (2) Where the load line certificate is cancelled or suspended, the Chief Surveyor may require the owner or master of the vessel to have the vessel surveyed again before the re-issue of the certificate or the grant of a new certificate.

**89. Surrender of load line certificate**

- (1) Where a load line certificate has expired or has been cancelled or suspended the Chief Surveyor shall require the owner or master of the vessel to which the certificate relates to surrender the certificate at such time and place as he may direct.
- (2) The owner or master of a vessel, who without reasonable cause, fails to comply with a requirement under subsection (1) shall commit an offence.

**90. Vessel without load line certificate**

- (1) A load line vessel shall not set sail unless her master produces to the Chief Surveyor, when requested, a valid load line certificate.
- (2) The Chief Surveyor may detain a vessel until her load line certificate is produced as required under subsection (1).

**91. Display of load line certificate and entries**

- (1) On receipt of a load line certificate, the owner or master of the vessel in respect of which the certificate is issued shall—
  - (a) cause it to be posted up in some conspicuous place on board the vessel for the period of its validity; and
  - (b) immediately enter in the official log-book the particulars as to the position of the deck line and load line which are specified in the certificate.
- (2) Before any vessel leaves any port or place for the purpose of setting sail, the master of the vessel shall—
  - (a) enter in the official log-book such particulars relating to the depth to which the vessel is for the time being loaded; and
  - (b) subject to subsection (3), cause a notice in such form and containing such particulars as may be specified in the load line regulations to be posted up in some conspicuous place on board the vessel.
- (3) The Chief Surveyor may exempt any class of vessel from the requirements of subsection (2).

- (4) Where the owner or master of a vessel fails to comply with any requirement imposed on him by subsection (1) or (2), he shall commit an offence.

## **92. Load line certificate of foreign vessel**

The Minister may, at the request of the Government of a contracting country, cause an appropriate load line certificate to be issued in respect of a vessel registered in that country, where he is satisfied that the certificate may properly be issued.

## **93. Inspection of foreign vessel**

- (1) A surveyor may go on board any vessel within any port or place in Malawi for the purpose of examining the load line certificate relating to the vessel.
- (2) Where a valid load line certificate in respect of a foreign vessel is produced to the surveyor on demand, the surveyor's power of inspecting the ship shall be limited to seeing that—
  - (a) the vessel is not loaded beyond the limits allowed by the certificate;
  - (b) lines are marked on the vessel in the position of the load lines specified in the certificate;
  - (c) no material alterations have taken place in the hull or superstructures of the vessel which affect the position in which any of those lines ought to be marked;
  - (d) the fittings and appliances for the protection of openings, the guard-rails, the freeing ports and the means of access to the crew's quarters are as when the certificate was issued.
- (3) Where a valid load line certificate in respect of a foreign vessel is not produced to the surveyor, the surveyor may inspect the vessel for the purpose of ensuring that the provisions of this Part and regulations made under this Act have been complied with, as if the vessel were a Malawi vessel.

# **Part IX – The crew**

## **Division A—Contents of agreement**

### **94. Crew agreement**

- (1) Subject to subsection (3), the owner of every vessel when on inland waters, shall enter into an agreement in writing with every seaman whom he engages as one of his crew.
- (2) A crew agreement shall be dated at the time it is first signed.

### **95. Contents of crew agreement**

- (1) A crew agreement shall state—
  - (a) the place at which it is made;
  - (b) the full names of the seaman;
  - (c) the place of birth of the seaman;
  - (d) the age and date of birth of the seaman;
  - (e) the name of the vessel on which the seaman undertakes to serve;
  - (f) the nature of the engagement;
  - (g) the period of the engagement whether for a single voyage or for a series of voyages or permanent;

- (h) the port at which it is intended to discharge the crew;
  - (i) any place or ports of Malawi or other countries to which the voyage or engagements is not to extend;
  - (j) the place and date at which the seaman is to be on board the vessel or to begin work;
  - (k) the capacity in which the seaman is to serve;
  - (l) the amount of wages that the seaman is to receive, including any payment in advance or any allotment during his absence as provided under sections [105](#) and [106](#);
  - (m) the scale of the provisions that are to be supplied to seamen;
  - (n) the leave to which the seaman is entitled;
  - (o) any regulations as to the conduct of seamen on board vessels; and
  - (p) any contributions to be made by the employer and any member of the crew towards a pension fund.
- (2) A crew agreement may contain such other stipulations as are agreed upon by the owner of the vessel and the seaman.

#### **96. Posting of specimen agreement**

The master of a vessel shall, at the commencement of every voyage, post up a legible specimen of the crew agreement in some part of the ship that is accessible to the crew.

#### **97. Employment of young persons**

No young person shall—

- (a) be engaged to work on board a vessel unless he has obtained the consent in writing of his parent or guardian;
- (b) be employed to work in the engine room of a vessel unless he is an apprentice working under supervision.

#### **98. Continuous Discharge Book**

- (1) The Chief Surveyor shall issue to every seaman engaged on a vessel a book, to be known as a Continuous Discharge Book, which shall contain a record of service of the seaman.
- (2) The master of a vessel shall, on the discharge of a seaman from his vessel, make an entry in the Continuous Discharge Book of the time and place of discharge and shall sign the entry.
- (3) An entry under subsection (1) shall not contain any statement as to wages or the quality of work of the discharged seaman.
- (4) The master of a vessel shall, on the discharge of every certificated officer whose certificate of competency has been delivered to and retained by him, return the certificate to the officer.

#### **99. Character report**

Where a seaman is discharged from a vessel, the owner of the vessel may make, sign and deliver to the seaman a character report in which the master shall report on the conduct, character and qualifications of the seaman.

**100. Time and manner of payment**

- (1) The owner or master of a vessel shall pay to each seaman engaged on his vessel the wages of the seaman within two working days after the arrival of the vessel at the port where the crew is to be discharged or on the seaman's discharge whichever is the earlier.
- (2) The final wages of a seaman, may, with his consent, be paid over for the account of the seaman, to the Chief Surveyor and the receipt of the Chief Surveyor shall constitute an absolute discharge to the owner of the wages paid over to the Chief Surveyor.

**101. Account of wages**

- (1) The owner of a vessel shall, before discharging a seaman, deliver to him a full and true account of the seaman's wages.
- (2) The account shall be delivered to the seaman not less than twentyfour hours before his discharge.

**102. Deductions**

- (1) The master of a vessel shall, before discharging a seaman, deliver to him a full and true account of the seaman's wages.
- (2) The master of a vessel shall, during the voyage enter the various matters in respect of which the deductions are made with the amount of the respective deductions as they occur in a book kept for that purpose.
- (3) The owner of the vessel shall, if required, produce the book at the time of the payment of the wages and at any hearing of any complaint or question relating to that payment.

**103. Settlement of wages**

- (1) Subject to subsection (2) where the wages of the seaman are not paid or settled as provided in this Part, the wages of the seaman shall continue to run and be payable until the time of the final settlement thereof.
- (2) Subsection (1) shall not apply where—
  - (a) the delay in the payment of the seaman's wages is attributable solely to the act or default of the seaman;
  - (b) a reasonable dispute as to the liability of the owner or master of the vessel arises; or
  - (c) the delay is due to any other cause outside the control of the seaman or owner of the vessel.
- (3) Where a seaman is discharged from a vessel and the settlement of his wages is completed, he shall endorse his discharge on a crew agreement and sign a release of all claims in respect of the voyage or engagement for which his wages have been settled.
- (4) The master of the vessel shall deliver a copy of the release so signed and attested to the Chief Surveyor.

**104. Rate of exchange**

Where a seaman has agreed with the owner of a vessel for payment of his wages in a specific currency, any payment of or on account of his wages if made in any currency other than that stated in the agreement, shall be made at the official rate of exchange for the currency at the place where, and on the day on which, the payment is made.

**105. Payment in advance**

A crew agreement may contain a stipulation for payment in advance, to or on behalf of a seaman conditionally on his commencement of work in pursuance of the agreement, of a sum not exceeding the equivalent of two weeks' wages payable to the seaman under the agreement.

**106. Allotment of wages**

- (1) A crew agreement may contain a stipulation that part of the wages due to a seaman, during his absence from Malawi, be allotted to such person and at such times as may be specified in the crew agreement.
- (2) The amount that may be specified under subsection (1) shall not exceed fifty percent of a seaman's monthly wages.
- (3) Any person who becomes entitled to an allotment under this section may sue and recover the amount of the allotment as if it were a debt due to him.

**107. Right to wages and provisions**

A seaman's right to wages and provisions shall begin at—

- (a) the time at which he commences work, or
- (b) the time specified in the agreement for his commencement of work or presence on board, whichever is the earlier.

**108. Abandonment of wages and salvage**

Any agreement whereby a seaman—

- (a) abandons any privilege he may have under any enactment on a vessel in respect of his wages;
- (b) is deprived of any remedy for the recovery of his wages;
- (c) abandons his right to wages in case of the vessel; or
- (d) abandons any right that he may have or obtain in the nature of salvage,

shall be null and void.

**109. Premature termination of service**

- (1) Where the service of a seaman terminates before the date contemplated in the agreement and is left on shore by reason of his unfitness or inability to proceed on the voyage, he shall be entitled to wages for time serviced up to the time of that termination.
- (2) Where the service of a seaman terminates before the date contemplated in his agreement by reason of the loss or foundering of the vessel on which he was employed, he shall be entitled to receive wages in respect of each day on which he is unemployed during a period of two months from the date of termination of his service at the rate stipulated in his agreement.

**110. Wages during sickness**

- (1) A seaman shall be entitled to his wages during sickness on board a vessel or on shore sick leave.
- (2) Where a seaman is by reason of sickness incapable of performing his duty and it is proved that his sickness—
  - (a) has been caused by his own wilful act or default; or

- (b) is a sickness or an infirmity wilfully concealed at the time of engagement, he shall not be entitled to wages for the time during which he is, by reason of the sickness, incapable of performing his duty.

### 111. Wages on improper discharge

Where a seaman who has signed an agreement is discharged otherwise than in accordance with the terms of the agreement—

- (a) before the commencement of the voyage; or  
(b) before the month's wages are earned, without fault on his part justifying the discharge and without his request to be discharged,

he shall, without prejudice to any other remedy available to him under any other enactment, be entitled to receive from the owner or master of the vessel any wages he might have earned together with compensation equivalent to one month's wages for the damage caused to him.

### 112. Annual leave

- (1) Every person shall be entitled after twelve months' continuous service on a vessel, or with the same employer or consecutively with several employers, to an annual leave with pay, the duration of which shall be stipulated in the crew agreement.  
(2) Where the continuous service of the seaman is less than twelve months he shall be entitled to leave proportionate to the period served.

### 113. Custody of property of deceased seaman

- (1) Where any seaman serving on a vessel dies during a voyage, the master of the vessel shall take charge of all personal effects, including money, on the vessel, belonging to the deceased seaman.  
(2) The master of the vessel shall enter in the official log-book—  
(a) a statement of the amount of the money including the currencies, where applicable, in which they are;  
(b) a description of the personal effects of the seaman; and  
(c) a full statement of the wages due to the deceased.

### 114. Delivery of property of deceased seaman

- (1) Subject to subsection (2), the property of a deceased seaman shall be delivered by the owner of the vessel to the Chief Surveyor.  
(2) The owner of the vessel may deduct from the property of (he deceased seaman any expenses properly incurred in complying with subsection (1).  
(3) Any person who claims to be entitled to the property of a deceased seaman shall make a claim to the Chief Surveyor within five years of the death of the seaman and no claim made thereafter shall be entertained by the Chief Surveyor.  
(4) Where no claim to the property of. deceased seaman is made within the time specified in subsection (3), the Chief Surveyor shall cause the property to be sold by public auction and credit the net proceeds of the sale to the Consolidated Fund.

## Division B—Provisions

### 115. Complaints as to provisions

- (1) Where four or more members of the crew of a vessel consider that the provisions or water provided for the use of the crew at any time are substandard or deficient in quantity they may make a complaint to that effect—
  - (a) in the first instance, to the owner of the vessel; and
  - (b) if there is no improvement, to the Chief Surveyor or to any authorized officer who may either examine the provisions or water complained of or cause them to be examined.
- (2) Where the person making an examination under this section finds that the provisions or water are substandard or deficient quality, he shall so inform in writing the owner of the vessel, and if the owner does not thereupon provide proper provisions or water, he shall commit an offence.
- (3) Any person other than the Chief Surveyor conducting „ examination under subsection (1) (b) shall send a report thereon to the Chief Surveyor.

### 116. Allowance for provisions

Where during the voyage of a vessel the allowance for provisions supplied to a seaman is deficient in quantity or any of those provisions are substandard, the seaman shall receive by way of compensation for the deficiency for so long as it lasts, an amount of money to be determined by the Chief Surveyor.

### 117. Weights and measures

The master of a vessel in which provisions are supplied to the crew shall keep on board proper weights and measures for determining the quantities of the several provisions supplied.

### 118. Qualified cook

Every vessel of 50 GRT or more shall, where passengers and crew are provided with food, carry a qualified crew cook and a qualified passenger cook.

### 119. Medical requisities

- (1) The owner and the master of a vessel shall ensure that the vessel carries medicine, medical stores and appliances in accordance with scales provided by regulations made under this Act.
- (2) Where an authorized officer is of the opinion that the medicines, medical stores and appliances on a vessel are deficient in quantity or quality or are placed in improper receptacles, he shall give notice thereof in writing to the owner or master of the vessel and shall report the matter to the Chief Surveyor.
- (3) The Chief Surveyor may, on receiving a report under subsection (2), suspend the certificate of registration of the vessel and detain the vessel until he is satisfied that the default has been remedied.

### 120. Expenses for medical treatment or burial

- (1) Where a member of the crew of a vessel receives, outside Malawi, any surgical or medical treatment, or any dental or optical treatment, the reasonable expense thereof shall be borne by the owner of the vessel.
- (2) Where a member of the crew of a vessel dies and is buried or cremated outside Malawi or his place of residence, the expenses of his burial or cremation shall be borne by the owner of the vessel.



### 121. Medical personnel

- (1) Every vessel which leaves a port with one hundred persons or more on board shall carry on board, as part of her complement, a medical practitioner.
- (2) Subsection (1) shall not apply to vessels operating within coastal or inland water ports.

### 122. Facilities for complaints

Where a seaman while on board a vessel informs the master of the vessel that he wishes to make a complaint to an authorized person against the master of the vessel or any other member of the crew, the master shall, as soon as the service of the vessel permits, allow the complainant to go ashore to make his complaint.

## Division C—Discipline

### 123. Disciplinary proceedings

- (1) Where the Chief Surveyor is of the opinion that a person to whom a certificate of competency or a licence has been issued under this Act—
  - (a) is unfit to discharge his duties;
  - (b) has been guilty of misconduct or negligence in the discharge of his duties;he shall inform the person of the charge and require him, by written notice, to show cause within such time as may be specified in the notice, why his certificate of competency or licence should not be cancelled or suspended.
- (2) Where the person referred to in subsection (1) does not make any reply to the notice under subsection (1), the Chief Surveyor shall—
  - (a) cancel the certificate of competency or licence held by that person; or
  - (b) suspend his certificate of competency or licence for such period as he thinks fit; or
  - (c) censure that person.
- (3) Where the person referred to in subsection (1) makes a reply to the notice under subsection (1) and the Chief Surveyor is not satisfied with his explanations, the Chief Surveyor shall report the matter to the Minister who shall appoint a fit and proper person, being a legal practitioner of not less than ten years, standing, to inquire into the charge and to make a report thereon to the Chief Surveyor, indicating at the same time how the matter should be dealt with.
- (4) On receipt of a report under subsection (3), the Chief Surveyor may—
  - (a) cancel the certificate of competency or licence held by that person; or
  - (b) suspend his certificate of competency or licence for such a period as he thinks fit; or
  - (c) censure that person; or
  - (d) absolve him of the charge.
- (5) Where a certificate of competency or licence has been cancelled or suspended under this section, the holder thereof shall, within seven days of being notified of the cancellation or suspension, deliver the certificate of competency or licence to the Chief Surveyor and where he fails to do so, he shall commit an offence.

#### 124. Review by Minister

Where a certificate of competency or licence has been cancelled or suspended under [section 123](#) the Minister may, in a fit and proper case—

- (a) authorize the re-issue of the certificate of competency or licence or reduce the period of the suspension; or
- (b) authorize the issue of a new certificate of competency or licence of a low grade in place of that cancelled or suspended.

#### 125. Misconduct endangering vessel or life

A member of the crew of a vessel, who, by wilful breach of duty or by reason of drunkenness—

- (a) does act in a manner tending to cause the immediate loss, destruction or serious damage to, the vessel or tending to pose an immediate danger to the life or limb of any person on board the vessel or another vessel; or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate loss, destruction or serious danger to the vessel or any immediate danger to life or limb,

shall commit an offence.

#### 126. Official log-book to be kept and delivered

- (1) The master of every vessel shall, in addition to the vessel's log-book, keep an official log-book.
- (2) An entry required to be made in an official log-book shall—
  - (a) be made as soon as possible after the occurrence to which it relates;
  - (b) where it is not made on the same day as the occurrence, be made and dated to show the date of the occurrence and the entry respecting it;
  - (c) where it is made in respect of an occurrence happening before the arrival of the vessel at her final port of discharge, be made not later than twenty-four hours after arrival.
- (3) Every entry in the official log-book shall be signed by the master and by another member of the crew, and where it is an entry of illness, injury or death, it shall be signed by any medical practitioner on board.
- (4) The master of a vessel shall, within forty-eight hours after the vessel's arrival at her final port of destination or on the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the Chief Surveyor or to an authorized officer if the crew is discharged outside Malawi.
- (5) Where a vessel is lost or abandoned, the owner or master of the vessel shall, where practicable, and as soon as possible, deliver or transmit to the Chief Surveyor any official log-book duly made out up to the time of the loss or abandonment.
- (6) Where, by reason of the transfer of the ownership of a Malawi vessel, the official log-book ceases to be required in respect of the vessel, the owner or master of the vessel shall—
  - (a) where the vessel is in Malawi, within fifteen days; or
  - (b) where the vessel is outside Malawi within six months, of the transfer, deliver or transmit to the Chief Surveyor the official logbook duly made out up to the time of the transfer.

### 127. Particulars of entry

The master of every vessel shall enter or cause to be entered in the official log-book particulars therein—

- (a) every conviction by a court of a member of his crew and the punishment inflicted;
- (b) every offence committed by a member of his crew for which it is intended to institute proceedings, or for which punishment has been inflicted on board and the punishment inflicted;
- (c) every case of illness or injury happening to a member of the crew, with the nature thereof and any medical treatment given;
- (d) every refusal to a member of the crew to take any medicine;
- (e) every birth and death happening on board the vessel;
- (f) the name of every seaman who ceases to be a member of the crew otherwise than by death, stating the place, time, manner and cause thereof;
- (g) the wages due to any seaman who dies during the voyage, and the gross amount of all deductions to be made from those wages;
- (h) the sale of the effects of any seaman with a statement of each article sold and the sum received for it;
- (i) every collision with any other vessel and the circumstances in which it occurred;
- (j) the date and time of posting up in the vessel of a notice containing particulars of the vessel draught and freeboard; and
- (k) any other entry directed by this Act to be entered in the logbook.

### 128. Breaches respecting official log-book

- (1) Where an official log-book is not kept or delivered as required by [section 126](#), or an entry required under [section 127](#) is not made in accordance with that section the master of the vessel shall commit an offence.
- (2) Any person who wilfully destroys or mutilates or renders illegible any entry in an official log-book or wilfully makes or procures to be made a false or fraudulent entry in an official log-book shall commit an offence.

## Division D—Relief and repatriation

### 129. Return on loss or abandonment of vessel

Where a vessel is lost or abandoned the owner or master of the vessel shall deliver to the Chief Surveyor the list of persons on board at the time of loss or abandonment.

### 130. Documents to be handed over

- (1) Where during a voyage the master of a vessel is removed or suspended or for any other reason relinquishes command and is succeeded in command by some other person, he shall deliver to his successor the certificate of registration and the various documents which relate to the navigation and to the crew of the vessel and which are in his custody.
- (2) The person taking over command of a vessel in accordance with subsection (1) shall immediately on assuming command of the vessel enter in the official log-book a list of the documents delivered to him.

### 131. Birth and death on board

- (1) Where a birth or death takes place on board a vessel while the vessel is on inland waters, the master of the vessel shall make an entry to that effect in the official log-book and shall draw up a memorandum or declaration of the birth, or death in accordance with section 19 of the Births and Deaths Registration Act, as the case may be.

*[Cap. 24:01]*

### 132. Application of Sections 132 to 134

Sections [sections 132](#) to [sections 134](#) shall apply to every vessel which engages a seaman in Malawi.

### 133. Repatriation of seamen

- (1) Where the agreement of a seaman terminates at a port other than the port of engagement, the seaman shall be returned to a proper return port at the expense of the owner or master of the vessel.
- (2) The responsibility of the owner and master under this section shall include an obligation—
  - (a) to pay the cost of maintenance and any medical treatment until the seaman's arrival at his proper return port; and
  - (b) to ensure that the seaman does not become a charge on the Government.

### 134. Defaulting seamen not entitled to be returned

A seaman who has been left behind or discharged from his vessel as a result of his—

- (a) desertion; or
- (b) imprisonment,

shall not be entitled to be returned under [section 138](#) at the expense of the owner or master of the vessel.

### 135. Security by owner or master

Where a seaman is to be left behind or discharged from the vessel at a port other than his port of engagement, an authorized officer may demand from the owner of the vessel adequate security or guarantee for the repatriation of the seaman to a proper return port.

### 136. Effects and wages of seaman left behind

- (1) Where a seaman engaged on a vessel is left at a place other than a proper return port, the master of the vessel shall enter in the official log-book, a statement of the personal effects left on board by the seaman and an account of wages due to him at the time he was left behind.
- (2) On the termination of the voyage during which the seaman was left behind, the master of the vessel shall furnish to an authorized officer, within forty-eight hours after the arrival of the vessel at the port at which the voyage terminates, a delivery account and a retention account relating to the seaman.
- (3) The master of the vessel shall, where required by an authorized officer, furnish such vouchers as may be necessary to verify the delivery and retention accounts.
- (4) The master of the vessel shall deliver to an authorized officer, the personal effects of a seaman as shown in a delivery account, and the authorized officer shall give to the master a receipt for any personal effect or amount so delivered.

- (5) The master of the vessel shall be entitled to retain out of the wages of a seaman any sum shown in a retention account that appears to an authorized officer to be owing or payable to the master.

### 137. Exemption from liability

The master of a vessel shall not be liable for any loss or damage to the personal effects of a seaman left behind or discharged at a port other than his proper return port, where the loss or damage occurred without fault on his part.

### 138. Return from service

- (1) Where during the currency of his agreement the service of a seaman engaged on a vessel terminates otherwise than by the consent of the seaman, the master of the vessel shall—
  - (a) make an appropriate entry in the seaman's Continuous Discharge Book;
  - (b) pay to the seaman the wages to which he is entitled; and
  - (c) make adequate provision in accordance with this Act for the maintenance and return of the seaman to a proper return port.
- (2) Where the master of a vessel fails without reasonable cause to comply with subsection (1), the expenses for the maintenance of the seaman and for his conveyance to a proper return port—
  - (a) if paid by the seaman, shall be recovered as wages due to him; and
  - (b) if paid by an authorized officer, shall be a charge on the vessel to which the seaman belonged.
- (3) A charge on a vessel under subsection (2) (b) may be recovered—
  - (a) from the person who is the owner of the vessel;
  - (b) where the vessel has been lost, from the person who was the owner of the vessel at the time of the loss;
  - (c) where the vessel has been transferred, from either the former or new owner of the vessel.

### 139. Discharge on change of ownership

- (1) Where a vessel is sold, transferred or otherwise disposed of, any seaman belonging to that vessel may at his option be discharged or be employed to complete the voyage of the vessel on terms and conditions not less favourable than those stipulated in the agreement under which he was engaged to serve on the vessel.
- (2) Where a seaman is discharged under this section the provisions of this part relating to the Continuous Discharge Book and the return of the seaman to a proper return port shall apply as if his service had been terminated otherwise than by his consent to be discharged during the currency of the agreement.

### 140. Relief of distressed seamen

- (1) Where a seaman—
  - (a) is found in any place outside Malawi after having been shipwrecked from a Malawian vessel; and
  - (b) by reason of having been discharged or left behind from a vessel in any place outside Malawi is in distress in that place,the authorized officer shall provide relief to the seaman.

- (2) The relief under subsection (1) shall provide—
  - (a) for the return of the seaman at the expense of the Government to a proper return port and for his necessary clothing and maintenance until his departure for such a port;
  - (b) in case of death, for burial expenses;
  - (c) in the case of a shipwrecked seaman, for the repayment of any expenses incurred in his conveyance to a proper return port and his maintenance while being so conveyed.

#### **141. Forcing ashore**

Any master or member of the crew of a vessel who wrongfully forces a seaman ashore and leaves him behind, or otherwise causes a seaman to be wrongfully left behind at any place, shall commit an offence.

#### **142. Return of seamen**

Where any question arises as to what return port a seaman is to be returned, the question may be referred to an authorized officer and his decision thereon shall bind both the master of the vessel and the seaman.

### **Part X – Dangerous goods and unseaworth vessels**

#### **Division A—Grain and deck cargo**

#### **143. Carriage of grain**

- (1) Where grain is loaded on board a Malawi vessel or is loaded in Malawi on board any vessel all necessary and reasonable precautions shall be taken to prevent the grain from shifting.
- (2) An inspector may go on board any vessel that is in any port in Malawi and inspect any grain loaded in the vessel and the manner in which it is stowed.
- (3) Where the precautions required under subsection (1) are not taken, the owner or master of the vessel or any agent of the owner who was charged with the loading or with letting the vessel sail laden with the grain, shall commit an offence and the vessel shall be presumed to be unsafe by reason of improper loading.
- (4) Where any vessel which has been loaded with grain outside Malawi without the taking of all necessary and reasonable precautions to prevent the grain from shifting enters Malawi so laden, the owner and the master of the vessel shall commit an offence.

#### **144. Deck cargo**

The Minister may make regulations prescribing the requirements to be complied with when cargo is carried in any uncovered space on the deck of a load line vessel.

#### **Division B—Dangerous goods**

#### **145. Meaning of "dangerous goods"**

In this Part—

"dangerous goods", in respect of any vessel means—

- (a) explosives, gases whether compressed, liquefied or dissolved under pressure, inflammable liquids, inflammable solids, or substances liable to spontaneous combustion, inflammable acids, or substances which when in contact with water emit inflammable gases, oxidizing substances,

organic peroxides, poisonous toxic substances, infectious substances, radioactive substances, corrosives; and

- (b) any other goods that may be classified as dangerous in the International Maritime Dangerous Goods Code (IMDG Code).

#### 146. Carriage of dangerous goods

- (1) Any person who sends by any vessel, or not being the owner or master of the vessel carries on the vessel, any dangerous goods—
- (a) without distinctly marking the nature on the outside of the package containing the goods; or
  - (b) without, at or before the time of sending the goods to be shipped or taking them on board the vessel giving written notice to the owner or master of the vessel of the nature of the goods and the name and address of the sender or carrier of the goods,
- shall commit an offence.
- (2) Any person who knowingly sends or carries in any vessel any dangerous goods under a false description, or falsely describes the sender or carrier of any such goods, shall commit an offence.

#### 147. Inspection or refusal to take dangerous goods

The owner or master of any vessel may require any package or parcel intended to be shipped to be opened to ascertain its nature or he may refuse to take on board any package or parcel which he suspects might contain any dangerous goods.

#### 148. Disposal of dangerous goods

- (1) Where any dangerous goods, or any goods which, in the opinion of the owner or master of the vessel, are dangerous goods, have been sent on board any vessel without the marking or the notice required under [section 146](#) the owner or master of the vessel may cause the goods, together with the packaging or container of the goods, to be thrown overboard.
- (2) Where goods are thrown overboard under subsection (1) the master of the vessel shall make an entry in the official log-book stating the reasons for his action.

#### 149. Regulations on dangerous goods

The Minister may, by notice published in the *Gazette*, make regulations regarding the carriage of dangerous goods in vessels.

### Division C— Seaworthiness

#### 150. Sending unseaworthy vessel on inland waterways

- (1) Any person who sends a vessel on inland waterways in such an unseaworthy state that the life of any person is likely to be endangered thereby commits an offence.
- (2) For the purposes of this Act, a vessel shall be deemed to be unseaworthy if a surveyor is satisfied that the vessel, by reason of—
- (a) defective condition or equipment;
  - (b) lack of equipment;
  - (c) undermanning or incompetence of master or crew;

- (d) overloading or improper loading,

is unfit to navigate upon that part of the inland waters where the vessel is found without danger to human life, regard being had to the nature of service for which the vessel is intended to be employed.

### 151. Duty to ensure seaworthiness

Notwithstanding any agreement to the contrary, it shall be an implied term of every contract of service between the owner of the vessel and any seaman thereof, and of every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any vessel, that—

- (a) the owner or master of the vessel; and
- (b) any agent charged with the loading of the vessel or with the preparation of the vessel for sailing or the sending of the vessel on inland waters,

shall take all reasonable measures to ensure the seaworthiness of the vessel for the voyage at the time when the voyage commences and to keep the vessel in a seaworthy condition for the duration of the voyage.

### 152. Detention of unseaworthy vessel

- (1) Where the Chief Surveyor believes that any vessel or any foreign vessel in Malawi is unfit to sail, he may detain the vessel until he is satisfied that the vessel is fit to sail.
- (2) Where a foreign vessel has been detained under this section, the Minister shall forthwith notify the consular officer of the country to which the vessel belongs of the detention.
- (3) The Chief Surveyor shall cause a vessel detained under this section to be inspected or surveyed to investigate any defects believed to exist and the inspector or surveyor shall submit a full written report on his findings to the Chief Surveyor.
- (4) The owner or master of the vessel or a consular officer referred to in subsection (2) may require that a person of his choice accompany any person making an inspection or survey under subsection (3).
- (5) Where a vessel is detained under this section, the owner of the vessel shall be liable to pay to the Government the cost of, and incidental to, the detention and survey of the vessel.
- (6) The costs under subsection (5) shall, without prejudice to any other remedy, be recoverable in the same manner as salvage.

## Part XI – Wrecks and salvage

### Division A— Wrecks

#### 153. Appointment of receiver

- (1) The Chief Surveyor shall be the Receiver of wrecks throughout Malawi.
- (2) The Receiver shall exercise general supervision over all matters relating to wrecks and salvage.
- (3) The Receiver may require any suitably qualified person to assist him in the performance of his duties as Receiver.



**154. Duty to attend vessels in distress**

- (1) Where any vessel is wrecked, stranded or in distress at any place on or near the shores or coast of inland waters, the Receiver shall immediately proceed to that place and shall on his arrival—
  - (a) take command of all persons present; and
  - (b) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the persons belonging to the vessel and of her cargo and equipment.
- (2) Any person who fails to comply with any directions of the Receiver under subsection (1) shall commit an offence.

**155. Power to require assistance**

- (1) The Receiver may, with a view to protecting vessel wrecked persons or any vessel which is wrecked, stranded, abandoned or in distress, or the cargo of the vessel of any wreck, require—
  - (a) such persons as he thinks fit to assist him;
  - (b) the master or other person having the charge of any vessel near at hand to give such assistance with his men or vessel as he can; and
  - (c) the use of any machinery, vehicle or equipment that is obtainable.
- (2) The Receiver may, without warrant, arrest any person who plunders or does any damage to any vessel which is wrecked, stranded, abandoned or in distress and may require any person to assist him in the arrest.
- (3) Any person who is required to give any assistance under subsection (1) or (2) and who without reasonable cause fails to do so shall commit an offence.
- (4) Where any person resists the Receiver or any person giving him assistance under this section suffers any injury, the Receiver or the person assisting him shall not be liable to any criminal offence or to damages unless the force used to deal with the resistance shown by the injured person was manifestly unreasonable having regard to the circumstances prevailing at the time.

**156. Power to pass over adjoining lands**

- (1) Where any vessel is wrecked, stranded or in distress at any place in Malawi, any person may, for the purpose of rendering assistance to the vessel, saving the lives of vessel wrecked persons or saving the cargo or equipment of the vessel—
  - (a) pass or re-pass, either with or without vehicles or animals, over any adjoining lands without being subject to interruption by the owner or occupier; and
  - (b) deposit on such adjoining lands any cargo or other article recovered from the vessel, without doing more damage than is unavoidable.
- (2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by subsection (1) shall be a charge on the vessel, cargo or article in respect of or by which the damage is occasioned.
- (3) The amount payable in respect of the damage shall, in case of dispute be determined and shall, in default of payment, be recoverable in the same manner as salvage.
- (4) Any owner or occupier of any land who—
  - (a) impedes any person in the exercise of the rights given by this section; or

- (b) prevents any cargo or other article deposited on his land in exercise of such rights from remaining deposited on the land for a reasonable time until it can be removed to a safe place, shall commit an offence.

### 157. Power to examine persons

- (1) Where any vessel is or has been in distress on inland waters, the Receiver shall examine on oath any person belonging to the vessel or any person able to provide information as to the following matters—
  - (a) the name and description of the vessel;
  - (b) the names of the owner and master of the vessel;
  - (c) the names of the owners of the cargo;
  - (d) the ports from which the vessel came and to which she was bound;
  - (e) the occasion of the distress of the vessel;
  - (f) the services rendered; and
  - (g) such other matters relating to the vessel or to her cargo as the Receiver thinks fit.
- (2) The Receiver shall—
  - (a) record the results of the examination;
  - (b) send a copy of the record to the Chief Surveyor; and
  - (c) post another copy in his office for the inspection of interested persons.
- (3) The Receiver shall for the purpose of this section have the power to administer oaths.

### 158. Taking possession of wreck

- (1) Where any person takes possession of any wreck in Malawi he shall, whether or not he is the owner of the wreck, forthwith notify the Receiver of the place at which the wreck is kept.
- (2) The Receiver shall, on being notified that a person has taken possession of a wreck, issue such directions as he thinks fit for the delivery of the wreck.
- (3) Subsection (1) shall apply to any wreck found derelict on waterways outside Malawi and brought into Malawi.
- (4) Any person who, having taken possession of any wreck, fails, without reasonable cause, to comply with subsection (1) shall commit an offence.

### 159. Concealing of wreck

- (1) Where the Receiver reasonably believes that any wreck—
  - (a) is in possession of some person who is not its owner; or
  - (b) is being improperly dealt with,he may apply to a magistrate for a search warrant.
- (2) The Receiver may by virtue of the warrant enter any premises or other place wherever situated, including any vessel and search for, seize and detain any wreck there found.

- (3) Where any seizure of wreck is made in consequence of information given by any person to the Receiver, the informer shall be entitled by way of salvage to such sum as the Chief Surveyor thinks fit.

#### **160. Notice of wreck**

- (1) Where the receiver takes possession of any wreck, he shall within forty-eight hours of the taking of possession cause to be posted in his office a description of the wreck and the mark by which it is distinguished.
- (2) The Receiver may give such publicity of the description of the wreck as he thinks fit.

#### **161. Owner's right to wreck**

- (1) The owner of any wreck in the possession of the Receiver shall on—
  - (a) establishing his claim to the wreck to the satisfaction of the Receiver within six months from the time at which the wreck came into the possession of the Receiver; and
  - (b) paying the salvage fees and expenses due, and any customs duty, be entitled to have the wreck or the proceeds of sale of the wreck delivered up to him.
- (2) Where any wreck in the possession of the Recover is shown to the satisfaction of the Receiver to belong to an owner in a foreign country, the Receiver may, in the absence of the owner, or his authorized agent, treat the consular officer of that country in Malawi to be the owner of the wreck.

#### **162. Sale of wreck**

- (1) The Receiver may at any time sell or cause to be sold any wreck in his custody where in his opinion —
  - (a) its value is less than K2,000;
  - (b) it is so damaged or of so dangerous or perishable a nature that it cannot with advantage be kept; or
  - (c) it is not of sufficient value to pay for warehousing.
- (2) The Receiver shall after payment of all expenses from Hie proceeds of sale of any wreck hold the remainder for the same purposes and subject to the sale claims, rights and abilities as if the wreck had remained unsold.

#### **163. Unauthorized sale of wreck**

- (1) No person shall, without authority, from the Receiver, sell any wreck, cargo or equipment of any vessel which has been stranded, is derelict or in distress.
- (2) Any person who contravenes subsection (1) shall commit an offence.

#### **164. Boarding wrecked vessel**

- (1) No person shall, without the leave of the master of the vessel, board or endeavour to board any vessel which is wrecked, stranded or in distress, unless the person is or acts under the authority of the Receiver.
- (2) Any person who contravenes subsection (1) shall commit an offence.

**165. Interference with wreck**

- (1) No person shall—
  - (a) impede or hinder the saving of any vessel stranded or in danger of being stranded or in distress on inland waterways;
  - (b) impede or hinder the saving of any part of the equipment or cargo of the vessel or of the wreck;
  - (c) conceal any wreck, or deface or obliterate any mark on it;
  - (d) wrongfully carry away or remove any part of a vessel stranded or in danger of being stranded or in distress; or
  - (e) carry away or remove any part of the cargo or equipment of the vessel or any wreck.
- (2) Any person who contravenes subsection (1) shall commit an offence.

**166. Unclaimed wreck**

Where no person establishes a claim as owner of any wreck in the possession, of the Receiver within six months after it comes into the Receiver's possession, the Receiver shall sell or cause to be sold the wreck and pay the proceeds into the Consolidated Fund, after deducting—

- (a) the expenses of the sale;
- (b) his own fees;
- (c) payment to the salvors of such amount of salvage as he shall determine; and
- (d) any other reasonable expenses incurred in respect of the wreck.

**167. Discharge of receiver**

On delivery of wreck or payment of the sale of wreck by the Receiver in pursuance of this Part, the Receiver shall be discharged from all liability in respect of the wreck.

**168. Obstruction to navigation**

- (1) Where the Receiver is of the opinion that a vessel sunk, stranded, abandoned or run aground in any place within inland waters limits of Malawi, is likely to become an obstruction or danger to navigation or is found in a dangerous or hazardous condition, he may—
  - (a) take possession of the vessel or part thereof until it is raised, removed or destroyed;
  - (b) light or buoy the vessel or part thereof until it is raised, removed or destroyed; and
  - (c) subject to subsection (3), in such manner as he thinks fit, sell or cause to be sold the vessel or part thereof when so raised or removed together with any other property recovered in the exercise of his powers under this section.
- (2) Where the Receiver has exercised the powers conferred on him under subsection (1) (c) he shall—
  - (a) reimburse himself the expenses incurred by him in relation to the vessel and any property recovered from her; and
  - (b) hold any surplus of the proceeds from the sale on deposit to pay to any person who establishes a right to the proceeds or any part thereof.
- (3) Except in the case of property which is of a perishable nature or which would deteriorate in value, the Receiver shall give seven clear days' notice in the *Gazette* before exercising his powers of sale under subsection (1) (c).

- (4) At any time before any property is sold under this section, its owner shall be entitled to take delivery of it on payment to the Receiver of the fair market value of the property.
- (5) For the purposes of subsection (4), the fair market value of any property shall be such amount as may be agreed upon in writing by the owner and the Receiver or failing agreement, such amount may be determined by a valuer appointed for the purpose by the Chief Surveyor.

### 169. Obstruction in port

- (1) Where the harbour master is of the opinion that a vessel as is mentioned in [section 168](#) is causing an obstruction or a danger to navigation in a harbour in Malawi, he may after consultation with the Receiver, exercise all the powers conferred by [section 168](#) on the Receiver.
- (2) Subject to subsection (1), the harbour master may, after the exercise of his powers under subsection (1), recover, all the expenses incurred by him in respect of the vessel in the same manner as the receiver would have recovered any similar expenses under this Part.
- (3) The harbour master shall not sell or cause to be sold my vessel, its apparel, tackle or furniture except with the prior approval of the Receiver.
- (4) Any balance remaining from the proceeds of any sale under this section shall, after deduction of all expenses incurred by the harbour master, be paid into the Consolidated Fund.

## Division B—Salvage

### 170. Salvage of life

- (1) Where services are rendered in whole or in part—
  - (a) near inland waters limits of Malawi in saving life from any aircraft or vessel; or
  - (b) elsewhere in saving life from any Malawian vessel,the salvor shall be entitled to a reasonable amount for salvage, as well as to a refund of all expenses properly incurred by him.
- (2) Where aircraft, vessel or cargo mid equipment thereof are destroyed or the value thereof is insufficient to pay any amount to winch the salvor is entitled under subsection (1) in respect of preservation of life, the Chief Surveyor may approve payment to the salvor out of the Consolidated Fund of such sum as he thinks fit to meet the expenditure properly incurred by the salvor.

### 171. Salvage of cargo

Where any vessel is wrecked, stranded, run aground or in distress at any place in, or near the inland waters limits of Malawi and services are rendered—

- (a) by any person in assisting the vessel or saving any cargo or equipment of the vessel; or
- (b) by any person in saving any wreck,

the salvor shall be entitled to a reasonable amount for salvage as well as a refund of all expenses properly incurred by him.

### 172. Non-entitlement to salvage

Nothing in [section 170](#) shall entitle any person to salvage or to a refund of expenses—

- (a) in respect of serves rendered contrary to an express reasonable prohibition of such services on that part of the vessel to which such services are rendered;

- (b) in respect of the services, rendered by a vessel which it is towing or the cargo thereof, except where such services are of an exceptional character such as are outside the scope of towage;
- (c) where he has caused the distress giving rise to the entitlement, either intentionally or through negligence; or
- (d) where he has concealed or unlawfully disposed of any property salvaged.

### 173. Salvage where vessels belong to same owner

Where services are rendered—

- (a) by any person to two or more vessels under the same ownership; or
  - (b) by any person from one vessel to another both of which are under the same ownership,
- salvage shall be paid as if the vessel belonged to different owners.

### 174. Determination of disputes and valuation

- (1) Where a dispute arises as to—
  - (a) the value of property salvaged;
  - (b) the amount of salvage payable; or
  - (c) the expenses properly incurred by a salvor,

the dispute shall be determined by the competent court unless the parties agree that it be determined by the Receiver or by arbitration under the Arbitration Act.

*[Cap. 6.03]*

- (2) For the purpose of determining the value of property salvaged, the Receiver may, at the request of any party to a dispute, appoint a valuer to value the property.

### 175. Detention of salvaged property

Where a salvor is entitled to salvage or to a refund of expenses properly incurred by him, the Receiver may —

- (a) where the entitlement is due in respect of service rendered in assisting any vessel, or saving life, cargo or equipment, detain the vessel, cargo or equipment; and
- (b) where the entitlement is due in respect of the saving of any wreck and the wreck is not sold as unclaimed, detain the wreck, until the claim of the salvor is met.

### 176. Sale of detained property

- (1) The Receiver may sell or cause to be sold any property detained under [section 175](#) where—
  - (a) the owner of the property detained is aware or has been made aware of the detention; and
  - (b) the amount due to the salvor is not in dispute and has not been paid within twenty-one days after a claim for the payment has been made.
- (2) The proceeds of a sale under subsection (1) shall, after payment of the sale, be applied by the receiver in the payment of any amount due to the salvor and all fees payable under this Act, and any balance shall be paid to the owner of the property.

**177. Priority of claims**

Any claim by a salvor in respect of the salvage of life under [section 170](#) shall be payable in priority to any other claim for salvage.

**Part XII – Inquiries and legal process****Division A–Inquiries****178. Shipping casualties**

For the purpose of an inquiry or investigation under this Part, a shipping casualty shall be deemed to occur –

- (a) when within near shore limits or in the course of a voyage any vessel is lost, abandoned, stranded or materially damaged or any loss or material damage is caused to the vessel by another vessel;
- (b) when in any place any vessel has been lost, abandoned, stranded or materially damaged and any member of her crew or any other person who is a competent witness of the loss, abandonment, stranding or material damage is in Malawi waters or ports;
- (c) when any loss of life occurs by reason of any casualty occurring to or on board any vessel within near shore limits or in the course of a voyage to Malawi; and
- (d) when in any place, a Malawi vessel is lost, abandoned, stranded or materially damaged.

**179. Preliminary inquiries**

- (1) Where any shipping casualty occurs, the Chief Surveyor may hold a preliminary inquiry into the circumstances which have led to the casualty or may require an inspector to hold such an inquiry.
- (2) Where an inquiry is held under subsection (1) a report thereon shall be submitted to the Chief Surveyor within seven days of the completion of the inquiry.

**180. Court of investigation**

- (1) Subject to subsection (2), the Chief Surveyor may appoint a court of investigation for the purpose of holding a formal investigation into any case where a shipping casualty has occurred, whether or not a preliminary inquiry has been held under [section 179](#).
- (2) The Chief Surveyor shall not appoint a court of investigation into any shipping casualty in respect of a foreign vessel unless—
  - (a) the casualty occurs within near shore limits of Malawi waters; and
  - (b) the appointment of the court of investigation has been requested or consented to by the Government of the country of which the vessel is registered.
- (3) A court of investigation shall be composed of—
  - (a) a chairman who shall be a person who holds or has held judicial office; and
  - (b) not less than two but not more than four other members.
- (4) A court of investigation shall hold its meetings and conduct its proceedings in the same manner and shall have the same powers as a commission of inquiry appointed under the Commissions of Inquiry Act.

*[Cap. 18:01]*

- (5) A court of investigation shall, after completion of the hearing of any investigation, submit to the Chief Surveyor a report together with a summary of the evidence adduced at the investigation.

### **181. Inquiry into deaths of crews**

- (1) Where a death occurs on board a Malawi registered vessel or on board any foreign vessel whose crew is discharged in any port in Malawi the Chief Surveyor shall, on the arrival of the vessel at that port—
- (a) inquire into the cause of the death; and
  - (b) make, in the official log book, a report of the result of the inquiry.
- (2) Where in the course of an inquiry under subsection (1) it appears to the Chief Surveyor that the death has been caused by violence or in suspicious circumstances, he shall report the matter—
- (a) to the Commissioner of Police; and
  - (b) where the vessel is a foreign vessel, to the appropriate body of the country in which the vessel is registered.

### **182. Inquiry into deaths of passengers**

Where a death of a passenger occurs on board a Malawi registered vessel or on board any foreign vessel whose next port of call is in Malawi, the provisions of [section 181](#) shall apply.

### **183. Loss of or damage to luggage**

Where loss of or damage to luggage is deemed to have occurred, the owner of the luggage shall notify the carrier for compensation.

## **Division B— Offences and penalties**

### **184. Setting sail with officers**

Where a vessel sets sail when any person empowered to detain the vessel or an inspector, surveyor or police officer is on board the vessel in the execution of his duties, the owner and the master of the ship shall each commit an offence and shall, on conviction be liable, in addition to any penalty provided under section 189 in a fine equivalent to the aggregate of the expenses of and incidental to the person, inspector, surveyor or police officer taken aboard, as the case may be, for his return.

### **185. Throwing of person overboard**

Any person who throws or causes to be thrown overboard any other person shall commit an offence.

### **186. Marking of heavy package**

No person shall, in Malawi, consign or load on any vessel or no owner or master of any vessel shall, in Malawi cause or permit to be loaded on the vessel, any package or object the weight of which exceeds three thousand kilogrammes without causing its approximate weight to be clearly and durably marked on the outside of the package or object.



### 187. Unauthorized presence on board

Any person other than, the Chief Surveyor or any person authorized under this Act or any other written law who, without reasonable cause—

- (a) goes on board any vessel in a port in Malawi, without the consent of the master of the vessel or of any other person empowered to give such consent; or
- (b) remains on board the vessel after being requested to leave by the master, a police officer, a customs officer or any person empowered to do so,

shall commit an offence.

### 188. Offences by seamen

(1) Every seaman who—

- (a) deserts from his vessel;
- (b) neglects or refuses to join his vessel or to set sail in his vessel;
- (c) is absent from his vessel, without leave;
- (d) assaults the master or any member of the crew;
- (e) combines with any member of the crew to neglect duty or to impede the navigation of the vessel or the progress of the voyage; or
- (f) wilfully damages his vessel or misappropriates any of her stores or cargo,

shall commit an offence.

(2) Subsection (1) shall apply in relation to—

- (a) a Malawi vessel; and
- (b) a foreign vessel if the offence is committed—
  - (i) in a port in Malawi or within the near shore limits; or
  - (ii) outside Malawi and the offender is in Malawi and a representative of the country in which the vessel is registered requests that criminal proceedings be instituted against the offender.

(3) Where any seaman who is not a citizen of Malawi commits an offence under subsection (1) (a) or (b), the Court may in lieu of any sentence which may be inflicted on him require a police officer to convey him on board his vessel for the purposes of setting sail.

(4) Where any seaman who is not a citizen of Malawi commits an offence under subsection (1) and is sentenced to a term of imprisonment, the Court before which he was sentenced may, on the application of a police officer or of the owner or master of the vessel, cause him to be conveyed on board the vessel for the purpose of setting sail, notwithstanding that the term of imprisonment to which he was sentenced is not at an end.

### 189. Penalties

- (1) A person who commits an offence under sections [9](#), [14](#), [15](#), [17](#), [27](#), [48](#), [68](#), [71](#), [74](#), [89](#), [91](#), [115](#), [125](#), [128](#), [141](#), [143](#), [146](#), [150](#), [154](#), [155](#), [156](#), [158](#), [163](#), [164](#), [165](#), [184](#), [185](#), [187](#), [188](#) and [193](#) shall, on conviction, be liable to a fine not exceeding K600 or to imprisonment for a term not exceeding two years.
- (2) A person who contravenes any provision of this Act, other than sections [9](#), [14](#), [15](#), [17](#), [27](#), [48](#), [68](#), [71](#), [74](#), [89](#), [91](#), [115](#), [125](#), [128](#), [141](#), [143](#), [146](#), [150](#), [154](#), [155](#), [156](#), [158](#), [163](#), [164](#), [165](#), [184](#), [185](#), [187](#), [188](#)

and 193 shall, on conviction, be liable to a fine not exceeding K600 or to imprisonment for a term not exceeding twelve months.

## Division C—Arrests and trials

### 190. Depositions

- (1) Notwithstanding any other written law subject to subsection (2), where—
  - (a) in the course of any proceedings instituted for the purpose of this Act, the testimony of any witness is required; and
  - (b) it is shown that the witness cannot be found in Malawi, any deposition that the witness has previously made on oath or under solemn affirmation in relation to the same subject matter before any judge or magistrate in another country or an authorized officer shall be admissible in evidence.
- (2) A deposition shall not be admissible—
  - (a) in any proceedings instituted in Malawi, where the deposition was not made in Malawi; or
  - (b) in criminal proceedings, unless the deposition was made in the presence of the accused or his legal practitioner.
- (3) A deposition referred to in subsection (1) shall be deemed to be duly authenticated where it purports to be signed by the judge, magistrate or authorized officer before whom it was made and where appropriate, certified by the signatory that the deposition was taken in the presence of the accused or his legal practitioner.

### 191. Admissibility of copies of documents

- (1) A copy of a document shall be admissible in evidence for the purposes of this Act if it purports to be signed and certified as a true copy of the officer in whose custody the original document was entrusted.
- (2) Any person who, in Malawi, has custody of a document required as evidence in proceedings under or connected with this Act shall furnish a certified copy of the document to any interested person applying for it.

### 192. Detention of foreign vessels

- (1) Where—
  - (a) a foreign vessel has in or any part of the waters outside Malawi caused damage to property belonging to the Government or to any statutory or corporate body or to a citizen of Malawi; or
  - (b) a claim is made for damages by or on behalf of any person resident in Malawi in respect of personal injuries, including fatal injuries, against the owner of a foreign vessel,a judge may, on it being shown to him by any person making an application that the damage or injury was probably caused by the misconduct or lack of skill of the master or crew of the vessel, issue an order to detain the vessel whenever the vessel comes within the jurisdiction of Malawi.
- (2) Any order of detention of a vessel under this section may be revoked on adequate security being furnished to the satisfaction of the judge to meet any possible claim against the owner of the vessel.

**193. Enforcement of detention**

- (1) Where a vessel is, by order of a Judge, detained under this Act, the Judge shall cause an order to be served on the owner of the vessel and the Chief Surveyor shall be notified of the invocation of the order.
- (2) Any order under subsection (1) may at any time be revoked and the Chief Surveyor shall be notified of the revocation of the order.
- (3) On receipt of an order under subsection (1), or in any case in which the Chief Surveyor may detain a vessel under this Act, the Chief Surveyor may cause a notice to be served on the master of the vessel calling upon him not to set sail until the notice is revoked.
- (4) The Chief Surveyor shall not issue a port clearance in respect of any vessel in relation to which a notice under subsection (3) is in force.
- (5) The Chief Surveyor and the harbour master may take such steps as they think fit to prevent any vessel in relation to which a notice under subsection (3) is in force, from setting sail and may for that purpose place a police officer on board the vessel.
- (6) Any police officer who is placed on board a vessel under subsection (5) may take such steps as he thinks fit to prevent the vessel from setting sail, including the use of force.
- (7) Any owner or master of a vessel which sets sail while a notice under subsection (3) is in force in respect of the vessel shall commit an offence.

**194. Arrest without warrant**

- (1) The Chief Surveyor, or a police officer may arrest, without warrant, any person committing an offence under this Act.
- (2) Where any person is arrested under subsection (1), he shall, as soon as possible after his arrest, be taken to the nearest Police station.

**195. Master's power of arrest**

- (1) The master of any Malawi vessel which is sailing may arrest and detain any seaman who commits an offence on board the vessel where he has reasonable grounds to believe that the arrest is necessary to prevent serious disorder on board the vessel.
- (2) Where a seaman is arrested and detained under subsection (1), the master shall make an entry to that effect in the official log-book as soon as convenient after the arrest.

**196. Offence on board a vessel**

Where any person—

- (a) who is a Malawi citizen is charged with having committed an offence under any written law on board any vessel on the inland waterways or in any port or harbour; or
- (b) other than a Malawi citizen is charged—
  - (i) with an offence to which [section 192](#) applies;
  - (ii) with having committed an offence under any written law on board a Malawi vessel on the inland waterways or in any port or harbour in Malawi,

that person may be tried in Malawi.

### 197. Venue of trial and jurisdiction

Notwithstanding any other written law, where any person is charged with an offence which under this Act is triable in Malawi, the offender shall, unless the Director of Public Prosecutions directs otherwise, be tried in Magistrate's Court and the court may impose on the offender any penalty provided under this Act.

### 198. Recovery of fines and judgement debts

Without prejudice to any written law relating to the recovery of fines or of judgment debts—

- (a) where the owner of a vessel who is convicted of an offence under this Act fails to pay any fine imposed on him, the amount due may be recovered in the manner a mortgage debt in favour of the Government in respect of the vessel would have been recovered;
- (b) any judgment debt against the owner of a vessel may be recovered in the manner a mortgage debt in favour of the judgment creditor in respect of the vessel would have been recovered.

### 199. Service of documents

Where for the purpose of this Act any document is to be served on any person, the document may be served—

- (a) in any case, by delivering a copy of the document personally to the person to be served, or by leaving the document at his last place of abode;
- (b) where the document is to be served on the master of a vessel where there is one, or on a person belonging to a vessel by leaving the document for him on board that vessel with the person being or appearing to be in command or charge of the vessel;
- (c) where the document is to be served on the master of a vessel, where there is no master, or the owner or agent of the owner of the vessel, and where the owner or the agent of the owner is not known or cannot be found, by affixing the document to the mast of the vessel;
- (d) where the document is to be served on the owner of the vessel, and the owner is not known or cannot be found, on the agent of the owner and if the latter is not known or cannot be found by affixing a copy of the document to the mast of the vessel.

*[Cap. 18:01]*

## Part XIII – Miscellaneous

### 200. Protection of officers

Any person who acts in the performance of his duties under this Act shall be deemed to be—

- (a) a public officer for the purposes of the Civil Procedure (Suits by or against the Government or Public Officers) Act; or

*[Cap. 6:01]*

- (b) a public servant as defined in section 4 of the Penal Code.

*[Cap. 7:01]*

### 201. Return of seaman left behind

Where any foreign vessel sets sail and leaves behind a seaman who is not a Malawi citizen, the expenses incurred for the repatriation or deportation of the seaman shall be recovered from the owner of the vessel, or where the owner is not in Malawi from the agent of the owner of the vessel.

## 202. Port clearances

- (1) No vessel shall leave a port in Malawi unless the master of the vessel has obtained within one hour of the expected time of departure a port clearance from the harbour master on behalf of the Chief Surveyor.
- (2) Where the master of any vessel obtains a port clearance and does not sail within forty-eight hours thereafter, he shall report to the Chief Surveyor his reasons for not sailing and shall obtain a fresh port clearance.
- (3) The Chief Surveyor shall not issue a port clearance for any vessel—
  - (a) until the master of the vessel, if so required, produces the certificate of registration of the vessel;
  - (b) until the master of the vessel has declared to him the name of the country, where applicable, to which the vessel belongs;
  - (c) unless every seaman on board the vessel holds a Continuous Discharge Book; and
  - (d) where the vessel is to be detained or where an order for the detention of the vessel is in force.
- (4) Where the Chief Surveyor is satisfied that—
  - (a) any person engaged on board a Malawi vessel;
  - (b) any Malawi citizen engaged on board a foreign vessel,has not been paid any wages due to him the Chief Surveyor may refuse to issue a port clearance to the master of the vessel unless the wages are paid or the owner or master of the vessel furnishes adequate security, to the satisfaction of the Chief Surveyor for the payment of the wages claimed to be unpaid.
- (5) Any master of a vessel which sets sail without, port clearance shall commit an offence and any owner of the vessel who is privy to the commission of the offence shall commit the like offence.
- (6) This section shall not apply to any class of vessel which the Chief Surveyor may exempt from the operation of this section.

## 203. Regulations

- (1) The Minister may make regulations for giving effect to this Act and, in particular, but without prejudice to the generality of the foregoing power, such regulations may provide for—
  - (a) the implementation of international conventions and international regulations relating to shipping to which Malawi is a party;
  - (b) prescribing the forms required to be prescribed under this Act;
  - (c) prescribing the fees and other charges to be paid under this Act;
  - (d) the control of pollution of inland waters arising from the operation of vessels, mining and other matters therefor;
  - (e) designating places or areas of inland waters or land as harbours or ports;
  - (f) the management, control and safety of any such harbours and of vessels and persons and cargo within them;
  - (g) the powers of persons to effect such control; and
  - (h) anything which is required to be prescribed under the provisions of this Act.

#### 204. Application of labour legislation

- (1) The Regulation of Minimum Wages and Conditions of Employment Act and the Employment Act shall apply to a seaman.
- (2) For the purposes of determining the daily wages of a seaman engaged on a Malawi vessel, the monthly wages of the seaman as stipulated in the crew agreement shall be divided by 30.

*[Cap. 55:01]*

*[Cap. 55:02]*

#### 205. Arrest and seizure

A police officer having reasonable grounds for believing that any person has committed an offence against this Act and that such person will not attend the court in answer to any process which may be issued against him may arrest such person without a warrant, and may seize any vessel or object which may afford evidence of the commission of the offence.

#### 206. Duty to give information

- (1) Where any surveyor, registrar, police officer or any other person or member of a class of persons generally or specially authorized by the Chief Surveyor to exercise the powers conferred by this section, has reason to suspect that an offence under this Act has been committed by any person on board a vessel, it shall be lawful for him or for any other surveyor, registrar, police officer or person so authorized to require the owner of the vessel to give all information in his possession as to the name, address, description and whereabouts of the master or any other person on board the vessel at the time of the alleged offence. Any owner failing to give such information shall be guilty of an offence unless he shows to the satisfaction of the court that—
  - (a) he did not have the information and could not with reasonable diligence have obtained it; or
  - (b) in the case of passengers carried for hire or reward, he did not have the information.
- (2) It shall also be lawful for a surveyor, registrar of vessels, police officer or other person authorized under subsection (1) to require any other person to give such information as aforesaid or any other information which it is in his power to give and which may lead to the identification of the master of and any other person on board the vessel, and if the person required to give such information fails to do so he shall be guilty of an offence unless he shows to the satisfaction of the court that—
  - (a) he did not have the information and could not with reasonable diligence have obtained it; and
  - (b) in the case of passengers carried for hire or reward, he did not have the information.

#### 207. Damage to navigation marks

- (1) No person shall wilfully or negligently—
  - (a) damage any navigation mark; or
  - (b) remove, alter or destroy any navigation mark; or
  - (c) ride by, make fast to or run foul of a navigation mark.
- (2) The provisions of subsection (1) (b) and (c) shall not apply to any person authorized by the Chief Surveyor to maintain, repair or remove a navigation mark.
- (3) The expenses incurred in repairing or replacing any navigation mark which has been injured, removed, altered or destroyed in contravention of subsection (1), shall be a debt due to Government and may be sued for and recovered by civil action in a competent court.

## 208. Certain provisions as to legal proceedings

- (1) In all proceedings for an offence against the provisions of this Act or for the recovery of damages for injury done by a vessel registered under such provisions, entries in a register of vessels relating to the vessel in question shall be conclusive evidence that any person registered at any date as the owner of such vessel was at that date the owner thereof:

Provided that—

- (a) the provisions of this subsection shall not have effect so as to prevent any proceedings or action being taken or instituted against any person not registered as the owner of such vessel who is beneficially interested therein;
  - (b) the provisions of this subsection shall not affect the rights of any person registered under the provisions of this Act as the owner of a vessel against any person not so registered who is beneficially interested in such vessel; and
  - (c) the registration of any vessel shall not confer, take away or affect any title to or interest in such vessel.
- (2) For the purposes of proceedings in any court or in any investigation conducted under this Act a copy or extract from any register or other record of which a registrar is in charge, duly certified as true by the registrar concerned, shall be receivable in evidence on its mere production by any person and shall be of like value and effect as the original in the register.
- (3) A certificate purporting to have been signed by a person describing himself as a registrar stating any provision of this Act as to registration of a vessel or as to the competency of a master or member of a crew has or has not been complied with shall, on its mere production by any person in any court or in the course of any investigation conducted under this Act, be received as *prima facie* evidence of the facts therein stated.
- (4) In any proceedings against any person for any contravention of any provision of this Act relating to the use of any vessel for hire or reward, or to the use thereof for carriage of goods or persons for hire or reward, the onus of providing that the use of such vessel, or the use thereof for the carriage of goods or persons, as the case may be, was not for hire or reward, or was otherwise lawful, shall be upon the party charged.

## 209. National colours and ensign

- (1) The flag of Malawi shall constitute the national colours of a Malawi vessel.
- (2) A Malawi vessel shall hoist the national colours on entering or leaving any port in Malawi and on a signal being made to the vessel by any vessel in the service of Government.
- (3) Where a person hoists a Malawi flag on a vessel which is not a Malawi vessel for the purpose of making the vessel appear to be a Malawi vessel, he shall commit an offence and the vessel shall be liable to forfeiture under a court order issued under this Act.
- (4) Where the owner or master of a Malawi vessel does anything or permits anything to be done, or carries or permits to be carried any papers or documents with intent—
- (a) to conceal the Malawi character of the vessel from any person entitled by any written law to inquire into such matters;
  - (b) to deceive any person so entitled; or
  - (c) to assume a foreign character,

he shall commit an offence and the vessel shall be liable to forfeiture under a court order issued under this Act.

- (5) The Chief Surveyor may prescribe any other ensign of such colours and design as he may direct which may be worn, in addition to national colours, by such vessels, in such manner and for such purposes as may be prescribed.

## 210. Offences and penalties

- (1) A person who—
- (a) for the purpose of obtaining, whether for himself or for any other person, the issue of a document under this Act makes a declaration or statement which he knows to be false in any material particular or does not know or believe to be true, or knowingly makes use of a declaration, statement or document containing the same;
  - (b) fraudulently imitates, alters, mutilates, destroys or uses, or fraudulently sells, supplies, lends or allows to be used by any other person any document issued for the purposes of this Act or deemed to have been issued hereunder;
  - (c) wilfully obstructs, hinders or resists any other person in the exercise of his powers or the carrying out of his duties under the provisions of this Act;
  - (d) on being required to do so fails or refuses to produce to a surveyor, registrar, police officer or other person authorized who demands it, any document issued under this Act;
  - (e) sends or, while in charge or command, takes, upon inland waters any vessel of a class prescribed under [section 65](#) which is not provided with a competent crew, as prescribed under that section;
  - (f) sends or takes or is a party to sending or taking a vessel upon inland waters in such an unseaworthy state that the life of any person is likely thereby to be endangered;
  - (g) contravenes or fails to comply with any provision of this Act or any direction or instruction given under this Act,
- shall commit an offence.
- (2) Where the master or a member of the crew of a vessel which is registered or should be registered under this Act by wilful breach of duty or by neglect of duty or by reason of drunkenness—
- (a) does any act tending to cause the immediate loss destruction or serious damage of the vessel or tending immediately to endanger the life or limb of a person belonging to or on board the vessel; or
  - (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate loss, destruction or serious damage or for preserving any person belonging to or on board the vessel from immediate danger to life or limb,
- he shall commit an offence.
- (3) Any person found guilty of an offence under this Act not otherwise provided for shall be liable—
- (a) for an offence under subsection (1) (e), (f), and subsection (2)—
    - (i) for a first offence to a fine of K400 and to imprisonment for one year; and
    - (ii) for a second or subsequent offence to a fine of K600 and to imprisonment for two years;
  - (b) for an offence not referred to in paragraph (a)—
    - (i) for a first offence, to a fine of K200 and to imprisonment for three months; and
    - (ii) for a second or subsequent offence to a fine of K400 and to imprisonment for six months.



## Part XIV – Repeal and savings

### 211. Repeal and savings

- (1) The Inland Waters Shipping Act is repealed.
- (2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—
  - (a) shall remain in force unless in conflict with this Act 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.