

Malawi

## Forestry Act

### Chapter 63:01

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# Malawi

## Forestry Act

### Chapter 63:01

Assented to on 9 May 1997

Commenced on 22 December 1997

*[This is the version of this document as it was at 31 December 2017 to 18 June 2020.]*

*[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.]*

*[11 of 1997; 5 of 2017; G.N. 3/1998; 64/2017]*

**An Act to provide for participatory forestry, forest management, forestry research, forestry education, forest industries, protection and rehabilitation of environmentally fragile areas and international co-operation in forestry and for matters incidental thereto or connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Forestry Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Minister**" means the Minister for the time being responsible for forestry matters;

"**Board**" means the Forest Management Board establishment under [section 15](#);

"**customary land**" has the meaning assigned thereto in the Land Act;

*[Cap. 57:01]*

"**customary land committee**" bears the meaning ascribed to it in the Customary Land Act;

*[5 of 2017; Act [19 of 2016](#)]*

"**forest**" means an area of land proclaimed to be a forest under this Act or unproclaimed land with trees on it;

"**forest management agreement**" means an agreement made under [section 31](#);

"**forest plantation agreement**" means an agreement made under [section 36](#) for establishment and management of forest plantations;

"**forest produce**" includes trees, timber, firewood, branch wood, poles, bamboos, chips, sawdust, plants, grass, reeds, peat, thatch, bedding, creepers, leaves, moss, fruits, seed, galls, slabs, roots, bark, rubber, gum, resin, sap, flowers, fungi, honey, wax, earth, water, soil, stones, vertebrates, invertebrates, wild animals, hides, horns, bones, ivory, meat and such other produce as the Minister may, by notice published in the *Gazette*, declare to be forest produce;

"**Fund**" means the Forest Development and Management Fund established under [section 55](#);

"**highway authority**" has the meaning assigned thereto in the Public Roads Act;

*[Cap. 69:02]*

"**licensing officer**" means, in relation to any licence under this Act, an officer not below the rank of Principal Forestry Officer who may be authorized to issue licences;

"**livestock**" includes cattle, horses, mules, donkeys, pigs, sheep and goats;

"**local government authority**" bears the meaning ascribed to it in the Local Government Act;

[5 of 2017; Cap. 22:01]

"**management authority**" in relation to a village forest area, means a person designated as the management authority pursuant to the agreement establishing the village forest area;

"**National Forest Plan**" means a plan prepared under [section 5](#);

"**officer**" means the Director of Forestry and any officer appointed pursuant to [section 4](#);

"**private land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**protected forest area**" means an area declared as such under [section 26](#);

"**public land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**river**" includes all natural or artificial water courses in which water ordinarily flows or remains either throughout the year or during particular seasons;

"**timber**" means any tree or part of a tree which has fallen or has been felled and any part of a tree which has been cut and all wood whether sawn, split, hewn, processed or otherwise fashioned;

"**tree**" means a woody perennial plant having a single well defined stem and a more or less defined crown and includes palm, shrubs, bush, climber, seedling, sapling and reshoots of all ages and of all kinds and any part thereof;

"**village forest area**" means an area of customary land established as such by an agreement under [section 30](#);

"**village natural resources management committee**" means a committee elected by stakeholders of the village forest areas.

[5 of 2017]

### 3. Purposes of this Act

The purposes of this Act are—

- (a) to identify and manage areas of permanent forest cover as protection or production forest in order to maintain environmental stability; to prevent resource degradation and to increase social and economic benefits;
- (b) to augment, protect and manage trees and forest on customary land in order to meet basic fuelwood and forest produce needs of local communities and for the conservation of soil and water;
- (c) to promote community involvement in the conservation of trees and forests in forest reserves and protected forest areas in accordance with the provisions of this Act;
- (d) to empower village natural resources management committees to source financial and technical assistance from the private sector, Non-Governmental Organizations and other organizations;
- (e) to promote sustainable utilization of timber, fuelwood and other forest produce;
- (f) to promote optimal land use practices through agroforestry in smallholder farming systems;

- (g) to upgrade the capability of forestry institutions in the implementation of their resource management responsibilities and in development of human resources in forestry;
- (h) to control trafficking in wood and other forestry produce including exportation and importation;
- (i) to protect fragile areas such as steep slopes, river banks, water catchment and to conserve and enhance biodiversity;
- (j) to provide guidelines in planning and implementation of forestry research and forestry education;
- (k) to establish a forestry administration; and
- (l) to promote bilateral, regional and international co-operation in forest augmentation and conservation.

## **Part II – Administration**

### **4. Director of Forestry and other officers**

There shall be appointed in the public service an officer to be designated as the Director of Forestry and other officers subordinate to him, who shall be responsible for the administration of this Act subject to any general and specific directions of the Minister.

### **5. Duties of the Director of Forestry**

The Director of Forestry shall be responsible for—

- (a) planning, promoting, conducting and assisting in the activities required to maintain, restore and develop the forest cover necessary for soil and water conservation, maintenance of biological diversity and the supply of forest produce;
- (b) conducting and maintaining inventories of the forest resources and preparing both national forestry plans and forestry management plans;
- (c) conducting and co-ordinating research into the growth, management, protection and sustainable utilization of forest resources;
- (d) promoting participatory forestry;
- (e) facilitating the formation of village natural resources management committees and the establishment of rules of village forest areas;
- (f) undertaking training programmes for subordinate, technical and professional staff in the Department of Forestry to the highest levels possible;
- (g) promoting proper harvesting systems, transportation, marketing and sustainable utilization of forest produce;
- (h) encouraging and promoting proper co-ordination of forestry related activities carried out by other organizations;
- (i) promoting forest recreation and tourism in forest areas;
- (j) exercising the control and the management of forest reserves and protected forest areas in accordance with the provisions of this Act;
- (k) promoting the empowerment of local communities in the augmentation, control and management of customary land trees and forests in accordance with the provisions of this Act;
- (l) carrying out silvicultural operations or other forest work including operations to prevent pests and diseases, construction of buildings, water works, and roads, erection of power lines, telephone lines

and radio masts and any other activities that enhance forest development in any part of a forest reserve or forest plantation;

- (m) preparing and updating National Forestry Plans in accordance with the National Forestry Policy;
- (n) co-ordinating forestry development and implementing the Forestry Programme of Action in the Southern Africa Development Community region.

## 6. Inspection by an officer

Pursuant to the provisions of this Act, and officer may—

- (a) demand the production by any person of a licence or other authority for any activity committed by such persons for which such licence or other authority is required by or under this Act;
- (b) without a warrant—
  - (i) stop and inspect any carrier or vehicle which the officer reasonably suspects is carrying any forest produce which has been obtained in contravention of this Act or for which a transportation document is required under this Act;
  - (ii) enter any premises in a forest reserve, any land or premises in which any activity licensed under this Act is conducted, or any village forest area or protected forest area and inspect such premises or land;
  - (iii) enter upon any land building, tent, carriages, motor vehicle, trailer, aircraft, boat or locomotive for ensuring that the provisions of this Act are being complied with, or for the purpose of detecting any offence against this Act; and
  - (iv) enter any land or premises and inspect silvicultural, forest harvesting and forest produce processing activities and wherever necessary provide advice on proper methods for carrying out such activities.

## 7. Barriers across roads

Any officer may, after consultation with the highway authority, temporarily place a barrier approved by the highway authority across any road in a manner consistent with such road safety standards and specifications as the highway authority shall specify for the purpose of examining or searching any motor vehicle or questioning any person in connexion with the provisions of this Act.

## 8. Search

Wherever an officer has reason to believe that any person to have committed an offence under this Act, the officer may search the person or property of such person or property in such person's possession or control.

## 9. Seizure of forest produce and article

- (1) Any officer or police officer may seize and detain—
  - (a) any forest produce which the officer or police officer reasonably suspects has been obtained or removed in contravention of this Act;
  - (b) any article which the officer or police officer reasonably suspects has been used in committing an offence under this Act.
- (2) Any officer or police officer who seizes and detains any forest produce or article under subsection (1) shall issue a seizure certificate.
- (3) Any village natural resources management committee may seize and detain any forest produce or article which the village natural resources management committee reasonably suspects has been

obtained or removed from the village forest area in contravention of rules made by such village natural resources management committee.

## 10. Custody of seized forest produce and article

Any forest produce or article seized under [section 9](#) shall be kept safely in the custody of an officer or the village natural resources management committee.

## 11. Disposal of seized forest produce and article

- (1) Any forest produce or article in the custody of an officer or the village natural resources management committee under [section 10](#) shall be retained until the case in connexion with which the forest produce or article was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

- (a) where any person has been tried and found guilty or where a person fails to claim the seized forest produce or article after being acquitted, the forest produce or article shall be disposed of at the discretion of the Director of Forestry;
- (b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;
- (c) where any seized forest produce or article is perishable, the Director of Forestry may order the forest produce or article to be sold or disposed of as he sees fit.

- (2) Any forest produce or article in the custody of a village natural resources management committee in accordance of [section 9](#) (3) shall be retained until the offence in connexion with which it was seized has been tried and concluded or a decision not to prosecute has been made:

Provided that—

- (a) where any person has been tried and found guilty or where a person fails to claim after being acquitted the forest produce or article shall be disposed of at the discretion of the village natural resources management committee according to its rules;
- (b) where a decision has been made not to prosecute, the seized forest produce or article may be returned to the owner;
- (c) where any seized forest produce or article is perishable, the village natural resources management committee may order the forest produce or article to be sold or disposed of in accordance with its rules.

## 12. Money from the sale of forest produce or articles to be paid into the Fund

Wherever the disposal of government seized forest produce or articles is by sale, all monies realized shall be payable into the Fund established under [section 55](#).

## 13. Arrest of a person for committing offence

- (1) Where any person is found committing or is reasonably suspected of having or of being about to commit an offence under this Act, any officer may, without warrant, arrest such person.
- (2) Any person arrested pursuant to subsection (1) shall be charged with an appropriate offence before a court of law.

#### 14. Prosecution by officers

The Director of Public Prosecutions may in writing nominate, by rank, any officer or class of officers of the Department of Forestry to undertake and prosecute criminal proceedings in respect of any offence committed under this Act.

### Part III – Forestry Management Board

#### 15. Establishment of the Board

There is hereby established a Board to be known as the Forestry Management Board.

#### 16. Composition of the Board

- (1) The Board shall consist of—
  - (a) the following *ex officio* members—
    - (i) the Secretary for Natural Resources or his designated representative;
    - (ii) the Secretary for Agriculture and Livestock Development or his designated representative;
    - (iii) the Secretary for Lands and Valuation or his designated representative;
    - (iv) the Secretary for Local Government and Rural Development or his designated representative;
    - (v) the Principal Secretary responsible for District Administration in the Office of the President and Cabinet or his designated representative;
    - (vi) the Secretary for Energy and Mining or his designated representative;
    - (vii) the Secretary for Works and Supplies or his designated representative;
    - (viii) the Secretary for Research and Environmental Affairs or his designated representative;
    - (ix) the General Manager of National Herbarium and Botanic Gardens or his designated representative;
    - (x) the General Manager of the Electricity Supply Commission of Malawi or his designated representative;
    - (xi) the Director of Forestry;
    - (xii) the Director of National Parks and Wildlife;
    - (xiii) the Director of Fisheries;
  - (b) and the following members who shall be appointed by the Minister—
    - (i) one member representing the University of Malawi;
    - (ii) not less than three and not more than five members representing the general public; and
    - (iii) a representative of the Timber Association of Malawi.
- (2) The Minister shall appoint one of the members to be Chairman of the Board.

- (3) A member of the Board appointed under subsection (1) (b), (i), (ii) and (iii) shall hold office for a period of two years unless his appointment be sooner terminated and shall be eligible for re-appointment.
- (4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.
- (5) The office of the Director of Forestry shall provide the Secretariat of the Board.
- (6) The office of a member appointed pursuant to subsection (1)(b), (i), (ii) and (iii) shall become vacant —
  - (a) upon his death;
  - (b) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;
  - (c) upon the expiry of one month's notice in writing of his intention to resign his office given by the member to the Minister; and
  - (d) if he is convicted of an offence under the Act.

## 17. Functions of the Board

The functions of the Board shall be to advise the Minister on all matters relating to tree and forest management in Malawi, including in particular but not limited to—

- (a) advising on the declaration and revocation of areas which for the purpose of protecting forest species, biotic communities, sites of special interest or aesthetic values, the Board considers should be declared forest reserves or protected forest areas;
- (b) advising on the import, export and re-export of tree species specimen into and out of Malawi;
- (c) initiating, overseeing and approving environmental impact assessments in forest reserves, protected forest areas and fragile sites.

## 18. Meetings of the Board

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

### 19. Members of the Board not deemed public officers

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

### 20. Allowances

Members of the Board shall be paid an honorarium determined by the Minister and shall be paid reasonable travelling expenses and subsistence allowance while engaged upon the business of the Board at the rate prescribed by the Minister.

## Part IV – Forest reserves and protected forest areas

### 21. Purposes of this Part

The purpose of this Part is to provide for the declaration, conservation and management of forest reserves, protected forest areas and the biodiversity.

### 22. Declaration of forest reserves

The Minister may, after consultation with the Minister responsible for land matters, by order published in the *Gazette*, declare any public land not already reserved for another public purpose to be a forest reserve.

### 23. Acquisition of land for forest reserve

Any area of land proposed for a forest reserve and which is not public land shall first be acquired in accordance with the provisions of the Land Act and the Lands Acquisition Act.

[Cap. 57:01; Cap. 58:04]

### 24. Management of forest reserves

In assuring the protection and management of forest reserves, the Director of Forestry shall prepare management plans as stipulated in [section 5](#).

### 25. Co-management of forest reserves

The Director of Forestry may enter into agreement with local communities for implementation of the management plans that is mutually acceptable to both parties.

### 26. Declaration of protected forest areas

- (1) Where the Minister finds that the protection of soil and water resources, outstanding flora and fauna requires that any area of land be maintained or established as a forest, the Minister may, by order published in the *Gazette*, after consultations with the Minister responsible for land matters, the Minister responsible for physical planning, the Minister responsible for agriculture, the Minister responsible for Irrigation and Water Development, the owner or occupier and, in case of customary land, the traditional authority, declare such land to be a protected forest area.
- (2) Where the Minister considers that land which requires protection as a forest reserve or protected forest area, is liable to serious degradation if not immediately protected, the Minister may declare such land to be a protected forest area for such period not exceeding one year as may be necessary to complete the consultations required by [section 22](#) or subsection (1).

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## 27. Management of protected forest areas

A declaration made under [section 26](#) shall state the measures required for protection of the areas, the assistance to be provided by the Department of Forestry towards accomplishing such measures and the obligations of the owner, occupier or traditional authority to maintain and protect the forest resources of the area.

## 28. Revocation of declaration

- (1) The Director of Forestry may recommend to the Minister to revoke or modify, by notice published in the *Gazette*, a declaration of a forest reserve or protected forest area with respect to any land, and the Minister shall first require a comprehensive environmental impact assessment.
- (2) The Minister may, by notice published in the *Gazette*, amend such order the purpose of which is to delineate or exercise land from a forest reserve or protected forest area subject to advice from the Board.
- (3) Any environmental impact assessment made pursuant to the provisions of subsection (1), shall investigate the ecological consequences of proposed resolution of modification and the report of the assessment shall be submitted to the Minister together with the advice of the Director of Forestry within ninety days of completion of the assessment being made.
- (4) The Minister shall not decide upon a proposal related to revocation or modification of a forest reserve or protected forest area until the Minister is in receipt of the report referred to in subsection (3).

## Part V – Customary land forest

### 29. Purpose of this Part

The purpose of this Part is to provide for promotion of participatory forestry on customary land through protection, control and management of trees and forests by the people on customary land, the demarcation and management of village forest areas, ownership of indigenous forest trees, establishment of three nurseries and regulation of forest produce.

### 30. Demarcation of village forest areas

Notwithstanding anything contained in this Act, a customary land committee may, with the advice of the Director of Forestry, demarcate on unallocated customary land a village forest area which shall be protected and managed in the prescribed manner for the benefit of that village community.

[5 of 2017]

### 31. Forest management agreement

- (1) For the proper management of village forest areas, the Director of Forestry may enter into a forest management agreement with a management authority providing for—
  - (a) the specifications of the nature of the forestry and other practices to be followed;
  - (b) the assistance to be provided by the Department of Forestry and provision for use and disposition of the produce and revenue therefrom.
  - (c) allocation of land to individuals or families for afforestation and revocation of such allocation if applicable provisions of the agreement are not adhered to by the occupier of the land so allocated;

- (d) formation of village natural resources management committees for the purposes of managing and utilizing village forest areas.
- (2) Subject to the performance of unfulfilled obligations under a forest management agreement to the right of third parties, a forest management agreement may be terminated by either party.
- (3) In the event of any dispute arising under a forest management agreement, the matter shall be referred to the Minister:  
  
Provided that any party aggrieved with the Minister's decision may apply to the High Court for review of the Minister's decision.
- (4) Any area designated as a village forest area but without the forest management agreement shall be managed in accordance with [section 30](#).
- (5) Any educational, religious or interested institutions in consultation with a village headman may demarcate, establish and manage a forest area or woodlot on customary land with the advice of the Director of Forestry subject to the provisions of subsections (1), (2) and (3).

### 32. Minister may make rules

- (1) The Minister may make rules which shall apply to all customary land outside forest reserves and protected forest areas.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may—
  - (a) provide for the protection of water catchment and fragile areas, rehabilitation of degraded areas and any other activity which would be conducive to good land husbandry;
  - (b) facilitate the establishment and management of forest by village natural resources management committees for the benefit of local communities;
  - (c) encourage local government authorities, non-governmental organizations and the private sector to contribute towards the provision of forestry extension services, as well as the establishment and management of plantations in accordance with guidelines provided by the Department of Forestry;  
  
*[5 of 2017]*
  - (d) provide for the establishment and maintenance of nurseries to provide seedlings for tree planting programmes;
  - (e) authorize the payment, of grants or bonuses out of public funds for the encouragement of forestry;
  - (f) provide for the declaration of endangered or essential tree species and their management;
  - (g) prescribe a mechanism for sharing costs and benefits between the Department of Forestry and village natural resources management committees in regard to forest produce confiscated from customary land forests.

*[5 of 2017]*

### 33. Approval of by-laws

Any rules made by village natural resources management committees shall be approved by the Minister.

### 34. Right to naturally growing trees

- (1) Any person who or community which protects a tree or forest, whether planted or naturally growing in any land which that person or community is entitled to use, shall acquire and retain the ownership of the tree and forest with the right to sustainable harvest and disposal of the produce.

- (2) Any tree or forest owner under subsection (1) may seek the advice of the Director of Forestry on the management and utilization of his tree or forest.

## **Part VI – Afforestation**

### **35. Purpose of this Part**

The purpose of this Part is to provide for the promotion of tree growing in forest reserves, public land, customary land and private land by the Government, non-governmental organizations and the community.

### **36. Forest plantation agreement**

Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to enter into a forest plantation agreement with any nongovernmental organization or community who may wish to plant trees in forest reserves, public land, customary land and private land, and such agreement shall—

- (a) provide for the obligation to grow and manage tree species as specified in the agreement and in accordance with the plantations management plan which shall be approved by the Director of Forestry;
- (b) convey the right to harvest the forest plantation in accordance with the terms of the agreement;
- (c) provide for advice and assistance from the Department of Forestry in growing and managing the plantations;
- (d) specify obligations of each of the parties to the agreement.

### **37. Right to planted forest produce**

Any person who plants any tree species on any land which that person is entitled to use for that purpose shall acquire and retain the right to harvest the resulting produce and to dispose of it freely.

## **Part VII – Forest protection**

### **38. Purpose of this Part**

The purpose of this Part is to provide for the protection of trees, forest and forest produce against fires, pests and diseases.

### **39. Prohibition against fires**

- (1) No person shall light or cause to be lit a fire in any forest reserve or protected forest area except in places designated for that purpose or as otherwise authorized by an officer.
- (2) An officer may order the closure of any place designated for the lighting of fires in a forest reserve or protected forest area and no person shall during such closure permit a fire to be lit in such place.
- (3) No person shall light or cause to be lit a fire in any village forest area except with the authorization of the management authority subject to the provisions and conditions of the forest management agreement.
- (4) Any person who lights a fire in or near a forest reserve, protected forest area or village forest area shall take all necessary precautions to prevent the fires escaping from control and shall be liable for any damage to the forest reserve, protected forest area or village forest area caused by any failure to take such precautions.

#### 40. Declaration of fire protection area

The Director of Forestry may, by notice published in the *Gazette*, declare any forest area to be a fire protection area and the notice shall regulate the lighting of fires in such area.

#### 41. Assistance in fire fighting

Any officer may require any person to assist in averting or extinguishing any fire threatening a forest reserve, protected forest area or village forest area.

#### 42. Forest pest and disease control

Notwithstanding anything to the contrary contained in this Act, the Minister may authorize the Director of Forestry to—

- (a) order the spraying or clearing of a compartment of a plantation or of a whole plantation for the purpose of controlling the spreading of pests and diseases;
- (b) control movement of timber and other forest produce through issue of permits as the pest and disease situation may demand;
- (c) issue silvicultural notes and technical orders for purposes of controlling pests and diseases;
- (d) suspend further planting of tree species which are susceptible to pests and diseases;
- (e) provide for control of vermin causing excessive damage beyond economic threshold in forest reserves;
- (f) provide for effective phytosanitation for all forest produce and all parts of the tree in accordance with the Plant Protection Act and to regulate importation of tree seed and other wood and forestry produce for purposes of pest and disease control.

*[Cap. 64:01]*

#### 43. Prohibition of possession or use of weapons, traps, explosives, poisons or hunting animals

- (1) Any person who conveys into, or possesses or uses within any forest reserve or protected forest area any weapon, trap, explosive, poison or hunting animal shall be guilty of an offence.
- (2) This section shall not apply to any officer acting in the performance of his duties.

#### 44. Prohibition of deposition of litter and waste

Unless under a licence, no person shall deposit litter or noxious waste in forest reserves, protected forest areas and village forest areas.

### Part VIII – Utilization of forest produce in forest reserves and customary land

#### 45. Purpose of this Part

The purpose of this Part is to provide for licensing and sustainable use of forest land and utilization of forest produce on customary land, public land, forest reserves and protected forest areas.

#### **46. Acts under licence**

Unless under a licence, no person shall—

- (a) cut, take, fell, destroy, uproot, collect and remove forest produce from a forest reserve, customary land, public land and protected forest area;
- (b) cultivate crops, graze livestock, clear land, dig or break up land for any road or for any purpose whatsoever on such area of the forest reserve and protected forest area that may be specified in the licence;
- (c) prospect for and extract minerals in a forest reserve and protected forest area;
- (d) squat, reside, erect any building, livestock enclosures or any structure in a forest reserve and protected forest area;
- (e) perform such other acts as may be specified in the licence in the forest reserve and protected forest area.

#### **47. Permit for exportation, importation and re-exportation of forest produce**

The Director of Forestry may issue to any person a permit in the prescribed form to export or import or re-export certain types of forest produce.

#### **48. Restrictions on, exports, import and re-exports of forest produce**

The Minister may, in consultation with the Minister responsible for trade, make regulations imposing restrictions on imports and exports and re-exports of certain type of forest produce.

#### **49. Waiver of fees, etc.**

The Director of Forestry may, subject to the general or special directions of the Minister, direct in writing that any fees or royalties payable under this Act shall be waived in whole or in part for a specified period.

#### **50. Forest produce from customary land**

- (1) A resident of any village may collect forest produce from customary land other than village forest areas for domestic use.
- (2) Any disposal of forest produce in a village forest area shall be in accordance with the provisions of the applicable forest management agreement.
- (3) Where the wood arising from any activity on customary land is in excess of community domestic needs, the excess wood shall be disposed of by the village natural resources management committee for the benefit of that community.

#### **51. Suspension of a licence**

The Director of Forestry may, at any time that it appears to him that there has occurred or is about to occur a violation of any provision of this Act or of any condition of a licence, order the suspension of any or all operations under any licence until the licensee has taken necessary measures to remedy or prevent the violation.

#### **52. Grounds on which a licence may be refused**

The Director of Forestry may refuse to issue a licence if—

- (a) the applicant fails to comply with any prescribed conditions;

- (b) any licence formerly held by the applicant under this Act has been revoked by the Director of Forestry within the previous twelve months;
- (c) the applicant has been convicted of an offence under this Act within the previous twenty-four months;
- (d) he is satisfied on reasonable ground that the applicant is not a fit or proper person to hold such licence; or
- (e) he is satisfied that the interest of forest management shall be better served by a temporary freeze in issuing of licence of that class.

### **53. Cancellation of a licence**

- (1) The Director of Forestry may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under [section 52](#) to refuse to issue a licence to that person.
- (2) The Director of Forestry shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

### **54. Appeal to the Minister against refusal, suspension or cancellation of a licence**

- (1) An applicant who has been refused a licence under [section 52](#) may, within thirty days, appeal to the Minister in writing.
- (2) Any licensee whose licence is cancelled under [section 53](#) may, within thirty days, appeal to the Minister in writing.
- (3) The Minister may, on proper cause being shown, allow an appeal out of the time prescribed.
- (4) The Minister shall be free to hear the views of the Director of Forestry in determining an appeal under this section and may uphold, vary or quash the decision of the Director of Forestry.
- (5) Any person aggrieved by the decision of the Minister may apply to the High Court for a review of the Minister's decision.

## **Part IX – Forest Development and Management Fund**

### **55. Establishment of the Fund**

- (1) There is hereby established a Fund to be known as the Forest Development and Management Fund (in this Act referred to as the "Fund").
- (2) the Fund shall consist of—
  - (a) such sums as shall be appropriated by Parliament for the purpose of the Fund;
  - (b) advances made to the Fund under [section 57](#);
  - (c) such sums as may be received for the purposes of the Fund by way of voluntary contributions;
  - (d) levies from a metre cube of wood felled or extracted by the Forestry Department;
  - (e) payments made into the Fund under [section 12](#); and
  - (f) such sums or other assets may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

## 56. The Fund to vest in the Minister

The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

*[Cap. 37:01]*

## 57. Advances to the Fund

If in any financial year the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

## 58. Objects of the Funds

The objects for which the Fund is established shall be the conservation, augmentation and management of forest resources and forest lands in Malawi.

## 59. Application of the Fund

Without derogation from the generality of [section 57](#), the Fund may be applied to—

- (a) the inculcation of the twin concepts of multiple purpose management and sustainability in forestry into local communities;
- (b) the provision of an enabling environment for the participation of the local communities in forest management and conservation;
- (c) maintenance of equipment and records;
- (d) the cost of any scheme which the Minister considers to be in the interest of the management of forest reserves;
- (e) meeting any expenses arising from the establishment and maintenance of the fund; and
- (f) any purpose which the Minister considers to be in the interest of the objects of the Fund.

## 60. Books and other records of accounts, audit and reports of the Fund

- (1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provisions of the Finance and Audit Act.
- (2) The accounts of the Fund shall be audited by the Auditor General, who shall have all powers conferred upon him by the Finance and Audit Act.

*[Cap. 37:01]*

- (3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.
- (4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

*[Cap. 37:01]*

## 61. Holdings of the Fund

- (1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.
- (2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

## 62. Financial year

The Financial year of the Fund shall be the period of twelve months ending on 31st March in each year.

## Part X – Offences and penalties

### 63. Purpose of this Part

The purpose of this Part is to define offences against this Act and to provide for penalties.

### 64. Offences relating to forest reserves and protected forest areas

Any person who, without authority under this Act—

- (a) fells, cuts, takes, destroys, removes, collects, uproots any indigenous tree or forest property in a forest reserve or protected area;
- (b) connives with or causes another person to fell, cut, take, destroy, remove, collect, uproot any indigenous tree or forest property in a forest reserve or protected area;
- (c) squats, resides, erects a building, hut, livestock enclosures or any structure in a forest reserve or protected area;
- (d) clears, cultivates, digs or breaks up land for any road or for any purpose whatsoever and grazes livestock in a forest reserve or protected areas,

shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

### 65. Offences relating to fires

- (1) Any person who lights or causes to be lit a fire in a forest reserve, protected forest area or village forest area in contravention of [section 39](#) shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.
- (2) Any person who permits a fire to burn out of control in, or to spread to a forest reserve or village forest area shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.
- (3) Any person who, without reasonable cause, refuses to assist in averting or extinguishing a fire when required to do so under [section 41](#), shall be guilty of an offence and liable upon conviction to a fine of K2,000 and to imprisonment for a term of one year.

### 66. Offences relating to wildlife

Subject to the provisions of this Act, any person who—

- (a) pursues, kills, hunts, molests, captures or injures any animal, bird, fish, or reptile;

(b) collects eggs or spawns from a forest reserve, a protected forest area or a village forest area, shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

#### **67. Offences relating to forest pests and diseases**

Any person who knowingly contravenes the provisions of [section 43](#) of this Act shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

#### **68. Offences relating to possession or trafficking of forest produce**

- (1) Any person who—
- (a) knowingly received forest produce illegally; or
  - (b) is found in possession of forest produce without a permit;
  - (c) trafficks in forest produce without a licence, shall be guilty of an offence.
- (2) Any person who is convicted of an offence under subsection (1) shall be liable to a fine upon conviction of K20,000 and to imprisonment of ten years.

#### **69. Offences relating to obstruction of officers**

Any person who—

- (a) obstructs or hinders any officer in the performance of his functions under this Act;
- (b) wilfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act;
- (c) refuses to furnish to any officer on request, particulars or information which the officer is entitled to obtain under this Act, shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of five years.

#### **70. Offences relating to official documents or stamps**

Any person who, without lawful authority—

- (a) counterfeits or alters any licence, permit or pass required under this Act;
- (b) alters or defaces any prescribed document issued under this Act;
- (c) makes upon or affixes to any forest produce a mark used in connexion with forest produce by the Department of Forestry,

shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.

#### **71. Offences relating to possession or use of weapons, traps, explosives and poisons for hunting animals**

- (1) Any person who contravenes the provisions of [section 43](#) shall be guilty of an offence and liable upon conviction to a fine of K20,000 and to imprisonment for a term of ten years.
- (2) This section shall not apply to any officer acting in the performance of his duties.

## 72. Offences relating to deposition of litter and waste

Any person who contravenes the provisions of [section 44](#) shall be guilty of an offence and liable upon conviction to a fine of K5,000 and to imprisonment for a term of two years.

## 73. Offences relating to import, export and re-export of forest produce

Any person who imports, exports or re-exports or attempts to import, export or re-export any forest produce—

- (a) through any place other than a custom's post or port; or
- (b) without producing to a customs officer a valid licence to import or export or re-export the forest produce as the case may be,

shall be guilty of an offence and liable upon conviction to a fine of K10,000 and to imprisonment for a term of not less than five years.

## 74. Additional orders upon conviction

- (1) Upon conviction of any person of an offence under this Act, the court may in addition to any other penalty provided by this Act, order—
  - (a) that any forest produce which has been used in the commission of the offence shall be forfeited to the Government;
  - (b) that where any forest produce has been damaged, injured or removed in the commission of the offence, the person convicted shall pay compensation equivalent to the value of the forest produce so damaged, injured or removed;
  - (c) that the person convicted shall pay ten times the amount of any royalties and other fees which, had the act constituting the offence been authorized, would have been payable in respect thereof;
  - (d) the demolition and removal of any building, enclosure, hut, kraal, structure or anything erected, standing or being in the area in contravention of this Act;
  - (e) the destruction, uprooting or removal of any crop standing or being in the area in contravention of this Act;
  - (f) the seizure of any carrier or vehicle which has been used in committing the offence.
- (2) Where an order is made under subsection (1) in respect of forest produce from a village forest area, the forest produce and article ordered to be forfeited and the amount ordered to be paid shall be forfeited and paid to the management authority in respect of that area.

## 75. Authority to compound offences

- (1) The Director of Forestry may authorize any officer not below the rank of Principal Forestry Officer where the Director of Forestry is satisfied that an offence against this Act has been committed, and such person consents in writing to compounding under this section, to compound such offences by charging a sum of money not exceeding one and half the maximum fine prescribed for the offence and no further court proceedings shall be instituted.
- (2) Where any article has been seized in connexion with the offence compounded under this section, the officer compounding the offence shall dispose of the article according to [section 11](#).
- (3) Any offence in respect of which a prosecution is actually pending shall not be compounded under this section other than with the consent of the court before which the prosecution is pending.

- (4) Any money received and any article confiscated under subsection (1) or (2) in respect of forest produce from a village forest area shall be paid to the management authority in respect of that area.

## **Part XI – International co-operation in forestry**

### **76. Purpose of this Part**

The purpose of this Part is to provide for the promotion of the management of cross-border forests and forests resources and implementation of agreed national obligations arising from bilateral, regional and international environmental and other related Conventions to which Malawi is a party.

### **77. Cross-border management**

For the proper management of cross-border forests and forest resources, the Director of Forestry may jointly produce management plans which shall lead to the realization of common forestry goals in cross-border areas.

### **78. Regional fora**

Implementation of common plans may be reviewed in regional fora such as Joint Permanent Commissions of Cooperation, the Southern Africa Development Community and others.

### **79. Cross-border trade in forest produce**

To assure sustainable utilization and marketing forest resources across borders, the Director of Forestry shall institute mechanisms for the verification of the legality of the forest produce being imported or exported.

### **80. Implementation of agreements**

The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation of relevant provisions of any convention on forestry to which Malawi is a party.

## **Part XII – Miscellaneous**

### **81. Charcoal licensing**

- (1) No person shall make or sell charcoal from indigenous timber or tree except pursuant to a licence issued under this section.
- (2) Upon application in the prescribed form, a licensing officer may, where the officer finds that the making of charcoal shall utilize plantation timber or indigenous timber or trees consistently with the applicable forest management plan or forest management agreement or forest plantation agreement, issue a licence to make charcoal in such quantity and from such timber or trees as may be specified in the licence.

### **82. Permit for wood using and wood processing industries**

No person shall engage in commercial processing of any wood or forest produce without a permit from the Director of Forestry and such commercial wood processing industries shall include—

- (a) tobacco curing, brick and tile making, wood carving, lime making, bamboo baskets making and chair making; and
- (b) wood processing industries, including sawmilling, veneer and plywood, blackboard, fibre and particle board, pulp and paper and any other industries.

**83. Utilization of and trafficking in indigenous timber from private land**

- (1) No indigenous wood shall be moved from any private land to any place outside the private land without a permit issued by the Director of Forestry. Any revenue realized from the removal of the indigenous wood from leasehold land shall all accrue to the village natural resources management committee in the area.
- (2) No indigenous endangered tree species shall be cut down without the written permission of the Director of Forestry.
- (3) Indigenous wood may be used on a sustainable basis for any purpose within the demised area without the written permission of the Director of Forestry.

**84. General indemnity**

The Director of Forestry or any other officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise in good faith of the powers vested in him under this Act.

**85. Disposal of forest produce from private land**

On application by a lessee in accordance with the Land Act, the Director of Forestry may grant permission for forest produce to be removed from, and used outside, the demised premises on payment of land all prescribed royalties to the village natural resources management committee in the area.

[Cap. 57:01]

**Part XIII – Regulations****86. Regulations**

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

- (a) prescribe the form and contents of any application, licence or agreement;
- (b) prescribe the conditions of any category of licence or agreement;
- (c) prescribe the rates and manner of payment of royalties, application fees and other fees;
- (d) regulate or prohibit access to any part of a forest reserve;
- (e) regulate forest utilization practices;
- (f) require the recording and reporting of information regarding sustainable utilization of forest and forest produce and approving the form, contents and manner of making records and reports, as submitted by the Director of Forestry;
- (g) prescribe the methods and requirements of scaling and making forest produce;
- (h) prescribe the marks to be used by officers in connexion with forest produce;
- (i) provide for the registration of forest property marks and regulating their use;
- (j) prescribe standards for the grading of wood and wood products, and requiring that any wood or wood product be graded according to such standards;
- (k) regulate the transportation, processing, sale of forest produce, including competitive bidding, and requiring permits, licences and documentation of such activities; and
- (l) prescribe anything required to be prescribed under this Act.

## Part XIV – Repeal and savings

### 87. Repeal and savings

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

*[Cap. 63:01]*