

MALAWI GOVERNMENT

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ACT

(Published 27th July, 2012)

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Act

No. 14 of 2012

I assent

MRS. JOYCE BANDA
PRESIDENT
12th July, 2012

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title
2. Interpretation

PART II—THE MALAWI BUREAU OF STANDARDS

3. Establishment of the Malawi Bureau of Standards
4. Objects of the Bureau
5. Functions, powers and duties of the Bureau
6. Non-liability of the Bureau

PART III—THE MALAWI BUREAU OF STANDARDS BOARD

7. Establishment of the Malawi Bureau of Standards Board
8. Composition of the Board
9. The Chairperson and Vice-Chairperson of the Board
10. Tenure of office of members, vacation and disqualification
11. Allowances for Members
12. Meetings of the Board
13. Non-liability of members
14. Pecuniary interest of members
15. Powers and functions of the Board
16. Committees of the Board
17. Delegation

PART IV—FINANCIAL PROVISIONS

18. Funds of the Board and its accounts
19. Annual Reports

SECTION

20. Quality development cess
21. Audit
22. Reimbursement of expenses of members of the Board
23. Financial Year

PART V—STAFF OF THE BUREAU

24. Director General
25. Appointment of other staff and conditions of service

PART VI—ESTABLISHMENT AND IMPLEMENTATION OF STANDARDS

26. Setting of Malawi Standards
27. Declaration of Malawi Standards
28. Incorporation of Malawi Standards in laws
29. Effect of declaration as mandatory standard and application of standardization mark
30. Non-compliance with mandatory standards

PART VII—STANDARDIZATION MARKS

31. Establishment, alteration of standardization marks, etc.
32. Application of standardization mark
33. Mark permits
34. Suspension or cancellation of permit
35. Samples and information
36. Limitations on certain claims

PART VIII—INSPECTORS AND AUDITORS

37. Appointment and powers
38. Functions

PART IX—DANGEROUS OR DEFECTIVE COMMODITIES

39. Order prohibiting or restricting supply of defective commodities
40. Remedy for supply of commodity in contravention of order
41. Order for recall of defective commodities
42. Voluntary recall of commodities
43. Certain actions not to affect insurance contracts

PART X—OFFENCES AND PENALTIES

44. Offences and penalties

SECTION

PART XI—GENERAL

45. Restriction on use of certain words
46. Presumption
47. Certain acts not to be interpreted as assurances or guarantees
48. Confidentiality
49. Inventions by staff members and other persons
50. Levying of interest
51. Disclosure of certain information to protect consumer
52. Prohibition of victimization
53. Conflicting standards
54. Regulations
55. Relationship between this Act and other written laws
56. Repeal and savings

PART XII—TRANSITIONAL PROVISIONS

57. Transfer of assets, funds, liabilities, etc.
58. Transfer of employees

SCHEDULES

An Act to establish the Malawi Bureau of Standards and the Malawi Standards Board; to vest the management and control of the Malawi Bureau of Standards in the Malawi Standards Board; to promote metrology, standardization and quality assurance of commodities and of the manufacture, production, processing or treatment thereof; and further to provide for matters incidental to, or connected with, the foregoing

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Malawi Bureau of Standards Act, 2012. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - “auditor”, means a person appointed as such under section 37;
 - “Board” means the Malawi Bureau of Standards Board established under section 7;

“Bureau” means the Malawi Bureau of Standards established by section 3;

“Bureau Management” means the Director General, Deputy Director General and the Heads of Departments of the Bureau;

“cess” means the quality development cess imposed by the Minister under section 20;

“Chairperson” means the Chairperson of the Board appointed and designated pursuant to section 9;

“Code of practice” means a set of rules relating to the methods to be applied or the procedure to be adopted in connection with the construction, installation, testing, operations or use of any article; apparatus, instrument, device or process, including—

(i) the marking, handling, packing, storage and transport of a commodity; or

(ii) the manner of installation of the commodity to ensure efficient performance;

“commodity” means product, service, good or article of, or for, trade;

“Director General” means the Chief Executive Officer of the Bureau appointed under section 24;

“examine” includes inspect, check or observe;

“financial auditor” means a person appointed as such to audit the finances of the Bureau;

“financial year” means the financial year of the Bureau as specified in section 23;

“import” means to bring or cause to bring a commodity in the country by any means;

“inspector” means an inspector appointed under section 37;

“Malawi Standard” means a specification, code of practice, terminology standard or method of test as declared under section 27 (1);

“Mandatory Standard” means a Malawi Standard declared as such under section 27 (2) to which compliance is compulsory;

“manufacture” includes produce, assemble, alter, modify, adapt, convert, process, package, including labeling, treat, install, test, operate and use;

“mark” means any device, brand, heading, label, ticket, emblem, representation, heading ticket, name, signature, word, letter or numeral, or any combination thereof; whether used in a compound with any other word or not.

“member” means a member of the Board appointed under section 8;

“person” includes a body corporate;

“reference material” means any material or substance with one or more characteristics which may be used for—

(a) calibration of any apparatus;

(b) testing of the accuracy of any method of measurement;
or

(c) determination, by comparison therewith, of any characteristic, including purity, of any other material or substance;

“regulation” means a regulation in force in terms of this Act;

“sell” includes—

(a) display, offer or advertise for sale;

(b) export from Malawi for or in pursuance of sale;

(c) have in possession for the purpose of sale, trade, manufacture export from Malawi or for humanitarian grounds;

“specification” means an explicit set of requirements to be satisfied by a commodity with reference to its characteristics, including its nature, quality, strength, efficacy, purity, composition, assembly, quantity; dimensions, mass, grade, design, layout, durability, capacity, format, operation, performance, origin or age, which ever may be applicable;

“standardization mark” means a certification mark, mark of proof, or mark of authenticity;

“system”, with regard to a commodity, means interrelated processes which are designed to achieve a particular purpose or to perform a specific function.

“Vice-Chairperson” means the person appointed as such under section 9.

PART II—THE MALAWI BUREAU OF STANDARDS

3. There is hereby established the Malawi Bureau of Standards (in this Act otherwise referred to as the “Bureau”), which shall—

Establishment
of the Malawi
Bureau of
Standards

(a) be a body corporate with perpetual succession and a common seal, with power to alter the same from time to time;

(b) in its corporate name be capable of suing and being sued;

(c) subject to the provisions of this Act, of acquiring, holding, letting and otherwise disposing of any property; and

(d) be capable of doing and performing such acts and things as bodies corporate may by law do and perform.

Objects of
the Bureau

4. The objects of the Bureau shall be—

(a) to promote standardization in commerce and industry;

(b) to prepare and issue standards and to administer schemes based thereon;

(c) to make arrangements to provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards, approved by the Minister on the recommendation of the Board, and for the issue of certificates in regard thereto;

(d) to make arrangements or provide facilities in order to examine, test or analyze articles, materials and substances;

(e) to provide for the testing of locally manufactured or imported commodities with a view to determining whether such commodities comply with the provisions of this Act, the Merchandise Marks Act or any other law relating to standards of quality;

(f) to control the use of standardization marks;

(g) to encourage or undertake educational work in connection with standardization;

(h) to provide for cooperation with any person, association or organization outside Malawi having objects similar to those of the Bureau;

(i) to assist any ministry, Government department, local authority, other public authority or any statutory corporation in the preparation and framing of the specifications or codes of practice required by it;

(j) to provide for cooperation with the representatives of any branch of industry, ministry, Government Department, local authority, other public authority or any statutory corporation or with any person with a view to bringing about standardization in connection with commodities;

(k) to assess quality systems and to administer the certification by such systems thus assessed;

(l) to supply reference material for specific purposes; and

(m) to perform, in so far as it is not repugnant to or inconsistent with the provisions of any written law, such functions as the Minister may assign to the Bureau, so as to promote and maintain standardization and quality regarding commodities.

Cap. 49:04

5.—(1) The Bureau shall exercise the following powers and perform duties as are conferred on it by this Act or any other written law for the purposes of achieving the objects of the Bureau set out in section 4—

Functions,
powers and
duties of the
Bureau

(a) to supply reference material and issue directives in connection with such material;

(b) at the request of any person, body, organization, administration or authority and subject to the conditions determined by the Bureau, conduct examinations, tests, or analyses or cause them to be conducted in respect of any articles, material or substances;

(c) to purchase or otherwise acquire a sample of any article in order to investigate, test or analyze it, and for the purposes of a Malawi Standard determine the sampling examination, testing or analysis procedure to be followed in order to assess whether there has been compliance with the relevant characteristics requirements or the manner of manufacture of a commodity;

(d) subject to the provisions of this Act, determine and collect cess and fees for services rendered under this Act; and

(e) in addition to any function, power or duty that the Bureau is required or empowered to perform, exercise or execute in terms of the provisions of this Act or any other written law, do every thing that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value of or render profitable the property or rights of the Bureau.

(2) The Bureau may in the exercise of its powers—

(a) enter into an agreement with;

(b) render assistance to; or

(c) obtain the cooperation of,

a person, body, organization, administration, authority or government in any country or territory outside Malawi.

(3) The Bureau may issue to a person—

(a) who manufactures outside Malawi a commodity, a consignment of which is intended for importation into Malawi; or

(b) who intends to import a consignment of a commodity manufactured outside Malawi; or

(c) who intends to export a consignment of a commodity manufactured inside Malawi,

a certificate in which it is declared that such consignment complies with or has been manufactured in accordance with the requirements determined under this Act.

(4) The Minister may, with the concurrence of the Minister of Finance, indemnify the Bureau against any losses which it may incur consequent upon any act or omission of the person, body, organization administration, authority or government referred to in subsection (2):

Provided that such act was performed or omission was made with the approval of or at the request of the Minister.

(5) The Bureau shall—

(a) subject to the payment of the prescribed fees, undertake the investigations or research which the Minister may assign to it; and

(b) at the request of the Minister, advise the Minister concerning any matter which is relevant to the objects of the Bureau.

Non-liability
of the Bureau

6. The Bureau shall not be liable in respect of anything done under this Act in good faith and without negligence.

PART III—THE MALAWI BUREAU OF STANDARDS BOARD

Establishment
of the Malawi
Bureau of
Standards
Board

7.—(1) There is hereby established the Malawi Bureau of Standards Board (in this Act otherwise referred to as the "Board").

(2) The operations of the Bureau shall be managed by the Board which, subject to the special or general direction of the Minister, may exercise all the powers and functions of the Bureau in addition to the powers and functions otherwise vested in the Board by this Act.

Composition
of the Board

8. The Board shall consist of—

(a) six members to be appointed by the Minister from the industry sector, trade sector, academic or non-Governmental organizations, who shall be persons with sufficient knowledge and experience in matters relating to the objects of the Bureau; and

(b) the following *ex officio* members—

(i) the Comptroller of Statutory Corporations or his designated representative;

(ii) the Secretary for Industry and Trade or his designated representative; and

(iii) the Secretary for Health or his designated representative.

9.—(1) The Minister shall designate one of the members appointed under section 8, other than an *ex officio* member, as a Chairperson of the Board.

The
Chairperson
and Vice-
Chairperson
of the Board

(2) The members of the Board shall, at their first meeting, elect a Vice-Chairperson.

10.—(1) The members, other than *ex officio* members, shall hold office for a period of two years but shall be eligible for reappointment for one more term.

Tenure of
office of
members,
vacation and
disqualifica-
tion

(2) Any member, other than an *ex officio* member, may at any time, by, at least two weeks notice in writing to the Minister, resign from his office.

(3) The office of a member, other than an *ex officio* member, shall become vacant—

- (a) upon his death;
- (b) if he is mentally or physically incapable of performing his duties as a member of the Board;
- (c) if he is adjudged bankrupt;
- (d) if he is convicted of an offence and sentenced to imprisonment for a term of six months or more without an option of a fine;
- (e) if he is guilty of gross misconduct and is so notified in writing by the Minister;
- (f) if he is absent from three consecutive meetings of the Board, for which he has had notice, without any reasonable excuse.

(4) Any person who—

- (a) is a Member of Parliament;
- (b) is a Minister or Deputy Minister;
- (c) is a holder of a licence under this Act;
- (d) is an employee of a holder of a licence;
- (e) is a director of a company holding a licence under this Act;
- (f) holds five per cent or more shares in a company holding a licence under this Act;
- (g) has, in the last seven years, been convicted of an offence under this Act, or an offence involving fraud or dishonesty by a competent court in Malawi or elsewhere; or
- (h) is in a position where there is a material conflict of interest between the interests of the member as member of the Board and the business interest of that member,

shall be disqualified from being appointed as a member of the Authority.

Allowances
for members

11. The members shall be paid such allowances as the Minister may, from time to time, determine.

Meetings of
the Board

12.—(1) The Chairperson of the Board shall call meetings of the Board at such places and times as the Chairperson may determine.

(2) The Chairperson shall preside over every meeting of the Board but in the absence of the Chairperson from any meeting of the Board, the Vice-Chairperson shall preside over such meeting and in the absence of both the Chairperson and the Vice-Chairperson from any such meeting, the members present shall elect one of their number other than a member of *ex officio* to preside at that meeting.

(3) The person presiding over any meetings of the Board shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(4) A meeting of the Board shall be held at least once in every three months and at such other times and at such places as the Chairperson may determine.

(5) At all meetings of the Board, two thirds of the members shall form a quorum.

(6) A decision of the Board shall be a resolution of the majority of members present at any meeting and, at all meetings of the Board.

(7) The Board may invite, for such a period of time as it thinks fit, any person whose knowledge or advice it may require, and the person invited may take part in the deliberations of the meeting of the Board but shall not be entitled to vote at any such meeting or be counted as a member for the purpose of forming a quorum.

Non-liability
of members

13.—(1) No member shall be personally liable for any act or default of his, or of the Board, done in the exercise, or in the purported exercise, in good faith of the functions of the Board.

(2) The Government, the Minister, the Bureau, a member of committee referred to in section 15, the Director General, or any employee of the Bureau, shall not be liable in respect of anything done under this Act in good faith and without negligence.

Pecuniary
interest of
members

14.—(1) If a member, or his spouse or any company which he or she is a director or major shareholder, or any partner of such member or his spouse, has or acquires any pecuniary interest, directly or indirectly, in any matter in which his private interest conflicts with his duties as a member and which is a subject of consideration by the Board, he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the Board.

(2) A member referred to in subsection (1) shall excuse himself from such a meeting and shall not in any way take part in the consideration of any question before the Board.

(3) For the purposes of this section, the term "major shareholder" means any person who at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per centum of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings or proxy or otherwise.

15.—(1) The Board shall have powers to—

Powers and
functions of
the Board

- (a) acquire and dispose of assets of the Bureau;
- (b) formulate the policy which, subject to the approval of the Minister shall be adopted by it with a view to achieving the objects of the Bureau;
- (c) advise the Minister in regard to any matter within his purview under this Act.

(2) For the purposes of achieving the objects of the Bureau, and in accordance with the provisions of this Act, the Board may do all such things as are conducive to the achievement of the said objects or calculated directly or indirectly to enhance the value of, or render profitable, the property or rights of the Board.

(3) The Board shall, in addition to any other powers and functions conferred by this Act, have the powers and functions set out in the First Schedule.

(4) The Minister may, at any time alter or amend the First Schedule by notice published in the *Gazette*.

(5) The Board may, in addition to the other powers and functions conferred by this Act, at the request of any ministry, Government Department, local authority, other public authority or any statutory corporation or of any body or person, carry out examinations or tests in respect of any particular commodities, or comparative examinations or tests in respect of imported and locally produced commodities or in respect of commodities of different makes or brands, and may furnish reports on any examination or test so carried out subject to such conditions as it may deem fit, including conditions as to the use which may be made of such reports, and conditions prohibiting or restricting the disclosure of any information contained in such reports.

(6) The Board shall cause to be kept proper books of accounts and other books in relation thereto.

Committees
of the Board

16.—(1) The Board may, for the purposes of performing its functions under this Act, establish committees and delegate to any such committee such functions of the Board as the Board may consider expedient.

(2) The chairperson of each committee shall be appointed by the Board from amongst the members of the Board.

(3) Each committee may, in its discretion, invite any person, not being a member of the Board, to attend a meeting of the Committee and take part in deliberations of the meeting but such person shall not be entitled to vote.

(4) The Chairperson of a committee may convene a meeting of the committee of which he is chairperson.

(5) The Chairperson may direct a chairperson of any committee to convene a meeting of such committee and such chairperson of a committee shall, as soon as practicable, comply with such direction.

(6) At all meetings of a committee a quorum shall be formed by a simple majority of members.

(7) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairperson shall have, in addition to a deliberative vote, a casting vote.

(8) Every committee shall have the power to regulate its own procedure.

(9) Every committee shall keep minutes of its meetings and shall inform the Board of its activities.

(10) A member of a committee shall, in respect of expenses incurred by him in traveling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Board such allowances as the Board may, determine.

Delegation

17.—(1) The Board may, subject to such conditions as it may impose—

(a) in writing, delegate to the Chairperson, the Director General or a committee referred to in section 16 any power conferred upon the Board by or under this Act or any other law; or

(b) in writing, authorize the chairperson, the Director General or a committee referred to in section 16, to perform any duty assigned to the Board by or under this Act or any other written law.

(2) The Director General may, subject to such conditions as he may impose—

- (a) delegate a power to an employee; or
- (b) authorize an employee to perform a duty, which has been—
 - (i) delegated or assigned to the Director General under subsection (1), unless the Board has in the delegation or assignment concerned determined otherwise; or
 - (ii) conferred or imposed on the Director General by this Act or any other law.

(3) The Board or the Director General, as the case may be, shall not be divested of any power delegated under subsection (1) or (2), as the case may be, by it or him, and may amend or, withdraw any decision made in the exercise of such delegated power.

PART IV—FINANCIAL PROVISIONS

18.—(1) The funds of the Bureau shall consist of—

Funds of the
Board and its
accounts

- (a) such sums as may be payable to the Bureau from moneys appropriated by Parliament for the purpose;
- (b) such moneys or other assets as may accrue to, or vest in, the Bureau, whether in the course of its functions or powers or otherwise;
- (c) such moneys or other assets as may accrue to, or vest in the Bureau by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from the Government or any other source;
- (d) such sums as are derived from the sale of any property, real or personal, by, or on behalf of, the Bureau;
- (e) revenue obtained by virtue of the provisions of subsection (2); and
- (f) any cess payable under section 20.

(2) Subject to the provisions of this Act, the Bureau may, in respect of any service rendered by it under this Act, charge fees or make such other financial arrangements as it may deem fit.

(3) With the approval of the Minister, the Bureau may establish such reserve funds as it may deem necessary or expedient and put therein such amounts as the Minister may approve.

(4) The Bureau shall utilize its funds for defraying expenses in connection with the performance of its functions.

Cap. 37:02 (5) The Bureau shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provisions of the Public Finance Management Act and the Public Audit Act.
Cap. 37:02

Annual Reports 19.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Board, and shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Board may consider appropriate or as the Minister may direct.

(3) The Minister shall, on receipt of the report referred to in subsection (1), lay the report before the National Assembly and subsequently publish the report.

Quality
development
cess

20.—(1) The Minister may, by order published in the *Gazette*, prescribe cess to be known as “quality development cess” which shall be payable to the Bureau in respect of commodities which the Minister shall specify in the order.

(2) An order made under subsection (1) may—

- (a) provide for cess at different rates on different commodities manufactured in, or imported into Malawi or may exempt any type of such commodities from liability for cess;
- (b) prescribe the manner in which the cess shall be levied, collected and paid to the Bureau; and

(3) The proceeds of the cess paid under this Act shall be used exclusively for the purposes of promoting standardization in commerce and industry.

Audit

21.—(1) The accounts of the Bureau shall be examined and audited annually by financial auditors approved by the Board.

(2) A financial auditor appointed by the Board shall audit the accounts of the Board at the end of each of the Board’s financial years.

(3) The Board shall pay, in respect of any audit held under this Part, such fees, costs and expenses as may be appropriate.

(4) The Financial Auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Bureau which he may deem necessary for the financial audit, summon in writing all such persons having knowledge of the affairs of the Board as he may think proper to appear to be fixed in such summons for examination in connection with any documents or matter relating to the financial audit.

(5) Any person who, without just cause, fails or refuses to produce any document the production of which has been duly required by the financial auditor, or who, having been duly required by the financial auditor, or who, having been so summoned—

(a) without just cause neglects or refuses to comply with the summons; or

(b) having appeared before the auditor, without just cause refuses to be examined; or

(c) without just cause refuses to answer such question pertaining to the audit as are put to him,

commits an offence and shall, on conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) for every such refusal or neglect and in default of payment, be liable to imprisonment for three months:

Provided that any conviction under this section shall not operate or be taken to exempt the person convicted from the liability to do or perform the act, matter or thing required of him.

(6) After completion of the audit of the accounts of the Bureau, the financial auditor shall report thereon in writing to the Board, through the Director General, about the audit generally.

22. The Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee in connection with the business of the Board or Committee.

Reimbursement of expenses of members of the Board

23. The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

Financial year

PART V—STAFF OF THE BUREAU

24.—(1) Subject to the approval of the Minister, the Board shall appoint, on such terms and conditions as it may determine, a person suitably qualified scientifically and technically, as Director General

Director General

of the Bureau, who shall be the secretary of the Board as well as the chief executive officer of the Bureau, and in addition shall perform such duties as the Board shall assign him and ensure the effective administration and implementation of this Act.

(2) The Board shall appoint, on such terms and conditions as it may determine, a person suitably qualified scientifically and technically, as Deputy Director General of the Bureau, who shall be the deputy chief executive officer of the Bureau, and shall perform such duties as shall be conferred on him by the Director General.

(3) Without derogation from the generality of the responsibilities and duties of the Director General conferred by subsection (1), the Director General shall—

(a) organize, carry out and direct the work of the Bureau in accordance with the policy adopted by the Board;

(b) be responsible for the day-to-day administration of the Bureau.

(4) The Director General or such other officer of the Bureau as the Director General may designate, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meetings.

(5) Whenever for any reason the Director General is absent or unable to fulfill his duties, the Board may, appoint some other person suitably qualified, scientifically and technically, to act as Director General during such absence or inability.

(6) Any person appointed as a member of staff of the Board shall perform the duties assigned to him from time to time by the Board.

Appointment
of other staff
and conditions
of service

25.—(1) The Board shall, subject to subsection (3) and on such conditions as it may determine, appoint heads of the Departments of the Bureau whom it deems necessary to assist the Bureau in the performance of its functions.

(2) The Director General shall, subject to subsection (3), and on such conditions as he may determine, appoint other staff members of the Bureau to assist the Board in the performance of its functions.

(3) The Bureau shall pay to its employees such remuneration, allowances, and other benefits as the Board may determine, in accordance with a system approved by the Minister and such system may be revised from time to time.

PART VI—ESTABLISHMENT AND IMPLEMENTATION OF STANDARDS

26.—(1) The Bureau shall, as far as possible, ensure that in the setting or amendment of a standard—

Setting of
Malawi
Standards

- (a) the latest technological development is considered;
- (b) the standard is based on an international standard as far as is practicable; and
- (c) the interests of all parties concerned, including the manufacturer, supplier and consumer, are considered.
- (d) the norm referred to in subsection (1) is maintained;

(2)—(a) the Bureau may—

- (i) set and issue a Malawi Standard;
- (ii) amend a set Malawi Standard; or
- (iii) withdraw a set Malawi Standard.

(b) Subject to subsection 1 (c), a Malawi standard may be set merely by referring to a provision which occurs—

- (i) in any other standard set by the Bureau; or
- (ii) in a document in the nature of a specification code of practice or standard method issued by a foreign or international body having objects similar to any object of the Bureau and which it deems fit to issue as a standard for the purposes of this Act.

(3) No person shall issue a document which creates or may create the impression that it is a Malawi Standard as contemplated in this Act, unless it is issued in accordance with the provisions of this Act.

(4) The Bureau may charge fees—

- (a) in respect of the setting and issuing of a Malawi standard;
- (b) in respect of services rendered in connection with the control over the use or application of codes of practice or any category of codes of practice which have been set and issued as a Malawi standard; and

(c) in regard to the participation in any scheme operated by the Bureau.

27.—(1) The Bureau may, by notice published in the *Gazette*—

Declaration
of Malawi
Standards

(a) declare any standard framed, developed or prepared by it to be a Malawi standard; or

(b) publish any replacement or withdrawal of a declared Malawi Standard.

(2) The Minister may, by order published in the *Gazette*, on the recommendation of the Board, and to promote and maintain standardization and quality of safety, health, consumer protection or the environment—

(a) declare a standard which has been set or issued to be a mandatory standard;

(b) amend a mandatory standard; or

(c) withdraw a mandatory standard.

(3)—(a) Where a Malawi Standard has been declared as a mandatory standard under subsection (2), the Minister may specify a date in the Order after which no person shall manufacture or sell a commodity, use any method or procedure for the manufacture of a commodity, to which the declared standard applies, unless the commodity or the manufacture thereof is in conformity with the relevant standard.

(b) different dates may be fixed under paragraph (a) on which different provisions of a mandatory standard shall come into operation.

(4) Notwithstanding any order made under subsection (3), the Minister may, on the advice of the Board, declare—

(a) that it is temporarily impossible or impracticable for any person, industry or trade to comply with the Order; and

(b) that it is desirable in the public interest that such person, industry or trade should be permitted to manufacture or sell any commodity, method or procedure referred to in the Order, by Notice in the *Gazette*, exempt such person, industry or trade from complying with the Order for any period and subject to such conditions as may be specified in the notice.

Incorporation
of Malawi
Standards
in laws

28.—(1) (a) If a Malawi Standard has been published in the *Gazette*, such Malawi Standard or a provision of such standard may be incorporated in any law by a mere reference to the title and number thereof;

(b) if a Malawi Standard or a provision of such a standard has been incorporated in any law in terms of paragraph (a) that standard or provision may be amended in accordance with section 26.

(2) A ministry, local authority, parastatal or other institution or body responsible for or involved in the administration of Malawi standards shall keep available for free inspection at each of its offices where or from where the administration of that Malawi standard or provision is undertaken, a copy, issued by the Bureau, of the full text of—

(a) the Malawi standard concerned and every amendment thereof; and

(b) every Malawi standard or document referred to in section 26 the whole or a part of which appears in a Malawi standard referred to in paragraph (a) above, and every amendment thereof.

(3)—(a) Criminal prosecution may only be instituted against a person on a charge of having contravened or failed to comply with a provision so incorporated with the consent of the Director of Public Prosecutions.

29.—(1) A person shall not start to manufacture a commodity to which a mandatory standard applies unless he first obtains a permission to do so from the Bureau.

Effect of
declaration as
mandatory
standard and
application of
standardiza-
tion mark

(2)—(a) A person shall not sell a commodity to which a mandatory standard applies, unless—

(i) such a commodity complies with or has been manufactured in accordance with the mandatory standard concerned; and

(ii) where applicable, the standardization mark referred to in section 32 (5) (a) has been applied to the commodity concerned in the prescribed manner as set out in the notice concerned, and such commodity has been marked in accordance with the requirements referred to in section 32;

(b) the provisions of section 32 (2) shall *mutatis mutandis* apply to the application of a standardization mark to a commodity;

(c) The Bureau may issue a sales permit exempting the person to whom it has been issued from provisions of paragraph (a), subject to the provisions of section 32 (3).

(3) A seller, manufacturer or importer, in respect of sales, shall keep records of quantities manufactured or imported, of a commodity to which a mandatory standard applies, for purposes of inspection and verification by the Bureau.

(4) A manufacturer or importer of a commodity to which a mandatory standard applies shall pay to the Bureau the prescribed fees.

(5) An imported commodity to which a mandatory standard applies may be deemed to comply with the provisions of subsection (2) (a) if that commodity has been certified by a person or organization recognized by the Bureau:

Provided that such a commodity shall be tested or examined and if it is found that that commodity does not comply with the provisions of subsection (1) (a) (i), it may be dealt with in terms of section 32 (3).

Non-compliance with mandatory standards

30.—(1) Where the Director General upon reasonable grounds, suspects that a commodity, excluding a commodity referred to in section 29 (5), or a consignment or batch thereof does not comply with or has not been manufactured in accordance with a mandatory standard that applies to it, he may direct a person in whose possession or under whose control that commodity, consignment or batch is, to keep it in his possession or under his control, at or upon premises mentioned in the directive, until the said directive is withdrawn by the Director General in writing.

(2)—(a) If a certificate referred to in section 5 (3) has not been issued in respect of a consignment of a commodity to which a mandatory standard applies and which has been imported into Malawi, the Commissioner General of the Malawi Revenue Authority may, subject to the provisions of paragraph (b), cause that consignment to be secured at the request of the Director General until the Director General withdraws his request.

Cap. 42:01

(b) for the purpose of paragraph (a), the provisions of the Customs and Excise Act with regard to the security goods shall apply *mutatis mutandis*.

(3) If it is found by the Bureau, or as a result of a test or examination referred to in section 29 (2), as the case may be, that a commodity referred to in subsections (1) or (2) does not comply with the mandatory standard concerned, the Director General may order in writing that—

(a) an importer of the consignment concerned of the said commodity return it to the country of origin;

(b) the consignment or batch concerned of the said commodity be confiscated and destroyed; or

(c) the consignment or batch concerned of the said commodity is dealt with in such other manner as may be stated in the order.

PART VII—STANDARDIZATION MARKS

Establishment, alteration of standardization marks, etc.

31.—(1) The Board shall by notice published in the *Gazette*, establish, alter or abolish the following standardization marks—

(a) certification marks;

(b) marks of proof; and

(c) marks of authenticity,

for any of the following purposes—

(i) the application to any commodity which is the subject of an order under section 27 (2); and

(ii) the application to a commodity which is not the subject of an order under section 27 (2) but concerning the manufacture or sale of which the Board has approved a standard.

(2) No mark which is identical with any trade mark registered in respect of any commodity under the Registered Designs Act, Trade Marks Act or the Merchandise Act or so nearly resembles any such mark which is likely to be mistaken for it, shall, under subsection (1), be specified to be a standardization mark in respect of the commodity or any similar commodity or in respect of the manufacture of that commodity or any similar commodity. Cap. 49:05
Cap. 49:01
Cap. 49:04

(3) No mark identical with any standardization mark which has been duly specified to be such which is likely to be mistaken as a trade mark in respect of any commodity shall be registered under the said Registered Designs Act, Trade Marks Act or the said Merchandise Marks Act. Cap. 49:05
Cap. 49:01
Cap. 49:04

(4) Where, after the date specified in the Order published under section 27 (3), a person intends to manufacture any commodity to which that order relates he shall notify the Board, in the prescribed form, of his intention and the Board shall, if it is satisfied that he is capable of manufacturing the commodity in accordance with the relevant Malawi Standard, issue to him a permit to use the standardization mark referred to in subsection (1) (a).

(5) Where any person manufacturers, or intends to manufacture, any commodity in respect of which a standardization mark has been specified under subsection (1) (b), he may notify the Board of his intention to comply with the approved specification and his wish to apply the relevant standardization mark and the Board shall, if it is satisfied that he is capable of manufacturing the commodity in accordance with the relevant approved specification issue to him a permit to use the standardization mark.

(6) A permit issued under this section may be subject to such conditions as may be specified therein and the person to whom it is issued shall pay to the Board such fees as may be prescribed.

(7) No person shall apply a standardization mark specified under subsection (1) to any commodity except under a permit issued by the Board and which complies with the relevant Malawi Standard.

(8) Any person who fails to comply with the provisions of this section commits an offence, and shall, on conviction, in addition to repayment of fees in arrears, be liable to the penalty provided under section 44.

Application of
standardiza-
tion mark

32.—(1) A standardization mark shall only be applied or used in a manner authorized by this Act.

(2) No person shall apply a standardization mark to a commodity except under a mark permit issued under section 33 and unless that commodity complies with or has been manufactured in accordance with the relevant Malawi Standard.

(3) For the purposes of this section a person shall be deemed to have applied a standardization mark to a commodity if he has—

(a) applied that standardization mark to any container or covering of the commodity concerned or to any label attached to the said commodity or to any container or covering thereof;

(b) placed or enclosed the commodity concerned in any container or covering to which that standardization mark has been applied or to which is attached any label to which the said certification mark has been applied; or

(c) in connection with the sale of commodity concerned, directly or indirectly referred to that standardization mark in a manner or under circumstances likely to convey the impression that the said commodity complies with or has been manufactured in accordance with the relevant Malawi Standard.

(4)—(a) If a standardization mark is altered under section 31 (1), the Bureau may authorize the continued use of that standardization mark as it existed prior to the alteration thereof on such conditions, including conditions regarding the withdrawal of the authorization, as it may deem expedient in the particular instance.

(b) a standardization mark referred to in paragraph (a) shall, during the period of the continued use thereof be deemed to be a standardization mark which has not been altered by the Minister.

(5)—(a) The Bureau may—

(i) subject to the conditions it deems necessary, grant permission to a person entitled under a mark permit to apply a standardization mark to a commodity, to apply to the commodity concerned a code mark approved by the Bureau in lieu of that certification mark; and

(ii) for the purpose of the application of a code mark referred to in subparagraph (i), suspend or amend any condition to which the issue of the said mark permit is subject.

(b) the code mark referred to in paragraph (a) (i) shall be deemed to be a standardization mark.

Mark permits

33.—(1) An application for a mark permit shall be made to the Bureau and shall be accompanied by the prescribed fees.

(2) The Bureau may—

(a) issue a mark permit or sales permit for an indefinite period or for a fixed period subject to such conditions as it may deem necessary; or

(b) withdraw or, subject to such conditions as it may deem necessary, suspend a permit referred to in paragraph (a), or terminate the suspension of such permit.

(3) The holder of a permit which has been withdrawn in terms of subsection (2) (b), or which has expired due to effluxion of time or any other cause, shall, at the written request of the Bureau, forthwith return that permit to the Bureau for cancellation or suspension of permit.

34.—(1) Notwithstanding any other measures applicable under this Act, the Board may suspend for a period not exceeding one year or cancel the operation of a permit where it is satisfied that the holder of the permit—

Suspension or
cancellation
of permit

(a) has not complied with any condition specified therein;

(b) has not manufactured any commodity to which the permit relates in conformity with the relevant mandatory Malawi standard; or

(c) has ceased to manufacture the commodity to which the permit relates.

(2) Any person who is dissatisfied with a decision of the Board or a person acting under its authority in regard to—

(a) the refusal of the Board to issue him with a permit;

(b) the issuance of a permit subject to conditions; or

(c) the variation, cancellation or suspension of a permit issued,

may within fourteen days of the date of the decision, appeal to the Minister and the Minister may confirm, set aside or vary the decision of the Board.

35.—(1) Notwithstanding anything to the contrary in this Act contained, any person who—

Samples and
information

(a) manufactures any commodity and is entitled under a mark permit to apply a certification mark to such a commodity;

(b) manufactures or sells any commodity for which or the manufacture of which a mandatory standard is in force;

(c) manufactures or sells any article in respect of which any other standardization mark is in force; or

(d) performs an act or carries out a process in which a commodity referred to in paragraph (a), (b) or (c) is involved, shall, at the written request of the Bureau, within a period stated in the request, at his own cost—

(i) transmit to the Bureau such samples as may be specified in the request, of the article concerned for examination, testing or analysis; or

(ii) furnish to the Bureau such information as may be so specified with regard to the article concerned or its manufacture.

(2)—(a) The Bureau may examine, test or analyze a sample obtained under this section in order to determine whether the article, component, material or substance concerned complies with, or has the characteristics or has been manufactured in accordance with, the requirements of any provision applicable in terms of this Act.

(b) If any sample obtained under this section is damaged or destroyed during the process of examining, testing or analyzing such sample, the Bureau shall not be liable for the damage to or destruction of the same.

(3) The result of any examination, test or analysis of any sample or a commodity to which a mandatory standard is in force, shall, until the contrary is proved, for all purposes be deemed to be valid for the whole consignment or batch from which the sample was obtained.

Limitations
on certain
claims

36.—(1) No person shall in connection with the sale of a commodity refer directly or indirectly to the Bureau in a manner or under circumstances likely to create the impression that such commodity has been approved by the Board, unless such commodity complies with, or has been manufactured in accordance with, a relevant Malawi Standard and certified by the Bureau.

(2) No person shall claim or declare that he or any other person complied with a standard unless—

(a) such claim or declaration is true and accurate in all material respects; and

(b) the identity of that person or the person, on whose authority such claim or declaration is made is clear.

(3) Any person who makes a false claim as per subsection (1) commits an offence, and the Bureau shall be entitled to recover the full costs of the investigation.

(4) Notwithstanding the provisions of subsection (1)—

(a) a trader may advertise or otherwise make known the fact that a standardization mark of the commodity offered by him complies with a particular Malawi Standard in the advertisement or notification concerned;

(b) any person required to make a statement in a contract, tender, quotation or other similar document as to the question whether any commodity offered or supplied by him complies with or has been manufactured in accordance with a particular Malawi Standard, may make such a statement, but only if such statement is correct and he confirms that statement in an affidavit or affirmation; and

(c) any person may advertise or otherwise make known the fact that he has used a commodity to which a standardization mark has been applied in an installation or in a process of manufacture:

Provided that he mentions or displays the trade name or trade mark of that commodity at the same time in the advertisement or notification concerned.

PART VIII—INSPECTORS AND AUDITORS

37.—(1) Subject to section 25, the Board may in general or for a specific purpose— Appointment and powers

(a) appoint a suitably qualified person as an inspector; or

(b) appoint a person, institution or organization as an auditor for the purposes of this Act.

(2) An inspector or auditor shall be furnished with a certificate stating that he has been appointed in general or for a specific purpose as an inspector or auditor, as the case may be, for the purposes of this Act.

(3) The Board may withdraw an appointment made under subsection (1).

38.—(1) An inspector or auditor may, subject to the provisions of his appointment and for the purposes of this Act— Functions

(a) at any time during working hours and without prior notice, enter any premises in or upon which—

(i) there is a commodity in respect of which a mandatory standard, or any other mark is in force;

(ii) a manufacturing process or action in accordance with a provision of a mandatory standard is executed or is suspected to be executed;

(iii) there is or was an article in respect of which the impression has been created that it complies with or has been manufactured in accordance with a mandatory standard while

such article in the opinion of the Bureau does not comply with or has not been manufactured in accordance with such a mandatory standard;

(iv) the records with regard to the manufacture or sale of an article referred to in subparagraph (ii) or (iii) of subsection (2) are kept;

(b) inspect and take samples of any such commodity or any material or substance in or on such premises used or suspected to be intended for use in the manufacture, production, processing or treatment thereof, and open any package or container in or on such premises which contains or is suspected to contain any quantity or any such commodity, material or substance;

(c) inspect any operations carried out in or upon any such premises in connection with the manufacture, production, processing or treatment of any commodity, if there is a mandatory standard for such a commodity;

(d) at any time require any person to produce then and there or at a time and place to be determined by the inspector any book, notice, record, list or other document which is in the possession or custody, or under the control of, that person, or of any other person on his behalf;

(e) examine any such book, notice, record, list or document and make copies of, or take extracts from, any such book, notice, record, list or document which relates to any commodity referred to in paragraph (a), or to any permit issued or to be issued under subsection (2) of this section, and require from any person an explanation of any entries therein and seize any such book, notice, record, list or document which, in his opinion, may afford evidence on any offence under this Act;

(f) in regard to any matter which is being investigated by him, question, either alone or in the presence of any other person, as he thinks fit, every person whom he finds on premises entered, under this section or who, he has reasonable grounds to believe is, or has been, employed on any such premises or is in possession, custody or control of anything referred to in this subsection;

(g) check any relevant document of a manufacturer or importer of a commodity in respect of which a mandatory standard is in force to determine whether that manufacturer or importer has paid the prescribed fees;

(h) order any person referred to in paragraph (d), (e) or (f) to appear before him at a time and place fixed by him, and at such time and place question that person concerning any matter, which is being investigated by him; or

(i) suspend a manufacturing activity if it is deemed with sufficient objective evidence to have a potential to compromise health and safety of a consumer or the environment.

(2) Any person who is in charge of any premises referred to in subsection (1) shall, at all times, furnish such facilities as are required by an inspector or auditor for the purpose of exercising his powers under the said subsection.

(3) Any inspector or auditor exercising any power conferred upon him by this section shall on demand, produce the certificate furnished to him in accordance with subsection (1) of this section.

(4) An inspector or auditor exercising powers assigned to him by this section shall, in addition, exercise the powers conferred upon him in the Second Schedule.

(5) The Minister may at any time alter or amend the Second Schedule by notice published in the *Gazette*.

PART IX—DANGEROUS OR DEFECTIVE COMMODITIES

39.—(1) The Director General, may by order under his hand, prohibit, or impose conditions for the supply of a commodity of any specified kind or description, if the Director General considers that the commodity is so defective that, in the interest of public safety, supply of the commodity should be prohibited or restricted immediately.

Order prohibiting or restricting supply of defective commodities

(2) An order under this section by the Director General shall take effect when written notice of the order is given to the supplier.

(3) An order made under this section shall remain in force until revoked.

(4) A person who supplies a commodity in contravention of an order made under this section commits an offence.

40.—(1) If a commodity is supplied to a person in contravention of an order under this Part, the person may recover from the supplier as a debt any money paid for the commodity, whether or not the supplier has been convicted of an offence in respect of its supply.

Remedy for supply of commodity in contravention of order

(2) If judgment is given for the plaintiff in an action under this Part, the judgment may, if the court so directs, be satisfied by repair or modification of the commodity in such a manner that—

(a) the contravention relied on by the plaintiff would not have occurred if the commodity had been supplied as repaired or modified; or

(b) the repaired or modified commodity is accepted by the plaintiff on or before a day specified in the direction.

Order for
recall of
defective
commodities

41.—(1) The Director General may by order under his hand, require a supplier of any defective commodity to do any one or more of the following—

(a) recall the commodity, and all others of the same type that were supplied by him, in the manner, and within the period, specified in the order;

(b) disclose to the public, or to a class of persons specified in the order, in the manner and within the period so specified—

(i) the nature of any defect in any commodities identified in the order;

(ii) the circumstances in which the use of any such commodities is dangerous; and

(iii) procedures for disposing of any such commodities;

(c) notify the public, or a class of persons specified in the order, in the manner and within the period specified in the order, that the supplier undertakes to repair the defective commodity within the period specified in the order.

(2) If a supplier undertakes to replace a commodity, the supplier shall cause the commodity to be repaired so that—

(a) any defect in the commodity identified in the order is remedied; and

(b) if there is a mandatory standard for commodities of that kind, the commodity complies with the mandatory standard.

(3) If a supplier undertakes to replace a commodity, the supplier shall replace the commodity with a like commodity which—

(a) does not contain any defect in the commodity that was identified in the order; and

(b) complies with any compulsory standard for commodities of that kind.

(4) If a supplier undertakes to repair a commodity or replace a commodity, the cost of the repair or replacement, including any necessary transportation costs, shall be borne by the supplier.

(5) While an order made under this section is in force, a supplier of a commodity to which the order relates—

(a) who fails to comply with a requirement, a direction, or any provision in the order;

(b) where the order identifies a defect in the commodity, supplies a commodity of the kind to which the order relates and which contains that defect;

(c) in a case other than a case referred to in paragraph (b), supplies a commodity of the kind to which the order relates;

(d) who fails to carry out an undertaking notified by the supplier under this section; or

(e) who having given such an undertaking to repair or replace a commodity, fails to comply with this section in relation to the action undertaken,

commits an offence and shall, on conviction, be liable to a fine or to imprisonment as provided for in section 44.

42.—(1) A supplier who, of his own volition, takes action to recall any commodity shall give to the Director General a notice in writing, not later than two days after that action is taken and the notice shall—

Voluntary

(a) state that the commodity is subject to recall;

(b) if the commodity has a defect, state the nature of the defect; and

(c) if the commodity does not comply with a Malawi Standard for the commodity, stating the nature of the non-compliance.

(2) A supplier who fails to comply with this section commits an offence and on conviction shall be liable to a fine as provided for in section 44.

43.—(1) The liability of an insurer under a contract of insurance with any person, being a contract relating to the recall of commodities supplied, proposed to be supplied by him or to his liability with respect to possible defects in any such commodities, shall not be affected only because he gives to the Minister, or to the Bureau or the Director General or any officer of the Bureau, any information relating to any commodity supplied or proposed to be supplied by him.

Certain actions not to affect insurance or contracts

(2) A contract of insurance shall be void and of no effect to the extent that it contains any provision that would defeat the operation of this section.

PART X—OFFENCES AND PENALTIES

44.—(1) Any person who—

Offences and penalties

(a) contravenes or fails to comply with any provision of this Act, or any directive, regulation, order, condition, requirement or request made there under;

- (b) refuses or fails to pay any money levied under this Act;
 - (c) falsely represents any material or substance to be reference material supplied by the Bureau;
 - (d) falsely holds himself out to be an inspector, or to be an auditor for the purposes of this Act;
 - (e) makes any statement to an inspector or auditor which is false in any material respect, knowing it to be false;
 - (f) refuses or fails to answer to the best of his knowledge any relevant question which an inspector or auditor has in the exercise of his powers put to him;
 - (g) refuses or fails to comply to the best of his ability with any lawful requirements, demand or order of an inspector or auditor; or
 - (h) hinders or obstructs an inspector or auditor in the exercise of his powers,
- commits an offence.

(2) Any person who is convicted of an offence in terms of this section shall—

(a) in the case of a first conviction for any offence under this Act other than offences listed in section 21 (5), be liable to a fine of five hundred thousand Kwacha (K500,000), and to imprisonment for three years;

(b) in the case of a first conviction for an offence referred to in section 31 (8) or section 39 (4), be liable to a fine of one million Kwacha (K1,000,000) and to imprisonment for five years; and

(c) in the case of a second or subsequent conviction, to imprisonment for six years.

(3) Any person who contravenes any other provision of this Act commits an offence and shall, on conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for six months.

(4) A court which convicts any person of an offence under this Act may, in addition to any penalty imposed in respect of that offence—

(a) and subject to the provisions of subsection (4), order that a commodity, a consignment or batch of a commodity, any other article, or any material or substance in respect of which that offence was committed, be forfeited; and

(b) summarily enquire into, and assess, the monetary value gained or likely to be gained by such person in consequence of that offence and impose on that person a fine to a maximum equal to the amount so assessed and, in default of payment of such fine to imprisonment for twelve months.

(5) The court shall generally, or in a particular case, determine the manner in which the forfeited goods referred to in subsection (4) (a) shall be dealt with.

PART XI—GENERAL

45.—(1) No person, association or company other than the Bureau, shall, except with the written consent of the Minister, carry on its activities under a name which contains any combination of the words “Malawi Bureau of Standards”, or “Malawi Standards”;

Restriction
on use of
certain words

(2) No association or company shall be registered under the name “Malawi Bureau of Standards” or “Malawi Standards”, or have a combination of those words in its name.

(3) No individual shall carry on any business, trade or occupation under any such name not being his own.

(4) No trade mark which contains the name “Malawi Bureau of Standard” or “Malawi Standard” shall be registered under the Registered Designs Act, the Trade Marks Act or the Merchandise Marks Act.

Cap. 49:05
Cap. 49:05
Cap. 49:05

(5) No person shall, except under a permit issued under subsections (3) and (4) of section 39, sell any commodity under a mark which contains the word “Malawi Bureau of Standards” or “Malawi Standard” or under a description in which the said word is used in a manner which may create the impression that the commodity or the manufacture, production, processing or treatment thereof complies with the standard.

(6) An association, company or individual who, immediately prior to the commencement of this Act, lawfully carries on any activity, business, trade or occupation or is registered under any name contemplated in subsection (1), may continue to carry on that activity, business, trade or occupation.

(7) The provisions of subsection (1) shall not affect any trademark registered at the commencement of this Act and the sale of any commodity under any such trade mark.

(8) The Minister may at any time withdraw any consent given by him under subsection (1) if, in his opinion, it is necessary to do so in order to avoid confusion or abuse.

46. If it is necessary for the purposes of this Act to determine an importer of a commodity, it shall be presumed, unless the contrary is proved, that the person indicated on the documents concerning the import transaction is the importer of that commodity.

Presumption

Certain acts
not to be
interpreted as
assurances or
guarantees

47. The fact that anything has been done under this Act by the Minister, the Bureau, the Board, a member of a committee of the Board, the Director General or an employee of the Bureau, in connection with any article, material, substance, act or matter, shall not be interpreted as an assurance or guarantee of any nature in respect of that article, material of a substance, act or matter.

Confidentiality

48.—(1) Any person who is or was concerned in the performance of any function under this Act, shall not disclose any information which he obtained in the performance of such a function except—

(a) to the Minister;

(b) to any person who, of necessity, requires such information for the performance of his functions under this Act;

(c) if he is a person who, of necessity, requires that he supplies such information in the performance of his functions under this Act;

(d) such information is required under any written law or as evidence in any court of law;

(e) to any competent authority which requires such information for the institution, or an investigation with a view to the institution of any criminal prosecution; or

(f) by or on the authority of the Minister, the Chairperson of the Board or the Director General.

(2) Notwithstanding the provisions of subsection (1), the disclosure of any information in connection with an invention shall not prejudice the rights of the Bureau or any other person to obtain a patent in respect of such an invention.

Inventions by
staff members
and other
persons

49.—(1) (a) If any invention is made—

(i) by an employee in the course of or in connection with the performance of his duties;

(ii) by a person while following a course of study with the assistance, whether financial or otherwise, of the Bureau; or

(iii) by a person assisting the Bureau with any investigation of research,

the rights in respect of that invention shall vest in the Bureau unless the Bureau and the employee or person concerned have entered into a written agreement that the rights of the invention vest in the employee or person concerned or in that employee or person and the Bureau jointly.

(b) In the absence of an agreement referred to in paragraph (a), the Bureau shall be deemed to be the sole inventor.

(2) If the rights in respect of an invention vest solely in the Bureau, the Bureau may make such invention available for use in the public interest, subject to such conditions as the Board may determine.

(3) The Bureau may pay to an employee or person referred to in subsection (1) (a) money or royalties or, with the approval of the Board provide for financial participating by such employee or person in the proceeds obtained as a result of the use of an invention referred to in subsection (1).

(4) The Bureau may apply for a patent in respect of an invention referred to in subsection (1) if an agreement under that subsection has not been entered into, and shall for the purpose of the Patents Act, regarded as the cessionary of the invention concerned. Cap. 49:02

50.—(1) The Bureau may levy interest in respect of money payable to it but which has not yet been paid from a date on which such money became payable, except in respect of money payable by the Government. Levying of interest

(2) The rate at which interest referred to in subsection (1) shall be calculated, shall be the rate which is determined from time to time in terms of applicable commercial bank market rates and which is applicable on the date on which the money referred to in subsection (1) is paid.

51.—(1) The Director General may, notwithstanding the provision of section 48, if he is of the opinion that it is necessary in the public interest and to protect the consumer, reveal in any manner— Disclosure of certain information to protect consumer

(a) any information which in his opinion is necessary to prevent the public from being misinformed regarding any aspect regulated by this Act;

(b) the fact that the use of an article is dangerous to the consumer; or

(c) the name or a person who in his opinion does not comply with or does not comply fully with a provision of this Act or any aspect regulated by this Act.

(2) The disclosure referred to in subsection (1) may include the trade name and trade mark of a commodity.

52.—(1) No employer shall dismiss any person employed by him or reduce the rate of remuneration of that person or otherwise alter the conditions less favourable to him or alter his position to his disadvantage relative to other persons employed by that employer by reason only that the employer believes or suspects, whether or Prohibition of victimization

not the belief or suspicion is justified or correct, that the person concerned has given any information which could be required under this Act to give to an inspector or has complied with any lawful requirement of an inspector or has given evidence in any proceeding under this Act.

(2) Any employer who contravenes subsection (1) commits an offence, and upon conviction the court may, in addition to any sentence which it imposes, order the employer—

(a) to restore the employee to position and condition of employment he enjoyed immediately before the event and which gave rise to the conviction and to pay to him such remuneration as he would otherwise have received since the occurrence of the event; or

Cap. 41:01

(b) subject to the Taxation Act, to pay the employee a sum equal to his annual salary payable at the time of the occurrence of such event.

(3) An order made under subsection (2) (b) may be enforced as if it were a judgment of a civil court in favour of the employee concerned.

Conflicting standards

53. Where there is a conflict between the provisions of a declared Malawi Standard under section 26 and a specification made or declared under any other written law, the Malawi Standard shall prevail.

Regulations

54.—(1) The Minister may, in consultations with the Board, make regulations generally for the better carrying into effect the provisions of this Act.

(2) Regulations, which differ in aspects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection (1) in respect of different areas in Malawi, or different commodities.

Cap. 1:01

(3) Any person who contravenes or fails to comply with the provisions of any regulation made under subsection (1) commits an offence and upon conviction shall, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, be liable to a fine of two hundred and fifty thousand Kwacha (K250,000) and to imprisonment for twelve months and, in the case of second or subsequent conviction, a fine of five hundred thousand Kwacha (K500,000), and to imprisonment for two years.

Relationship between this Act and other written laws

55. Except where otherwise expressly provided, this Act shall be in addition to, and not in substitution for or diminution of, any other written law.

56.—(1) Subject to subsection (2), the Malawi Bureau of Standards Act is hereby repealed.

Repeal and
savings
Cap. 51:02

(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 shall be deemed to be subsidiary legislation made under this Act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART XII—TRANSITIONAL PROVISIONS

57.—(1) Property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Board established under the Act repealed by section 56 shall, on commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Board and shall become enforceable by or against the Board to the same extent as they were enforceable by or against the former Board.

Transfer of
assets, funds,
liabilities, etc.

(2) Where the transfer of any property transferred to or vested in the Board under subsection (1) is required by any written law to be registered, the Board shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Board or any person by way of registration fees, stamp or other duties—

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Board a certificate of title or other statutory evidence or ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsement on such deeds or other documents as may be presented on such registering authority relating to the title, right or obligation concerned.

58.—(1) All appointments of members of the Board and staff of the former Board, made prior to the commencement of this Act and subsisting at that date shall be deemed to have been made in accordance with this Act.

Transfer of
employees

(2) Any person who immediately prior to the commencement of this Act is employed by the former Board, shall be deemed to have been transferred to the employment of the Board under his former terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the time he was appointed by the former Board.

FIRST SCHEDULE

s. 15

ADDITIONAL POWERS AND FUNCTIONS OF THE BOARD

1 The powers and functions of the Board shall include—

(a) to appoint, subject to paragraph 2 and on such conditions as it may determine, the employees of the Bureau whom it deems necessary to assist the MBS in the performance of its functions;

(b) to make provisions for the salaries, wages, conditions of service and other benefits of the Director General and other staff of the Board in accordance with a system approved by the Minister, with the concurrence of the Minister responsible for statutory corporations, as such system is amended from time to time;

(c) where applicable, to purchase, take on lease or in exchange or otherwise acquire dwelling houses for persons in its employ;

(d) where applicable, to purchase land and construct thereon dwelling houses for persons in its employ;

(e) to provide collateral security, including guarantees, to a registered finance institution in respect of a loan granted to an employee of the Bureau by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes;

(f) subject to the Public Finance and Management Act, to raise moneys by way of loan or bank overdraft;

(g) to manage, insure, purchase, take on lease or in exchange, hire or otherwise acquire any real or personal, movable or immovable property, and any rights or privileges in or over any such property, which it considers necessary for the purpose of performing its functions;

(h) to construct, maintain, alter and improve any buildings, works, machinery and plant necessary or expedient for the purpose of performing its functions;

(i) to work or otherwise beneficially use, or to exchange, let, sell or mortgage any property, rights or privileges acquired or constructed;

(j) to invest and deal with any of its moneys not immediately required in such securities and in such manner as it may think fit and to vary or realize such investments;

(k) to invite or receive donations from any person towards its expenses and to award bursaries and to make grants towards research or to any other such project as it deems conducive to the promotion of the objects of the MBS;

(l) to enter into an agreement to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employers;

(m) for the better performance of its functions, to cooperate with Ministries, Government Departments, universities, technical colleges, persons engaged in research, Chambers of Commerce, manufacturers, exporters, producers and such other associations, organizations or persons as may desire to avail themselves of its facilities inside and outside Malawi;

(n) to do all things incidental or conducive to the performance of its functions under this Act.

SECOND SCHEDULE

s. 38

ADDITIONAL POWERS OF INSPECTORS AND AUDITORS

1.—(1) An inspector shall, for the purpose of the execution of his duties under this Act, have power to do the following things, that is to say, to take with him a police officer if he has reasonable cause to believe that he will meet any serious obstruction in the execution of his duty.

Powers of
inspectors

(2) If any person willfully delays an inspector in the exercise of any power under this Act, or fails to comply with the requisition of an inspector in pursuance of this Act or to produce any register, certificate, notice or documents which he is required by or in pursuance of this Act to produce, or willfully withholds or sell a commodity, or method or procedure for the manufacture of a commodity, to which declared Malawi Standard applies, or conceals or prevents, or attempts to conceal or prevent, a person from appearing before or being interviewed by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act.

2.—(1) If an inspector is of the opinion that a person—

(a) is contravening any of the provisions of this Act or regulations made thereunder; or

Improvement
and
prohibition
notices

(c) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, he may serve on him a notice (in this Schedule referred to as "an improvement notice") stating that he is of that opinion, specifying the provision or provisions in respect of which he is of that opinion, giving particulars of the reasons why he is of that opinion and requiring that person to remedy the occasioning within such period within which an appeal against the notice can be brought under paragraph (8) below as may be specified in the notice.

(2) This clause applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which this Act or the regulations made thereunder apply or will, if the activities are so carried on, apply.

(3) If as regards any activity to which this clause applies an inspector is of the opinion that, as carried on or about to be carried on by or under the control of the person in question the activity involves or, as the case may be will involve a risk or serious personal injury, the inspector may serve on that person a notice (in this part referred to as "a prohibition notice").

(4) A prohibition notice shall—

(a) state the opinion of the inspector;

(b) specify the matters which, in his opinion, give or as the case may be, will give rise to the said risk;

(c) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any provision of this Act or the regulations made thereunder, state that he is of that opinion, specify the provision or provisions in respect of which he is of that opinion and give particulars of the reasons why he is of that opinion; and

(d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of subparagraph (b) of this clause and any associated contravention of provisions so specified in pursuance of subparagraph (c) have been remedied.

(5) A direction given under paragraph (3) (d) of this clause shall take immediate effect if the inspector is of the opinion, and states it, that the risk of safety, health or environment as related to the commodity, is or, as the case may be, will be imminent, and shall have effect to the end of a period specified in the notice in any other case.

(6) A notice may contain directions as to the measures to be taken to remedy any contravention or matter which the notice relates and any such directions—

(a) may be framed to any extent by reference to any standard approved by the Board; and

(b) may be framed so as to give the person on whom the notice is served a choice regarding ways of remedying the contravention or matter.

(7) Where an improvement notice or prohibiting notice which is to take immediate effect has been served—

(a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of paragraph (5), if the risk to safety, health or environment has been remedied; or

(b) the period so specified may be extended by an inspector at any time when an appeal against the notice is not pending.

(8) A person on whom a notice is served may, within fourteen days from the date of its service, appeal to the Minister and on such appeal the Minister may either cancel or affirm the notice and, in affirmation the Board, may do so either in the notice's original form or with such modification as the Minister may, in the circumstances deem fit.

(9) Where an appeal under this clause is brought against a notice within the period allowed under paragraph (8) then—

(a) in the case of an improvement notice, the lodging of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; or

(b) in the case of a prohibition notice, the lodging of the appeal shall have the like effect if, but only if, on the application of the appellant, the Board so directs; and then only from the giving of the direction.

Passed in Parliament this twenty-eighth day of June, two thousand and twelve.

H. H. NJOLOMOLE
for: Clerk of Parliament