

[Chap6101]CHAPTER 61:01

MINES AND MINERALS

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1 of 1981

2 of 1983

G.N. 31/1981

An Act to make provision with respect to searching for and mining minerals, to repeal the Mining Act and certain other Acts and to provide for matters connected therewith and incidental thereto

[1ST JUNE 1981]

PART I

PRELIMINARY

[Ch6101s1]1. Short title

This Act may be cited as the Mines and Minerals Act.

[Ch6101s2]2. Vesting of minerals, etc.

(1) The entire property in, and control over, minerals in land in Malawi are vested in the President on behalf of the people of Malawi; but without prejudice to the exercise of any right under or pursuant to this Act.

(2) Nothing in subsection (1) shall operate so as to affect any interest of a person in earth, clay, granite, limestone, marble, sand, stone or other similar substance upon or in land, being an interest created by virtue of any Certificate of Claim or ownership of land or other disposition made by or on behalf of the British Crown.

(3) Subject to sections 115 and 116, no person shall carry on in Malawi reconnaissance, prospecting or mining operations, except under and in accordance with a Mineral Right, a non-exclusive prospecting licence, a claim or a mineral permit.

(4) Any person who contravenes subsection (3) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

[Ch6101s3]3. Interpretation

2 of 1983(1) In this Act, unless the context otherwise requires—

“authorized officer”, in relation to any provision of this Act, means a person designated as such under section 6 (2) for the purposes of that provision;

“body corporate” means a company or a corporation;

“building and industrial minerals” means basalt, clay, dolomite, granite, gravel, gypsum, laterite, limestone, marble, sand, sandstone, or salt, used for agricultural, building, roadmaking or industrial purposes in Malawi, and includes such other minerals as may be prescribed;

“claim” means a claim registered under Part IV;

“claim area” means an area of land subject to a claim;

“Commissioner” means the Commissioner for Mines and Minerals appointed pursuant to section 5;

“company” means a corporate body incorporated under the Companies Act; Cap. 46:03

“conditions” includes terms, limitations and stipulations;

“conserve” means, in relation to natural resources, to protect, improve and use natural resources in accordance with principles that will ensure the highest sustainable benefit in terms of economic, social, cultural and aesthetic values;

“corporation” means a corporate body incorporated in or outside Malawi, whether by Act or otherwise, but does not include a company;

“customary land” has the meaning assigned by the Land Act: Cap. 57:01

“drilling” means the perforation of the earth’s surface otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled with extraneous matter (including water);

“exclusive prospecting licence” means a licence granted under section 26;

“holder” means—

(a) in relation to a Mineral Right, the person whose name is for the time being recorded pursuant to section 58 or 60 as being the holder of the Mineral Right; or

(b) in relation to a claim, the person whose name is for the time being registered pursuant to section 76;

“in default” means in breach of any provision of this Act or of any condition of a Mineral Right, a non-exclusive prospecting licence or a claim;

“land” includes land beneath water;

“lawful occupier”, in relation to any customary land, includes such persons, or such class of persons, as may be prescribed;

“mine”, when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground, for the purpose of winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

“mine”, when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary for or incidental to mining operations;

“mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but does not include—

(a) water, not being water taken from a borehole, well, excavation or natural saltpan for the extraction therefrom of a substance in solution therein and of commercial value; or

(b) soil, not being soil taken from the earth for the extraction therefrom of a substance of commercial value contained therein or for the manufacture therefrom of a product of commercial value; or

(c) petroleum as defined in section 3 of the Petroleum (Exploration and Production) Act; Cap. 61:02

“mineral permit” means a permit issued under section 81;

“Mineral Right” means a reconnaissance licence, an exclusive prospecting licence or a mining licence;

“mining area” means an area of land subject to a mining licence;

“mining licence” means a licence granted under section 38;

“mining operation” means operations carried out in the course of mining;

“monument” has the meaning assigned by the Monuments Act; Cap. 29:01

“non-exclusive prospecting licence” means a licence issued under section 73;

“private land” has the meaning assigned by the Land Act; Cap. 57:01

“prospect” means intentionally to search for minerals and includes the determination of their extent and economic value;

“prospecting area” means the area of land subject to an exclusive prospecting licence;

“prospecting operations” means operations carried out in the course of prospecting;

“public land” has the meaning assigned by the Land Act; Cap. 57:01

“radioactive mineral” means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or any combination thereof, and includes—

- (a) monazite sand and other ore containing thorium; and
- (b) carnotite, pitchblende and other ore containing uranium;

“reconnaissance area” means an area of land subject to a reconnaissance licence;

“reconnaissance licence” means a licence granted under section 17;

“reconnaissance operations” means the search for minerals by geophysical surveys, geochemical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith;

“Register” means the Register referred to in section 58;

“the Regulations” means regulations made under section 128;

“relic” has the meaning assigned by the Monuments Act; Cap. 29:01

“salt” means—

- (a) sodium chloride or sodium carbonate, occurring naturally, whether individually or as a mixture;
- (b) any naturally occurring salt or mixture of salts, soluble in water, which may be prescribed;

“this Act” includes the Regulations;

“working for profit” means producing a mineral for use or sale.

(2) In this Act, a reference to minerals in any land includes a reference to minerals on or under the land.

(3) In this Act—

(a) a reference to the conditions of a Mineral Right is a reference to the conditions on which the Mineral Right is granted, as from time to time varied; and

(b) a reference to the conditions of a claim is a reference to the conditions on which the claim is, for the time being, registered.

(4) In this Act, a reference to a programme of reconnaissance operations, prospecting operations, or mining operations, in relation to the holder of a Mineral Right, is a reference to operations of that kind which the holder is, from time to time, required to carry on.

[Ch6101s4]4. Service of documents

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—

(a) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business or at the address kept pursuant to section 66;

(b) in the case of the Minister or the Commissioner, in the manner prescribed;

(c) in the case of a body corporate—

(i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;

(ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or

(iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.

(2) For the purposes of subsection (1) (c), the principal office of a body corporate incorporated outside Malawi is its principal office within Malawi or the address kept pursuant to section 66.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

PART II

ADMINISTRATION

[Ch6101s5]5. Commissioner for Mines and Minerals

The Minister may appoint a person to be the Commissioner for Mines and Minerals, and such other persons to be officers as he may consider necessary for the administration of this Act.

[Ch6101s6]6. Performance of Commissioner's functions, etc.

(1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any public officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.

(2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act or any provision of this Act.

[Ch6101s7]7. Prohibition against disclosure of information

(1) Subject to subsection (2), no information furnished, or information in a report submitted, pursuant to section 66 by the holder of a Mineral Right, shall, for as long as the Mineral Right has effect, be disclosed, except with the consent of the holder of the Mineral Right.

(2) Nothing in subsection (1) operates to prevent the disclosure of information where the disclosure is made—

- (a) for or in connexion with the administration of this Act;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Act;
- (d) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

[Ch6101s8]8. Officers holding certain shares to notify Minister

(1) In this section, "officer" means a public officer for the time being engaged in the administration of this Act.

(2) Where an officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a Mineral Right, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.

(3) For the purposes of this section, the holding by the wife or husband (not herself or himself being an officer) of an officer of any shares of the kind referred to in subsection (2), is deemed to be a holding by the officer of the shares.

(4) This section applies with respect to shares whether acquired before or after the commencement of this Act, or whether acquired by a person before he became an officer.

[Ch6101s9]9. Indemnity

2 of 1983A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

PART III

MINERAL RIGHTS

Division 1—General

[Ch6101s10]10. Agreements with respect to the grant of Mineral Rights

The Minister, on behalf of the Republic, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—

- (a) the grant to that person, or to any person (including anybody corporate to be formed) identified in the agreement, of a Mineral Right on the conditions (if any) specified in the agreement;
 - (b) conditions or the conditions to be included in the Mineral Right as granted or renewed;
- or
- (c) any matter incidental to or connected with the foregoing.

[Ch6101s11]11. Applications

(1) An application under this Part—

- (a) shall be made to the Minister, or, if so prescribed, to the Commissioner;
- (b) shall be in or to the effect of a form approved by the Minister;
- (c) shall be accompanied by the prescribed fee; and
- (d) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.

(2) Any application under this Part required to be made to the Minister shall be made to him through the Commissioner.

(3) The Minister may, by notice served on an applicant for the grant or renewal of a Mineral Right, or for the enlargement of a prospecting area or a mining area under section 68, direct the applicant to publish details of his application at a time or times and in the manner specified in the notice, or give details of his application to such persons and in a manner specified in the notice.

[Ch6101s12]12. Power of Minister to obtain information concerning applications, etc.

(1) The Minister may, by notice served on an applicant for the grant of a Mineral Right, require the applicant to furnish him, within such reasonable, time as is specified in the notice,—

(a) with such further information relevant to the application as may be described in the notice; and

(b) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in the direction of the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual or individuals resident outside Malawi.

(2) To enable him to dispose of an application for the grant of a Mineral Right, the Minister—

(a) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and

(b) may, by notice served on the applicant for the grant of the Mineral Right, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

[Ch6101s13]13. Restriction on persons to whom Mineral Right may be granted

No Mineral Right—

(a) shall be granted to an individual unless he is a citizen of Malawi or has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a Mineral Right is made;

(b) being a reconnaissance licence or an exclusive prospecting licence, shall be granted to a body corporate unless the body corporate is—

(i) a company;

(ii) a corporation incorporated in Malawi; or

(iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or

(c) being a mining licence, shall be granted to a body corporate unless the body corporate is—

(i) a company; or

(ii) a corporation incorporated in Malawi.

[Ch6101s14]14. Form of Mineral Right

A Mineral Right shall be in accordance with such form as the Minister approves.

[Ch6101s15]15. Restriction on exercise of rights by holder of Mineral Right

Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a Mineral Right to do the Act—

(a) otherwise than in accordance with the written law; and

(b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

Division 2—Reconnaissance Licences

[Ch6101s16]16. Application for reconnaissance licence

An application for the grant of a reconnaissance licence—

(a) shall give in respect of the person or, if there is more than one person, of each person making the application—

(i) in the case of an individual, his full name and nationality; or

(ii) in the case of a body corporate, its name and place of incorporation, the names and nationality of the directors or equivalent officers and, if the body corporate has a share capital, the name of any person who is the beneficial owner of more than five per cent of the issued share capital;

(b) shall be accompanied by a plan of the area over which the licence is sought, drawn in such manner and showing such particulars as the Minister may require;

(c) shall identify the minerals in respect of which the licence is sought;

(d) shall be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence;

(e) shall give or be accompanied by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the area of land over which the licence is sought, an estimate of the cost of carrying out the programme and of the period required for completion of the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment or on any monument or relic in the area over which the licence is sought; and

(f) may set out any other matter which the applicant wishes the Minister to consider.

[Ch6101s17]17. Disposal of application for reconnaissance licence

(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a reconnaissance licence over any area of land.

(2) The area of land over which a reconnaissance licence is granted shall be of such shape, orientation and dimensions, as may be prescribed in, or as may be determined in accordance with, the Regulations.

[Ch6101s18]18. Restriction on grant of reconnaissance licence

(1) No reconnaissance licence shall be granted over an area of land in, or which constitutes,—

(a) a prospecting area if a person, other than the person to whom the reconnaissance licence would be granted, is the holder of an exclusive prospecting licence over the area in respect of a mineral of which the reconnaissance licence would relate;

(b) a mining area; or

(c) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (4), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area, no other reconnaissance licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which that exclusive right relates.

(3) Where it is necessary to fly over any land for the purpose of the exercise of any right under section 23, nothing in this section operates to prevent any such flight from being undertaken.

[Ch6101s19]19. Notice of decision on application for reconnaissance licence

(1) The Minister shall give notice to an applicant for the grant of a reconnaissance licence of his decision on the application and, if he is prepared to grant the licence, he shall give in the notice details of the proposed licence.

(2) If an applicant, within sixty days after he is given notice pursuant to subsection (1) that the Minister is prepared to grant a reconnaissance licence, fails to give notice to the Minister of his willingness to accept the proposed licence, his application lapses.

[Ch6101s20]20. Contents of reconnaissance licence

(1) A reconnaissance licence shall—

- (a) state the date of the grant of the licence and the period for which it is granted;
- (b) include a description and, if the Minister so directs, a plan of the area of land over which it is granted;
- (c) state the conditions on which it is granted; and
- (d) identify any mineral to which the licence relates.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a reconnaissance licence either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the reconnaissance area, the holder of the licence will, during a specified period, carry out the programme of reconnaissance operations and expend the amounts specified in the licence; or

(b) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of reconnaissance operations and the expenditure of amounts in, or in relation to, the reconnaissance area during that period.

(3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on reconnaissance operations, he may specify in a reconnaissance licence a period (not exceeding three months) as the preparation period.

(4) A reconnaissance licence may, in respect of any mineral to which the licence relates, confer on the holder of the licence the exclusive right to carry on reconnaissance operations in the reconnaissance area.

[Ch6101s21]21. Term of reconnaissance licence

(1) The term of a reconnaissance licence is the period for which the licence is granted, not exceeding twelve months, stated in the licence, and any preparation period specified in the licence pursuant to section 20 (3).

(2) The term of a reconnaissance licence commences on and includes the date on which the licence is granted, as stated in the licence.

[Ch6101s22]22. Miscellaneous provisions concerning reconnaissance licences

(1) Subject to this section, where the holder of a reconnaissance licence applies for the grant of an exclusive prospecting licence over an area of land in the reconnaissance area and the application has not been finally dealt with before the date on which the reconnaissance licence would, but for this subsection, cease to have effect, the reconnaissance licence continues to have effect over the area of land until—

(a) notice is given to the applicant pursuant to section 28 of the refusal to grant the exclusive prospecting licence; or

(b) as the case may be, the date of the grant of the exclusive prospecting licence, as stated in the exclusive prospecting licence.

(2) Where an exclusive prospecting licence is granted to the holder of a reconnaissance licence, the land subject to that exclusive prospecting licence ceases to be subject to that reconnaissance licence, but no other reconnaissance licence is affected by the grant of that exclusive prospecting licence.

(3) Where an area of land becomes a mining area, it ceases to be subject to any reconnaissance licence to which it was subject immediately before becoming a mining area.

(4) Subsection (1) shall not have effect—

(a) to prevent the cancellation under this Act of a reconnaissance licence; or

(b) if an application for the grant of an exclusive prospecting licence is withdrawn.

[Ch6101s23]23. Rights of holder of reconnaissance licence

(1) Subject to this Act and the conditions of the licence, a reconnaissance licence, while it has effect, confers on the holder of the licence the right to carry on reconnaissance operations in or over the reconnaissance area, and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of employees or agents, enter the reconnaissance area, and erect camps and temporary buildings, or erect installations in any waters forming part of the reconnaissance area.

(2) The holder of a reconnaissance licence shall not engage in drilling, excavation or other subsurface techniques, except where and to the extent he is authorized by his licence to use any of those techniques.

[Ch6101s24]24. Duties of holder of reconnaissance licence

(1) The holder of a reconnaissance licence—

(a) shall, subject to subsection (2), carry on reconnaissance operations in accordance with his programme of reconnaissance operations;

(b) shall, subject to subsection (2), expend in, or in relation to, the reconnaissance area an amount not less than the amount required by the licence or otherwise to be so expended; and

(c) shall carry on reconnaissance operations in accordance with the requirements of this Act.

(2) The Minister may, on application made to him by the holder of a reconnaissance licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (a) or (b) either conditionally or unconditionally.

Division 3—Exclusive Prospecting Licences

[Ch6101s25]25. Application for exclusive prospecting licence

An application for the grant of an exclusive prospecting licence—

(a) shall give information of the kind referred to in section 16 (a), and shall give or be accompanied by a statement giving particulars of the kind referred to in section 16 (d)

(b) shall identify the minerals in respect of which the licence is sought;

(c) shall be accompanied by a plan of the kind referred to in section 16 (b);

(d) shall state the period for which the licence is sought;

(e) shall give or be accompanied by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the area of land over which the licence is sought and an estimate of the cost of carrying out the programme, and an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought;

(f) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malawi;

(g) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(h) may set out any other matter which the applicant wishes the Minister to consider.

[Ch6101s26]26. Disposal of application for exclusive prospecting licence

(1) Subject to this Act and to any relevant agreement of a kind referred to in section 10, on application duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, an exclusive prospecting licence over any area of land.

(2) The area of land over which an exclusive prospecting licence is granted shall be of such shape, orientation and dimensions as may be prescribed in, or as may be determined in accordance with, the Regulations.

[Ch6101s27]27. Restriction on grant of exclusive prospecting licence

(1) No exclusive prospecting licence shall be granted over an area of land in, or which constitutes—

- (a) a mining area; or
- (b) a claim area.

(2) Where an area of land is subject to an exclusive prospecting licence, no other exclusive prospecting licence shall be granted over land in, or which constitutes, that area in respect of any mineral to which the subsisting exclusive prospecting licence relates.

(3) Where an area of land is subject to a reconnaissance licence which gives, pursuant to section 20 (4), to the holder of the licence an exclusive right to carry on reconnaissance operations in respect of the land, an exclusive prospecting licence shall not be granted in respect of any mineral to which that exclusive right relates, over land in, or which constitutes, that area, to a person other than the holder of the reconnaissance licence.

(4) No exclusive prospecting licence shall be granted to an applicant unless—

- (a) the applicant has adequate financial resources, technical competence and experience to carry on effective prospecting operations;
- (b) the programme of proposed prospecting operations is adequate;
- (c) the applicant's proposals for the employment and training of citizens of Malawi are adequate; and
- (d) the applicant is not in default.

[Ch6101s28]28. Section 19 to apply to application for exclusive prospecting licence

The provisions of section 19 apply in relation to an application for the grant of an exclusive prospecting licence as they apply in relation to an application for the grant of a reconnaissance licence.

[Ch6101s29]29. Contents of exclusive prospecting licence

(1) An exclusive prospecting licence shall—

- (a) state the date of the grant of the licence and the period for which it is granted;
- (b) identify the mineral in respect of which it is granted;

(c) include a description and, if the Minister so directs, a plan of the area of land over which it is granted; and

(d) state the conditions on which it is granted.

(2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on prospecting operations he may, in an exclusive prospecting licence, specify a period (not exceeding three months) as the preparation period.

(3) There shall be appended to an exclusive prospecting licence a programme for the employment and training of citizens of Malawi.

[Ch6101s30]30. Programme prospecting operations

(1) In addition to conditions included in an exclusive prospecting licence under section 29 (1), or on any extension of the licence under section 50,—

(a) the licence is subject to the condition that not later than one month before the anniversary in any year of the grant of the licence, the holder of the licence shall submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the licence immediately following; and

(b) the programme so submitted is deemed to constitute a requirement of the licence with respect to prospecting operations and expenditure.

(2) The requirement in subsection (1) (a) that the programme submitted shall be adequate is deemed to have been met where the programme submitted satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in section 10.

[Ch6101s31]31. Option

There may be included in an exclusive prospecting licence provision with respect to the exercise, by the Republic or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any mining venture which may be carried on in relation to land in, or which constitutes, the prospecting area.

[Ch6101s32]32. Term of exclusive prospecting licence

(1) The term of an exclusive prospecting licence is the period for which the licence is granted, not exceeding three years, stated in the licence, and any preparation period specified in the licence pursuant to section 29 (2).

(2) The term of an exclusive prospecting licence commences on and includes the date of the grant of the licence, as stated in the licence.

[Ch6101s33]33. Miscellaneous provisions concerning exclusive prospecting licences

(1) Subject to this section, where the holder of an exclusive prospecting licence applies for the grant of a mining licence over any area of land in, or which constitutes, the prospecting area, and the application has not been finally dealt with before the date on which the exclusive prospecting licence would, but for this subsection, cease to have effect, the exclusive prospecting licence continues to have effect over that area of land until—

(a) notice is given to the applicant pursuant to section 40 of the refusal to grant the mining licence; or

(b) as the case may be, the date of the grant of the mining licence, as stated in the mining licence.

(2) Where a mining licence is granted over any area of land wholly or partly in one, or more than one, prospecting area—

(a) the exclusive prospecting licence held by the person to whom the mining licence is granted ceases to have effect in the mining area; and

(b) the exclusive prospecting licence held by any other person—

(i) ceases to have effect if the prospecting area covered by the licence is within, or is constituted by the same area of land as, the mining area; or

(ii) as the case may be, continues to have effect only in relation to land outside the mining area.

(3) Subsection (1) shall not have effect—

(a) to prevent the cancellation under this Act of an exclusive prospecting licence; or

(b) if an application for the grant of a mining licence is withdrawn.

(4) An exclusive prospecting licence may continue to have effect pursuant to this section notwithstanding that the prospecting area has ceased to be in the shape or to have the dimensions prescribed in respect of prospecting areas or, as the case may be, approved in respect of that area.

[Ch6101s34]34. Rights of holder of exclusive prospecting licence

Subject to this Act and the conditions of the licence, an exclusive prospecting licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting operations in the prospecting area for the mineral to which the licence relates, and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular, either himself, or by way of his employees or agents, enter the prospecting area and erect camps and temporary buildings, or erect installations in any waters forming part of the prospecting area.

[Ch6101s35]35. Duties of holder of exclusive prospecting licence

The holder of an exclusive prospecting licence—

- (a) shall commence prospecting operations within three months of the date of the grant of the licence, as stated in the licence;
- (b) shall, subject to sections 36 and 54, carry on prospecting operations in accordance with his programme of prospecting operations;
- (c) shall give to the Minister notice of the discovery—
 - (i) of any mineral to which his licence relates of possible commercial value; and
 - (ii) of any mineral deposit of possible commercial value, within thirty days of the discovery;
- (d) shall, subject to section 36, expend in, or in relation to, the prospecting area an amount not less than the amount required by the licence or otherwise to be so expended;
- (e) shall, subject to section 36, employ and train citizens of Malawi in accordance with the proposals in that connexion particulars of which have been given in or appended to the licence; and
- (f) shall carry on prospecting operations in accordance with the requirements of this Act.

[Ch6101s36]36. Variation, etc., of obligations

(1) The Minister may, on application made to him by the holder of an exclusive prospecting licence, limit, reduce, vary or suspend any obligation arising pursuant to section 35 (b), (d) or (e) either conditionally or unconditionally.

(2) To enable him to dispose of an application under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

Division 4—Mining Licences

[Ch6101s37]37. Application for mining licence

(1) An application for the grant of a mining licence may be made by the holder of an exclusive prospecting licence or by a person who is not such a holder.

(2) Where an application for the grant of a mining licence is made by the holder of an exclusive prospecting licence, the application shall be made—

- (a) only in respect of land subject to the exclusive prospecting licence;
- (b) only if the holder has given notice to the Minister of the discovery in commercial quantities of any mineral to which his licence relates; and

(c) not later than two months, or such further period as the Minister may allow, after that notice was given to the Minister.

(3) An application for the grant of a mining licence—

(a) shall give information of the kind referred to in section 16 (a);

(b) shall identify the minerals which it is proposed to mine;

(c) shall state the number of the exclusive prospecting licence (if any) held by the applicant and shall give details of any exclusive prospecting licence held by the applicant, or by any person controlling, controlled by or under joint or common control with, the applicant, during the preceding four years;

(d) shall be accompanied by a plan of the area over which the licence is sought drawn in such manner as the Minister may require and showing—

(i) the name of each lawful occupier of a holding in, or partly in, that area and, in the case of more than one such holding, the boundaries within that area of each such holding; and

(ii) such other particulars as the Minister may require;

(e) shall state the period for which the licence is sought;

(f) shall give or be accompanied by a statement giving details of the mineral deposits in the area of land over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;

(g) shall be accompanied by a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;

(h) shall give or be accompanied by a statement giving particulars of the programme of proposed mining operations including a statement of—

(i) the estimated date by which the applicant intends to work for profit;

(ii) the estimated capacity of production and scale of operations;

(iii) the estimated overall recovery of ore and mineral products;

(iv) the nature of the products;

(v) proposals for the prevention of pollution, the treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of land disturbed by mining and for the minimization of the effects of mining on surface water and ground water and on adjoining or neighbouring lands;

(vi) the residual effects on the environment of the mining operations and proposals for their minimization;

(vii) any particular risks (whether to health or otherwise) involved in mining the mineral, and proposals for their control or elimination; and

(viii) any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which the licence is sought and proposals for eliminating or controlling that effect;

(i) shall give or be accompanied by a statement giving a detailed forecast of capital investment, operating costs and revenues and the anticipated type and source of financing;

(j) shall be accompanied by a report on the goods and services required for the mining operations which can be obtained within Malawi and the applicant's proposals with respect to the procurement of those goods and services;

(k) shall give or be accompanied by a statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Malawi;

(l) shall be accompanied by a statement giving particulars of expected infrastructure requirements; and

(m) may set out any other matter which the applicant wishes the Minister to consider.

(4) Where an application for the grant of a mining licence is made by a person who is not the holder of an exclusive prospecting licence the application shall, in addition to the matter referred to in subsection (3), give or be accompanied by a statement giving particulars of the financial and technical resources available to the applicant for the licence.

[Ch6101s38]38. Disposal of application for mining licence

(1) Subject to this section, section 39 and to any relevant agreement of a kind referred to in section 10, on application duly made by the holder of an exclusive prospecting licence the Minister shall grant, on such conditions as he may determine, the mining licence applied for.

(2) Subject to this section and section 39, on application duly made by a person who is not the holder of an exclusive prospecting licence, the Minister may grant, on such conditions as he may determine, or refuse to grant, the mining licence applied for.

(3) To enable him to dispose of an application for the grant of a mining licence, the Minister may, by notice given to the applicant, require the applicant, at his own expense, to commission an independent study by consultants acceptable to the Minister for the purpose of—

(a) assessing the feasibility of the programme of mining operations proposed in the application; or

(b) assessing, or making recommendations about, such other matters arising out of, or connected with, the application, as the Minister may specify in the notice.

[Ch6101s39]39. Restriction on grant of mining licence

(1) No mining licence shall be granted over an area of land in, or which constitutes,—

- (a) a mining area; or
- (b) a claim area.

(2) Where an area of land is subject to a reconnaissance licence which, pursuant to section 20 (3), gives to the holder of the licence an exclusive right to carry on reconnaissance operations in that area in respect of any mineral, a mining licence shall not be granted over land in, or which constitutes, the reconnaissance area, in respect of any such mineral, to any person other than the holder of the reconnaissance licence.

(3) No mining licence over land in, or which constitutes, a prospecting area shall be granted to a person who is not the holder of a prospecting licence over that land.

(4) Subject to any relevant agreement of a kind referred to in section 10, no mining licence shall be granted to an applicant unless—

- (a) the programme of proposed mining operations—
 - (i) takes proper account of environmental and safety factors; and
 - (ii) will ensure the most efficient and beneficial use of the mineral resources concerned;
- (b) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out that programme;
- (c) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;
- (d) the applicant's proposals for the employment and training of citizens of Malawi are adequate;
- (e) the applicant's proposals with respect to the procurement of goods and services obtainable within Malawi are satisfactory;
- (f) any relevant option given pursuant to section 31 has been exercised and given effect to or satisfactory arrangements have been made for that purpose; and
- (g) the applicant is not in default.

(5) Where an application for the grant of a mining licence is duly made by the holder of an exclusive prospecting licence, the Minister shall not refuse an application for the grant of a mining licence on a ground referred to in subsection (3) (a), (b), (d), (e), (f) or (g) unless he has—

(a) given notice to the applicant of his intention to refuse to grant the licence on that ground (giving particulars); and

(b) specified in the notice a date before which the applicant may make appropriate proposals to remove the ground for refusal or, as the case may be, remedy the default, or make representations in relation thereto, and the applicant has not, before that date—

(c) given notice to the Minister containing proposals or representations which the Minister accepts; or

(d) remedied the default.

[Ch6101s40]40. Section 19 to apply to application for mining licence

The provisions of section 19 apply in relation to an application for the grant of a mining licence as they apply in relation to an application for the grant of a reconnaissance licence.

[Ch6101s41]41. Contents of mining licence

(1) A mining licence shall—

(a) state the date of the grant of the licence and the period for which it is granted; and

(b) identify the mineral in respect of which it is granted.

(2) There shall be appended to a mining licence particulars of the holder's proposals for the employment and training of citizens of Malawi which shall form part of the licence.

(3) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a mining licence either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the mining area, the holder of the licence will, during a specified period, carry out the programme of mining operations and expend the amounts specified in the licence; or

(b) a condition requiring the holder of the licence, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of mining operations and the expenditure of amounts in, or in relation to, the mining area during that period.

(4) There may be included in a mining licence conditions with respect to the processing, disposal or sale of the minerals to be mined.

[Ch6101s42]42. Term of mining licence

(1) The term of a mining licence is the period (not exceeding twenty-five years), or the estimated life of the ore body which it is proposed to mine, whichever is the shorter, stated in the licence.

(2) The term of a mining licence commences on and includes the date of the grant of the licence, as stated in the licence.

[Ch6101s43]43. Rights of holder of mining licence

(1) Subject to this Act and the conditions of the licence, a mining licence, while it has effect, confers on the holder of the licence the exclusive right to carry on prospecting and mining operations in the mining area and for the purpose of the exercise of that right the holder may, subject to this Act and the conditions of the licence, in particular—

(a) use employees and agents;

(b) take all reasonable measures in that area, including the use of necessary equipment and the erection of necessary installations, plant and buildings for mining, and transporting, dressing, treating, smelting or refining any mineral recovered; and

(c) dispose of any mineral product recovered, and stack or dump any mineral or waste products in a manner approved by the Minister.

(2) The holder of a mining licence—

(a) shall not intentionally carry on prospecting or mining operations for a mineral unless it is a mineral to which his licence relates; and

(b) shall not mine any mineral deposit, particulars of which have not been given pursuant to section 37 (3) (f) in his application, or in a statement accompanying his application, for the grant of the licence, without the approval of the Minister given under subsection (3).

(3) Where in the exercise of his rights the holder of a mining licence discovers any mineral deposit particulars of which were not given pursuant to section 37 (3) (f) in his application, or in a statement accompanying his application, for the grant of the licence, the holder—

(a) shall within the period of thirty days after the discovery give notice and particulars of the mineral deposit and the circumstances in which the discovery was made; and

(b) may, in the notice, request the Minister to give his approval to the mining of the mineral deposit in accordance with a programme of mining operations stated in the notice.

(4) Subject to subsection (5), on a request made pursuant to subsection (3) (b), the Minister—

(a) shall, if the mineral deposit consists, or consists primarily, of minerals to which the mining licence relates, and the programme of mining operations stated in the notice containing the request is satisfactory, give his approval to the request; or

(b) may, in any other case, give or refuse to give his approval to the request.

(5) The Minister may, pursuant to subsection (4), by notice served on the holder of the licence, give his approval—

(a) to the request as made; or

(b) to the request as amended with the agreement of that holder,

unconditionally or subject to such conditions as are agreed by the holder.

(6) The instrument in which the Minister gives an approval under subsection (5) is deemed to form part of the mining licence concerned.

(7) Before giving his approval to any request under this section the Minister may, by notice served on the holder of the licence, require the holder to comply with any of the requirements of section 37 (3) as if the request were an application for the grant of a mining licence in respect of the minerals to which the request relates.

[Ch6101s44]44. Duties of holder of mining licence

(1) The holder of a mining licence—

(a) shall, subject to subsection (2) and section 54, carry on mining and development operations and commence production in accordance with his programme of mining operations;

(b) shall, subject to subsection (2), employ and train citizens of Malawi in accordance with the instrument containing proposals in that connexion appended to the licence;

(c) shall, subject to subsection (2), expend in, or in relation to, the mining area an amount not less than the amount required by the licence or otherwise to be so expended;

(d) shall carry on mining operations in accordance with the requirements of this Act;

(e) shall demarcate, and keep demarcated, in the manner prescribed the area of land subject to the licence; and

(f) shall give notice to the Minister when he begins to work for profit.

(2) The Minister may, on application made to him by the holder of a mining licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1) (a), (b) or (c) either conditionally or unconditionally.

[Ch6101s45]45. Use of wasteful practices

(1) Where the Commissioner considers that the holder of a mining licence is using wasteful mining or treatment practices, he may give notice to the holder accordingly (giving in the notice particulars of the practices) and require the holder to show cause, by notice given to the Commissioner, within such period as the Commissioner shall specify in the notice given to the holder, why he should not cease to use those practices.

(2) Where, within the period specified in a notice given to the holder of a mining licence pursuant to subsection (1), the holder fails, by notice given to the Commissioner, to satisfy the Commissioner that he is not using the wasteful practices concerned, or that the practices are not wasteful, or that the use of those practices is justified, the Commissioner may give notice to the holder directing him to cease using all of those practices or the practices specified, by such date as is so specified, and the holder shall do so.

[Ch6101s46]46. Cessation, etc., of production from mine

(1) The holder of a mining licence shall give notice to the Commissioner—

(a) twelve months in advance, if he proposes to cease production from a mine in the mining area concerned;

(b) six months in advance, if he proposes to suspend production from any such mine; or

(c) three months in advance, if he proposes to curtail production from any such mine,

and shall give in the notice the reason for the cessation, suspension or curtailment.

(2) Where, for any reason beyond his control, the holder of a mining licence ceases, suspends or curtails production from a mine in the mining area concerned he shall, within fourteen days after the cessation, suspension or curtailment, give notice thereof to the Commissioner.

[Ch6101s47]47. Power of Commissioner on cessation, etc.

Where, pursuant to section 46 (1) or (2), notice is given to him, or if he otherwise becomes aware, of any cessation, suspension or curtailment of production from a mine, the Commissioner shall cause the matter concerned to be investigated and thereafter—

(a) he shall give his approval, conditionally or unconditionally, to the cessation, suspension or curtailment by notice to the holder of the mining licence; or

(b) he shall direct the holder of the mining licence by notice given to the holder to resume full production, or production at such level as is specified in the notice, by such date as is so specified, and the holder shall do so.

[Ch6101s48]48. Unit development

(1) This section applies where the Minister determines that, in the interest of the effective recovery of minerals from neighbouring or contiguous mining areas, it is desirable that the holders of

mining licences in respect of those areas should coordinate their operations for the recovery of the minerals.

(2) Where this section applies the Minister may direct the holders of the mining licences concerned to enter into an agreement, within the period specified by the Minister, for or in relation to the co-ordination of their operations for the recovery of minerals, and to lodge the agreement with the Minister forthwith for approval.

(3) Before giving any direction under subsection (2) the Minister shall afford each holder of a mining licence concerned reasonable opportunity to make representations to him in writing.

Division 5—Renewal and Amendment of Mineral Rights

[Ch6101s49]49. Application for renewal of reconnaissance licence

(1) The holder of a reconnaissance licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the reconnaissance area.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied—

(i) by a report on reconnaissance operations then carried out; and

(ii) by a statement giving particulars of the programme of reconnaissance operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall, if renewal of the licence is sought in respect of part only of the reconnaissance area, be accompanied by a plan identifying that part of the reconnaissance area; and

(d) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 16 (a) and (d).

(3) On application duly made for the renewal of a reconnaissance licence, the Minister—

(a) may, if he is satisfied that it would be in the public interest to do so, renew the licence, with or without variation of the conditions of the licence, for a period not exceeding twelve months; and

(b) if not so satisfied, shall refuse to renew the licence.

[Ch6101s50]50. Application for renewal of exclusive prospecting licence

(1) The holder of an exclusive prospecting licence may, not later than three months before the expiration of the licence, apply for the renewal of the licence in respect of an area of land—

(a) of such shape as may be prescribed; and

(b) which is not greater in extent than half of the prospecting area as at the date of the grant of the licence, unless the Minister otherwise permits.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied—

(i) by a report on prospecting operations then carried out and the costs incurred in carrying them out; and

(ii) by a statement giving particulars of the programme of prospecting operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall be accompanied by a plan identifying the area of land in respect of which renewal of the licence is sought; and

(d) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 25 (a).

(3) Subject to subsections (4) and (5), on application duly made for the renewal of an exclusive prospecting licence, the Minister shall renew the licence for a period not exceeding two years.

(4) The Minister shall refuse to renew an exclusive prospecting licence—

(a) if—

(i) the applicant is in default;

(ii) the programme of prospecting operations proposed to be carried out is not satisfactory; or

(iii) the area of land in respect of which renewal of the licence is sought does not meet the requirements of subsection (1) (a) and (b);

(b) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(c) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or made representations, which in the opinion of the Minister remove the ground for the intended refusal.

(5) An application under subsection (1) for the renewal of an exclusive prospecting licence may be made on not more than two occasions and, accordingly, the power under subsection (3) may be exercised in relation to an exclusive prospecting licence on not more than two occasions.

(6) Where a prospecting licence has been renewed pursuant to subsection (3) on two occasions, the Minister—

(a) on the request of the holder of the licence; and

(b) if he considers it in the public interest to do so,

may, by instrument in writing, extend the term of the licence with effect from the date of expiry of the last period of renewal for such period, and on such conditions, as are specified in the instrument.

[Ch6101s51]51. Application for renewal of mining licence

(1) The holder of a mining licence may, not later than twelve months before the expiration of the licence, apply for the renewal of the licence in respect of all or any part of the mining area.

(2) An application under subsection (1)—

(a) shall state the period for which renewal of the licence is sought;

(b) shall be accompanied by a statement giving particulars of the programme of mining operations proposed to be carried out in the period of renewal, an estimate of any significant effect which the carrying out of the programme would be likely to have on the environment and on any monument or relic in the area over which renewal of the licence is sought, and an estimate of the cost of carrying out the programme;

(c) shall be accompanied by a statement giving details of—

(i) the latest proved, estimated or inferred ore reserves;

(ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;

(iii) any expected changes in methods of mining and treatment; and

(iv) any expected increase or reduction in mining activities and the estimated life of the mine;

(d) shall, if renewal of the licence is sought in respect of part only of the mining area, be accompanied by a plan indentifying that part of the mining area; and

(e) shall give particulars of any alteration in the matter shown in the application for the grant of the licence pursuant to section 37 (3) (a), (d), (h) (v), (vi) and (vii), (j) and (l).

(3) Subject to subsection (4), on application duly made for the renewal of a mining licence, the Minister shall renew the licence, with or without variation of the conditions of the licence, for a period not exceeding fifteen years.

(4) The Minister shall refuse to renew a mining licence—

(a) if—

(i) the applicant is in default;

(ii) the development of the mining area has not proceeded with reasonable diligence;

(iii) minerals in reasonable quantities do not remain to be produced; or

(iv) the programme of mining operations proposed to be carried out is not satisfactory;

(b) if the Minister has given to the applicant notice of his intention to refuse to renew the licence—

(i) giving in the notice particulars of the ground for the intended refusal; and

(ii) stating a date before which the applicant may take appropriate action or make representations in relation to that ground; and

(c) if the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made appropriate amendments to his application, or make representations which, in the opinion of the Minister, remove the ground for the intended refusal.

(5) In determining whether or not to vary the conditions of a mining licence on renewal, the Minister shall have regard and give effect to any relevant agreement of a kind referred to in section 10.

[Ch6101s52]52. Notice of disposal of application for renewal of Mineral Right

(1) The Minister shall give notice to an applicant for the renewal of a reconnaissance licence, an exclusive prospecting licence or a mining licence of his decision on the application and, if he renews the licence, the notice—

(a) shall state the period of renewal;

(b) shall set out any variation in the conditions of the licence; and

(c) shall include a plan of the area of land in respect of which the licence is renewed if that area differs from the area of land subject to the licence immediately before the renewal of the licence.

(2) Subject to any relevant agreement of a kind referred to in section 10, there may be included in, or in a statement appended to, a notice referred to in subsection (1) either or both of the following conditions, namely—

(a) a condition that in, or in relation to, the reconnaissance area, prospecting area or mining area, as the case may be, the holder of the licence concerned will, during a specified period, carry out the programme of reconnaissance, prospecting or mining operations, as the case may be, specified in the notice; or

(b) a condition requiring the holder of the licence concerned, in respect of any period and in the manner specified, to submit to the Minister acceptable proposals for the carrying out of a programme of reconnaissance, prospecting or mining operations, as the case may be, and the expenditure of amounts, in or in relation to, the reconnaissance area, the prospecting area or the mining area, as the case may be, during that period.

[Ch6101s53]53. Licence to have effect pending disposal of application for renewal

(1) Subject to this section, where an application under this Part for the renewal of a Mineral Right is not finally dealt with before the date on which the Mineral Right would, but for this subsection, cease to have effect, the Mineral Right continues to have effect over the area of land over which renewal of the Mineral Right is sought until notice is given pursuant to section 52 of the refusal to renew or, as the case may be, of the renewal of the Mineral Right.

(2) The period for which a Mineral Right is renewed commences on and includes the date on which the Mineral Right would have ceased to have effect if an application for the renewal of the Mineral Right had not been made.

(3) Subsection (1) shall not have effect—

(a) to prevent the cancellation under this Act of a Mineral Right; or

(b) if an application for the renewal of a Mineral Right is withdrawn.

[Ch6101s54]54. Amendment of prospecting or mining programme

(1) The holder of an exclusive prospecting licence or a mining licence may amend his programme of prospecting or mining operations and, subject to subsection (2), the amendment has effect when particulars of the amendment are given in a notice served on the Minister.

(2) An amendment which substantially alters a programme of prospecting or mining operations does not have effect unless application has been made pursuant to section 36 or 44 (2) to the Minister and the Minister has, under section 36 or 44 (2), agreed to the amendment.

Division 6—Surrender, Cancellation and Suspension of Mineral Rights

[Ch6101s55]55. Surrender

(1) The holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence who wishes to surrender all or part of the land subject to the licence shall apply to the Commissioner for a certificate of surrender, in respect of the land, not less than three months before the date on which he wishes the surrender to have effect.

(2) An application under subsection (1)—

(a) shall state the date on which the applicant wishes the surrender to have effect;

(b) shall, if part only of the land subject to the licence is to be surrendered, identify the land to be surrendered by the inclusion of a plan thereof;

(c) shall give particulars of reconnaissance, prospecting or mining operations carried on in respect of the land to be surrendered; and

(d) shall be supported by such records and reports in relation to those operations as the Commissioner may reasonably require.

(3) Subject to subsections (4) and (5), on application duly made under subsection (1) the Commissioner shall issue a certificate of surrender, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

(4) Where an application is made under subsection (1) the Commissioner shall consult with the Minister.

(5) The Commissioner shall not issue a certificate of surrender—

(a) to an applicant who is in default;

(b) to an applicant who fails to comply with any reasonable requirement of the Commissioner for the purposes of subsection (2) (d); or

(c) if the Commissioner is not satisfied that the applicant will leave land to be surrendered and on which reconnaissance, prospecting or mining operations have been carried on in a condition which is safe and which accords with good mining practice.

[Ch6101s56]56. Effect of certificate of surrender

(1) Where, pursuant to section 55 (3), a certificate of surrender is issued, the Commissioner—

(a) shall, if part only of the land subject to a reconnaissance licence, an exclusive prospecting licence or a mining licence is surrendered, amend the licence accordingly; or

(b) shall, in any other case, cancel the licence,

and in either case the Commissioner shall give notice to the applicant for the certificate of surrender of the amendment or, as the case may be, the cancellation, and of the issue of the certificate of surrender.

(2) Land in respect of which a certificate of surrender is issued shall be treated as having been surrendered with effect from the date on which notice of the surrender is given pursuant to subsection (1) to the applicant for the certificate.

(3) The surrender of any land does not affect any liability incurred before the date on which the surrender has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of the liability against the applicant for the certificate may be commenced or continued against that applicant.

[Ch6101s57]57. Suspension or cancellation of Mineral Right

(1) Subject to this section, where the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence—

(a) fails to use in good faith the land subject to the licence for the purpose for which the licence was granted;

(b) uses that land for any purpose other than the purpose for which the licence was granted;

(c) fails to comply with any requirement of this Act (not being exempted under this Act from doing so) with which he is bound to comply;

(d) fails to comply with a condition of the licence (not being exempted under this Act from doing so);

(e) fails to comply with a direction lawfully given under this Act or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under this Act;

(f) fails to comply with the conditions, relating to the exercise of his rights under his licence, which are contained in a relevant agreement of a kind referred to in section 10; or

(g) fails to pay any amount payable by him under this Act within one month after the amount becomes due,

the Minister may, on that ground, by notice in writing served on the holder of the licence, suspend or cancel the licence.

(2) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in that subsection unless—

(a) he has, by notice in writing served on the holder of the licence, given not less than thirty days notice of his intention to so suspend or cancel the licence on that ground;

(b) he has, in the notice, specified a date before which the holder of the licence may, in writing, submit any matter which he wishes the Minister to consider; and

(c) he has taken into account—

(i) any action taken by the holder of the licence to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to him by the holder of the licence pursuant to paragraph (b).

(3) The Minister shall not, under subsection (1), suspend or cancel a licence on a ground referred to in paragraph (g), if, before the date specified in a notice referred to in subsection (2), the holder of the licence pays the amount of money concerned together with an amount of interest (if any) which the Minister considers reasonable in all the circumstances of the case.

(4) The Minister may, by notice in writing served on the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, cancel the licence—

(a) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(b) if, in the case of a holder that is a body corporate, an order is made or a resolution is passed winding up the affairs of the company or corporation, unless the winding up is for the purpose of amalgamation or reconstruction and the Minister has been given notice thereof.

(5) Where two or more persons constitute the holder of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the holder, of an event entitling the Minister to so cancel the licence, unless he is satisfied that any other person or persons constituting the holder are unwilling, or would be unable, to carry out the duties and obligations of the holder of the licence.

(6) On the cancellation of a reconnaissance licence, an exclusive prospecting licence or a mining licence, the rights of the holder of the licence thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the licence may be commenced or continued against him.

Division 7—Transfers and Registration

[Ch6101s58]58. Records

(1) The Commissioner shall cause a record to be kept in a Register of every Mineral Right granted and of any dealings with, or affecting, a Mineral Right.

(2) When a Mineral Right is granted the Commissioner shall cause the name of the person to whom the Mineral Right is granted to be recorded in the Register as the registered holder of the Mineral Right.

[Ch6101s59]59. Interest in Mineral Right to be created by instrument in writing

(1) A legal or equitable interest in, or affecting, a Mineral Right, is not capable of being created, transferred, assigned, effected or dealt with, whether directly or indirectly, except by instrument in writing.

(2) The creation of a legal or equitable interest in, or affecting, a Mineral Right, does not affect the liability of the holder of the Mineral Right for any breach of the conditions of the Mineral Right or of any of the provisions of this Act.

[Ch6101s60]60. Transfer of Mineral Right to be approved by Minister, etc.

(1) Unless the Minister approves—

(a) the transfer of a Mineral Right; or

(b) an instrument by which a legal or equitable interest in, or affecting, a Mineral Right, is created, assigned, effected or dealt with, whether directly or indirectly,

the transfer, or the instrument (in so far as it operates as provided in paragraph (b)), is of no force.

(2) An application for the approval by the Minister under subsection (1) of a transfer or an instrument shall be made to the Commissioner in accordance with the Regulations.

(3) Subject to subsections (4) and (5), on application duly made under subsection (2), the Minister may give, or refuse to give, his approval, or may give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall not give his approval to the transfer of, or to any instrument operating as provided in subsection (1) (b) in relation to, a reconnaissance licence.

(5) The Minister shall give his approval to the transfer of an exclusive prospecting licence or a mining licence when the transferee—

(a) is a person controlling, controlled by, or under common control with, the transferor; and

(b) is not a person disqualified under any provision of this Act from holding a Mineral Right.

(6) If the Minister gives his approval to the transfer of a Mineral Right the Commissioner shall cause the name of the transferee to be recorded in the Register as the registered holder of the Mineral Right, but legal proceedings that might have been commenced or continued against the former registered holder may be commenced or continued against him notwithstanding the transfer.

(7) The reference in subsection (1) (a) to “the transfer of a Mineral Right” includes a transfer of a Mineral Right by operation of law.

[Ch6101s61]61. Minister may require information

The Minister may require any person making application under section 60 to the Commissioner to furnish to the Commissioner such information as the Minister may reasonably require to enable him to dispose of the application, and the applicant shall comply with the requirement.

[Ch6101s62]62. Evidentiary provision

(1) The Commissioner may give a certificate with respect to any matter referred to in subsection (2).

(2) A certificate of the Commissioner—

(a) that a Mineral Right was granted, transferred, suspended or cancelled on, or with effect from, a date specified in the certificate;

(b) that any land, identified in the certificate is, or was on a date specified in the certificate, subject to a Mineral Right;

(c) that a mineral specified in the certificate is a mineral to which a Mineral Right relates;

(d) that any condition specified in the certificate is, or was on a date so specified, a condition of a Mineral Right;

(e) that a certificate of surrender was issued in respect of land identified, on a date specified, in the certificate given by the Commissioner;

(f) that any condition specified in the certificate is a condition on which a certificate of surrender was issued or on which any consent or approval so specified was given; or

(g) that a person named in the certificate is, or was on a date specified in the certificate, the holder of a Mineral Right,

shall be received in proceedings before any court or tribunal as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

[Ch6101s63]63. Inspection of Register

(1) A copy of any entry in the Register may be obtained on payment of the prescribed fee.

(2) The Register shall, at all reasonable times, be open for inspection by any person on payment of the prescribed fee, and a person may take copies of any licence or entry in the Register on payment of the prescribed fee.

[Ch6101s64]64. Register may be rectified

Where the Commissioner is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in, the Register, he shall rectify the Register by correcting that mistake or incorrect entry.

[Ch6101s65]65. Offences in relation to registration

A person who wilfully—

- (a) makes, or causes to be made or concurs in making, a false entry in the Register; or
- (b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the Register or of or from an instrument lodged with the Commissioner under this Division,

is guilty of an offence and liable on conviction to a fine of two hundred and fifty Kwacha or to imprisonment for a term of six months, or to both.

Division 8—Miscellaneous Duties with respect to submitting Reports, etc.

[Ch6101s66]66. First Schedule

(1) The First Schedule applies with respect to the duty of the holder, or former holder, of a Mineral Right to furnish information, submit reports or keep records.

(2) The holder of a Mineral Right—

(a) shall establish immediately after the grant of the Mineral Right, and keep established while the Mineral Right subsists, an address in Malawi; and

(b) shall give notice of that address to the Minister, and of any variation of the address which may be made from time to time.

Division 9—Miscellaneous

[Ch6101s67]67. Application for inclusion of additional minerals in licence

(1) This section applies where—

(a) the holder of an exclusive prospecting licence or mining licence, in the course of searching for or mining the mineral to which his licence relates, finds another mineral (in this section called an “additional mineral”); and

(b) in the circumstances it would be impracticable or impossible to mine the mineral to which the licence relates without also mining that additional mineral.

(2) Where this section applies, the holder of the exclusive prospecting licence or mining licence concerned may make application to the Minister for the inclusion in the licence of the additional mineral and the Minister, subject to this section, if satisfied that this section applies, shall approve the application.

(3) The Minister is not required to approve an application referred to in subsection (2) if the applicant is unwilling to make such alterations to his programme of prospecting or mining operations as are reasonably necessary to cover adequately the searching for or mining of the additional mineral.

(4) Where the Minister approves an application referred to in subsection (2) he shall do so subject to the condition that the exclusive right to search for or mine the additional mineral shall arise only where that mineral is found together with a mineral to which the licence otherwise relates in such circumstances that it would not be practicable, or possible, to mine such last-mentioned mineral without also mining the additional mineral.

(5) Notice of the Minister's decision under subsection (2) shall be given to the holder of the exclusive prospecting licence or, as the case may be, mining licence concerned; and in the event that the Minister approves the application, the licence is, subject to subsection (4), deemed to relate to the additional mineral.

(6) In any case where this section would not apply by reason of the requirement of subsection (1) not being met, the Minister may, if he considers that it would be in the interest of the development of the mineral resources of Malawi to do so, approve an application by the holder of an exclusive prospecting licence or a mining licence to include a further mineral in the licence; and in that event the licence is deemed to relate to the further mineral, subject to any conditions imposed on the giving of the approval.

[Ch6101s68]68. Enlargement of prospecting area or mining area

(1) The holder of an exclusive prospecting licence or a mining licence may apply to the Minister to have his prospecting area or, as the case may be, mining area enlarged in the manner specified in the application and the Minister may, subject to subsection (2), approve the application or refuse to do so.

(2) The Minister shall not approve an application made under subsection (1)—

(a) unless he is satisfied that to do so would be in the interest of the development of the mineral resources of Malawi; or

(b) if, by reason of this Act, the Minister could not then grant to the holder making the application an exclusive prospecting licence or, as the case may be, a mining licence over the area of land by the addition of which the prospecting area or mining area is to be enlarged, or could only do so subject to any condition which could not be satisfied.

(3) The approval of the Minister under subsection (1) may be given unconditionally, or subject to such conditions as the Minister may determine and specify in a notice given pursuant to subsection (4).

(4) Notice of the Minister's decision under subsection (1) shall be given to the holder of the prospecting licence or, as the case may be, mining licence concerned, and in the event that the Minister approves the application, the prospecting or mining area is deemed to have been enlarged accordingly.

(5) To enable him to dispose of an application made under subsection (1) the Minister may, by notice served on the applicant, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such information relevant to the application as may be described in the notice.

[Ch6101s69]69. Recovery of unexpended amounts

(1) Subject to subsection (3), when the amount expended in, or in relation to, a reconnaissance area, a prospecting area or a mining area is less than the amount required to be so expended by a reconnaissance licence, an exclusive prospecting licence or a mining licence, or otherwise, the amount of the shortfall is a debt due to the Republic and may be recovered in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount is payable by an identified person shall be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(3) The right to recover an amount pursuant to this section is subject to the provisions of a relevant agreement of a kind referred to in section 10 limiting that right.

[Ch6101s70]70. Control of company not to be given without consent of Minister

2 of 1983(1) A company which is the holder of a mining licence shall not, without the prior consent in writing of the Minister—

(a) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(b) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,

if the effect of doing so would be to give to the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section—

(a) a person is deemed to have control of a company—

(i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of equity shares in the company;

(b) “equity shares”, in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;

(c) “preference shares” means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights; and

(d) the reference in paragraph (a) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

PART IV

NON-EXCLUSIVE PROSPECTING LICENCES AND CLAIMS

[Ch6101s71]71. Definition

In this Part, “District” means one of the districts into which Malawi is divided for purposes of administration in accordance with the Regional and District Boundaries and Place Names Act. Cap. 18:04

[Ch6101s72]72. Restriction on exercise of rights by holder of non-exclusive prospecting licence or claim

Where the doing of any act is regulated or prohibited by a written law (other than this Act), nothing in this Act shall be construed as authorizing the holder of a non-exclusive prospecting licence or a claim to do the act—

(a) otherwise than in accordance with the written law; and

(b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

[Ch6101s73]73. Non-exclusive prospecting licence

(1) Subject to this section, the Commissioner may issue to any person a non-exclusive prospecting licence.

(2) Subject to subsection (5), a non-exclusive prospecting licence—

(a) shall not be issued to an individual unless he is a citizen of Malawi;

(b) shall not be issued to a company unless it is a company whose entire share capital is beneficially owned by citizens of Malawi or by a corporation which, in the opinion of the Minister, has been established for a public purpose, or partly by such citizens and partly by such a corporation;

(c) shall not be issued to a corporation unless it is a corporation incorporated in Malawi.

(3) A non-exclusive prospecting licence shall not be issued to a person unless the Commissioner is satisfied that that person intends, within the limits of his competence and resources, to undertake prospecting operations.

(4) The power to issue a non-exclusive prospecting licence is subject to the Regulations.

(5) Where the Minister is satisfied that it is in the public interest to do so and so certifies to the Commissioner, the Commissioner may issue a non-exclusive prospecting licence—

(a) to an individual who is not a citizen of Malawi but who has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a licence is made; or

(b) to a company or corporation other than one of a kind referred to in subsection (2) (b) or (c).

[Ch6101s74]74. Rights under non-exclusive prospecting licence

(1) A non-exclusive prospecting licence may authorize the holder of the licence to prospect in all districts, or in any district or part of a district identified in the licence, for any mineral identified in the licence.

(2) The holder of a non-exclusive prospecting licence may, subject to this Act and the conditions of the prospecting licence, enter on any land in which he is authorized to prospect, and carry on prospecting operations for any mineral to which his licence relates.

(3) The holder of a non-exclusive prospecting licence shall not prospect—

(a) in land—

(i) in a reconnaissance area for any mineral in respect of which the holder of the reconnaissance licence has been granted exclusive rights pursuant to section 20 (4);

(ii) in a prospecting area for any mineral to which the prospecting licence relates; or

- (iii) in a mining area;
- (b) in land in a claim area, unless he is the holder of the claim.

(4) Subject to this Act and the conditions of the non-exclusive prospecting licence, for the purpose of the exercise of the right referred to in subsection (2), the holder of a non-exclusive prospecting licence may, in particular, erect camps and temporary buildings, or erect installations in any waters forming part of the land on which he is authorized to prospect.

[Ch6101s75]75. Term and renewal of non-exclusive prospecting licence

(1) A non-exclusive prospecting licence has effect for the period of twelve months from and including the date of the issue of the licence.

(2) Subject to subsections (3) and (4) and the Regulations, the Commissioner, on application duly made, may renew a non-exclusive prospecting licence for a period of twelve months from the date on which it would cease to have effect if not renewed.

(3) The Commissioner shall not renew a non-exclusive prospecting licence unless he is satisfied—

(a) that the applicant has undertaken, in good faith, within the limits of his competence and resources during the period for which he has held the licence, prospecting operations; and

(b) intends, within those limits, to undertake in good faith further prospecting operations.

(4) The Commissioner shall not renew a non-exclusive prospecting licence if the applicant is in default.

[Ch6101s76]76. Pegging of claim

(1) Subject to this Act, the holder of a non-exclusive prospecting licence may peg a claim or claims in accordance with the Regulations.

(2) Where the holder of a non-exclusive prospecting licence, pursuant to subsection (1), pegs a claim, he shall, within thirty days of doing so, apply in accordance with the Regulations for registration, in the manner prescribed, of the claim.

(3) Subject to the Act, on application duly made for the registration of a claim, the claim shall be registered, either unconditionally or subject to such conditions as are specified.

[Ch6101s77]77. Restriction on registration of claim

(1) A claim shall not be registered pursuant to section 76 in respect of land in which the person applying for registration of the claim is not entitled to prospect.

(2) The Commissioner shall refuse to register a claim—

(a) if he has reasonable grounds to believe that minerals in payable quantities have not been discovered within the proposed claim area;

(b) if he has reasonable grounds to believe that the applicant does not intend to carry on, in good faith, within the limits of his competence and resources, mining operations in the proposed claim area;

(c) if he has reasonable grounds to believe that it is not in the public interest that a claim should be registered in respect of the proposed claim area; or

(d) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to register a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

(4) The Commissioner may refuse to register a claim if the applicant fails, within a reasonable period specified by the Commissioner, to furnish the Commissioner with satisfactory evidence of the existence of the mineral for which the claim is pegged, within the area of the claim.

[Ch6101s78]78. Period of validity and renewal of claim

(1) Subject to this Act, a claim registered pursuant to section 76—

(a) is valid from the day when the claim was pegged until the 31st March next following that day; and

(b) on application made to the Commissioner in accordance with the Regulations, may be renewed for further periods of twelve months each, commencing on the 1st April in each year.

(2) A claim shall not be renewed pursuant to subsection (1)—

(a) unless the Commissioner is satisfied that minerals in payable quantities remain in the claim area;

(b) unless the Commissioner is satisfied that the applicant has carried on, in good faith, within the limits of his competence and resources, mining operations in the claim area and intends to continue doing so; or

(c) if the applicant is in default and the Commissioner is not prepared, under this paragraph, to waive the default.

(3) Where the Commissioner has refused to renew a claim on a ground referred to in subsection (2), the applicant may appeal against the decision to the Minister whose decision is final.

[Ch6101s79]79. Rights and duties of holder of claim

(1) Subject to this Act and the conditions of the claim, the holder of a claim has the right to enter a claim area and the exclusive right, while the claim is registered, to prospect and mine therein, and to remove therefrom and dispose of, the minerals in respect of which the claim is registered pursuant to section 76.

(2) The holder of a claim shall—

(a) within the limits of his competence and resources carry on, in good faith, in the claim area mining operations;

(b) furnish the Commissioner with such information relating to his mining or prospecting operations carried on in the claim area as the Commissioner may reasonably require or as may be prescribed; and

(c) carry put promptly any directions relating to his mining or prospecting operations which may be given to him by the Commissioner for the purpose of ensuring safety, or good mining practice.

[Ch6101s80]80. Cancellation of claim

(1) Where the holder of a claim—

(a) fails to use, in good faith, the land in the claim area for mining operations;

(b) uses the land in the claim area for any purpose other than mining operations;

(c) fails to comply with any requirement of this Act (not being exempted from doing so) with which he is bound to comply;

(d) fails to comply with a condition of the claim (not being exempted from doing so);

(e) fails to comply with a direction lawfully given under this Act or with a condition on which any exemption or consent is given; or

(f) fails to pay any amount payable under this Act by him within one month after the amount becomes payable,

the Commissioner may, on that ground, by notice in writing served on the holder of the claim cancel the claim.

(2) The Commissioner may, by notice in writing served on the holder of a claim, cancel the claim—

(a) if the holder (being an individual) is—

(i) adjudged bankrupt; or

(ii) enters into an agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors;

(b) if, in the case of a holder that is a company or a corporation, an order is made or a resolution is passed winding up the affairs of the company or corporation unless the winding up is for the purpose of amalgamation or reconstruction and the Commissioner has been given notice thereof.

(3) On the cancellation of a claim, the rights of the holder of the claim thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the claim may be commenced or continued against him.

(4) Where the Commissioner has cancelled a claim under subsection (1) or (2), the person who was the holder of the claim may appeal against the cancellation to the Minister whose decision is final.

PART V

MINERAL PERMITS

[Ch6101s81]81. Issue of mineral permit

A District Commissioner, or a person authorized by the Minister for the purposes of this section, may, on the prescribed fee being paid, issue to any person a mineral permit.

[Ch6101s82]82. Rights under mineral permit

Subject to this Act, the holder of a mineral permit may enter upon public land or customary land and mine any prescribed mineral.

[Ch6101s83]83. Restriction on exercise of rights under mineral permit

(1) The holder of a mineral permit shall not, pursuant to section 82, enter—

(a) a forest reserve as defined in section 2 of the Forest Act; Cap. 63:01

(b) a national park established under section 3 of the National Parks Act; Cap. 66:07

(c) a game reserve declared or proclaimed under section 10 of the Game Act; or Cap. 66:03

(d) upon any monument or relic which is protected under section 7 of the Monuments Act, Cap. 29:01

nor mine therein any prescribed mineral.

(2) The holder of a mineral permit shall not, pursuant to section 82, mine any prescribed mineral in a prospecting area, a claim area or a mining area, without the consent of the holder of the licence or claim concerned.

(3) The holder of a mineral permit shall not, pursuant to section 82,—

(a) carry on mining operations underground;

(b) use explosives; or

(c) use any powered machinery in his mining operations except for the purpose of loading material in, or moving material from, the area where he carries on those operations.

[Ch6101s84]84. Cancellation of mineral permit

The Minister may, where he considers it necessary or desirable to do so, cancel a mineral permit.

[Ch6101s85]85. Record of mineral permits

Any person issuing a mineral permit shall supply a copy of the permit to the Commissioner who shall maintain a record, in such manner and containing such particulars as he may determine, of copies so supplied to him.

PART VI

FINANCIAL

[Ch6101s86]86. Royalty on minerals obtained under mining licence, etc.

(1) Subject to this Act, the holder of a mining licence shall, in accordance with this Act and his licence, pay, to the Republic, royalty in respect of minerals obtained by him in the mining area.

(2) Royalty is payable pursuant to subsection (1)—

(a) at the rate fixed in, or computed in accordance with the provisions of, the mining licence concerned; or

(b) if no rate is so fixed or provision so made in the mining licence concerned, at the rate prescribed.

(3) Provision may be made in the Regulations for the payment of royalty in respect of minerals obtained in a reconnaissance area or a prospecting area.

[Ch6101s87]87. Royalty on minerals obtained under a claim

(1) Subject to this Act, the holder of a claim shall, in accordance with this Act, pay royalty to the Republic in respect of minerals obtained by him in the claim area.

(2) Royalty is payable pursuant to subsection (1) at the rate prescribed.

[Ch6101s88]88. Prohibition on disposal of minerals

If the holder of a mining licence fails to pay any royalty payable by him on or before the due date or any extension thereof allowed by the Minister, the Minister may, by notice served on the holder of the mining licence, prohibit the disposal of any mineral from the mining area concerned, or from any

other mining area held by that holder, until all outstanding royalty has been paid or until an arrangement has been made, acceptable to the Minister, for the payment of the royalty, and the holder shall comply with the notice.

[Ch6101s89]89. Remission of royalty, etc.

(1) The Minister may, after consultation with the Minister for the time being responsible for finance, remit in whole or in part, any royalty payable on any mineral, or on any mineral obtained from a particular deposit, for such period as he may determine, if he considers it expedient in the interests of the production of the mineral to do so.

(2) The Commissioner may exempt from liability with respect to royalty samples of minerals acquired for the purpose of assay, analysis or other examination.

(3) The Minister may, on application made to him by the holder of a mining licence or a claim, defer payment of any royalty due from the holder for such period and subject to such conditions as he may determine.

[Ch6101s90]90. Annual charges in respect of Mineral Rights

(1) There shall be payable to the Republic by the holder of any Mineral Right an annual charge of such amount as may be prescribed, or as may be computed in such manner as may be prescribed.

(2) The annual charge payable pursuant to subsection (1) is payable on the grant of a Mineral Right and thereafter annually on the anniversary of the grant until the termination of the Mineral Right.

[Ch6101s91]91. Security for compliance

The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a Mineral Right complies with this Act, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of that compliance.

[Ch6101s92]92. Minister may require information to be furnished

(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available books or documents relating to minerals obtained, or the value of minerals obtained, he may, by instrument in writing served on that person, order that person—

(a) to furnish to him in writing, within the period and in the manner specified in the instrument, any such information;

(b) to attend before him or a person specified in the instrument, at such time and place as is so specified, and there to answer questions relating to minerals obtained, or the value of minerals obtained; or

(c) to produce or make available to a person specified in the instrument, at such time and place as is so specified, books or documents in his custody, power or control relating to minerals obtained or the value of minerals obtained.

(2) A person is not excused from furnishing information, answering a question or producing or making available books or documents when required to do so under this section, on the ground that the information so furnished, the answer to the question, or the production or making available of any books or documents, might tend to incriminate him or make him liable to a penalty, but the information so furnished is not admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where books or documents are made available pursuant to a requirement under subsection (1) (c) the person to whom the books or documents are made available may make copies of, or take extracts from, the books or documents.

(4) A person shall not—

(a) refuse or fail to comply with a requirement under subsection (1) to the extent to which he is capable of complying with it;

(b) in purported compliance with such a requirement, knowingly furnish information that is false or misleading in a material particular;

(c) when attending before the Minister or any person in pursuance of such a requirement, knowingly make a statement or produce a document which is, or produce books which are, false or misleading in a material particular; or

(d) when making available books or documents in pursuance of such a requirement, knowingly make available books which are, or a document which is, false or misleading in a material particular.

(5) Any person who contravenes subsection (4) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to a term of imprisonment of two years, or to both.

[Ch6101s93]93. Recovery of royalty, etc.

(1) Royalty payable under section 86 or 87 and any annual charge payable under section 90, are debts due to the Republic and are recoverable in a court of competent jurisdiction.

(2) In proceedings pursuant to subsection (1) a certificate of the Minister certifying that a specified amount of royalty, or an annual charge of a specified amount, is payable by an identified person shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(3) Where two or more persons constitute the holder of a mining licence or a claim when royalty becomes payable, those persons are jointly and severally liable for the payment of royalty under section

86 or 87, or any annual charge payable under section 90; but without prejudice to any right to contribution existing between them.

PART VII

PROTECTION OF THE ENVIRONMENT

[Ch6101s94]94. Protection of natural resources to be taken into account

(1) In deciding whether or not to grant a Mineral Right, the Minister shall take into account the need to conserve the natural resources in or on the land over which the Mineral Right is sought, or in or on neighbouring land.

(2) In deciding whether or not to issue a non-exclusive prospecting licence or to register a claim, the Commissioner shall take into account the need to conserve the natural resources in or on land to be covered by the licence or over which the claim is to be registered, or in or on neighbouring land.

(3) The Minister may, pursuant to section 38 (3), require environmental impact studies to be carried out.

[Ch6101s95]95. Conditions for the protection of the environment, etc.

(1) There may be included in a Mineral Right conditions with respect to—

- (a) the prevention, limitation or treatment of pollution;
- (b) the minimization of the effects of mining on adjoining or neighbouring areas and their inhabitants.

(2) On the registration of a claim, any condition of a kind referred to in subsection (1) may be imposed as a condition on which the claim is registered.

[Ch6101s96]96. Rehabilitation of area damaged by prospecting or mining

(1) There may be included in a prospecting or mining licence such conditions relating to—

(a) the reinstatement, levelling, regrassing, reforesting and contouring of any part of the prospecting or mining area that may have been damaged or deleteriously affected by prospecting or mining operations; and

(b) the filling in, sealing or fencing off, of excavations, shafts and tunnels,

as may be prescribed, or as the Minister may, in any particular case, determine.

(2) There may be included as a condition on which a claim is registered any condition, of a kind referred to in subsection (1), which may be prescribed for the purposes of that subsection.

(3) Where any condition is to be included in a prospecting or mining licence pursuant to subsection (1) the Minister may require the applicant for the licence to lodge with the Commissioner, within such time as the Minister may require, security for the performance of the conditions in such amount and form as the Minister deems appropriate.

[Ch6101s97]97. Direction to comply with conditions of Mineral Right for protection of environment

(1) Where a Mineral Right over any land is wholly or partly determined or cancelled, or expires, the Minister may, by notice served on the person who is or was the last holder of the Mineral Right, direct him to take such steps within such time as may be specified in the notice, to give effect, in relation to the land which is no longer subject to the Mineral Right, to any conditions included in the Mineral Right pursuant to section 95 or 96.

(2) Any person to whom a direction is given under subsection (1) who, without reasonable excuse, fails or neglects to comply with the direction is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate to a fine of twenty thousand Kwacha.

(3) If a person to whom a direction is given under subsection (1) does not comply with the direction, the Minister may cause to be taken any steps specified in the notice containing the direction.

(4) Costs and expenses incurred pursuant to subsection (3) in taking any steps referred to in that subsection are a debt due to the Republic and are recoverable in a court of competent jurisdiction.

(5) In any proceedings instituted for the recovery from a person to whom a direction was given under subsection (1) of a debt due by that person to the Republic under subsection (4), a certificate of the Minister that a specified amount is the amount of the debt due shall be received as evidence of that fact; but without prejudice to the right to adduce evidence in rebuttal.

(6) A debt due by any person to the Republic under subsection (4) is recoverable notwithstanding that that person is convicted of an offence under subsection (2).

(7) Where two or more persons constitute, or constituted, the holder of a Mineral Right, those persons are jointly and severally liable for the payment of any costs and expenses which may be recovered under this section from the person who is or was the last holder of the Mineral Right; but without prejudice to any right to contribution existing between them.

PART VIII

RESERVED MINERALS

[Ch6101s98]98. Definitions

In this Part, unless the context otherwise requires—

“precious metals” means gold, silver, platinum and platinoid metals, in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable for their content of the aforementioned precious metals;

“precious stones” means rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed;

“reserved minerals” means precious metals, precious stones and any other mineral which may be prescribed;

“reserved minerals licence” means a licence issued under section 100.

[Ch6101s99]99. Possession, etc., of reserved minerals

(1) Subject to this section, no person—

(a) shall possess any reserved minerals—

(i) unless they were obtained by him pursuant to the exercise of rights under a Mineral Right, a non-exclusive prospecting licence, or a claim, of which he is the holder; or

(ii) unless he is the holder of a reserved minerals licence authorizing him to buy the mineral concerned, or an employee of any such holder duly authorized and acting as such; or

(b) shall, in Malawi, buy any reserved minerals unless he is the holder of a reserved minerals licence authorizing him to buy the minerals.

(2) Nothing in subsection (1) operates to prevent a bona fide museum, educational or scientific establishment from possessing or purchasing reasonable amounts of reserved minerals for the purpose of display, teaching or scientific study.

(3) This section is subject to such exceptions as may be prescribed.

[Ch6101s100]100. Reserved minerals licence

(1) Subject to the Regulations, the Commissioner may, on the prescribed fee being paid, issue to any person a reserved minerals licence.

(2) Subject to subsection (3), a reserved minerals licence authorizes the holder to buy such reserved minerals as are identified in the licence.

(3) The holder of a reserved minerals licence shall not buy any reserved minerals from any person unless that person is entitled, under this Part, to possess those reserved minerals.

(4) The holder of a reserved minerals licence shall keep such records in such form and containing such particulars as may be prescribed.

(5) The Regulations may make provision with respect to the term, renewal and cancellation of reserved minerals licences.

[Ch6101s101]101. Offences

Any person who contravenes section 99 (1) or 100 (3) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

PART IX

RESTRICTIONS AND SURFACE RIGHTS

[Ch6101s102]102. Definition

In this Part, “Authority” means—

(a) a Mineral Right;

(b) a non-exclusive prospecting licence;

(c) a claim; or

(d) a mineral permit.

[Ch6101s103]103. Restrictions on exercise of rights in relation to certain land

2 of 1983(1) The holder of an Authority shall not exercise any of his rights under the Authority or under this Act—

(a) except with the written consent of the President in respect of—

(i) any land set apart for any public purpose (other than mining);

(ii) any land dedicated as a place of burial or which is a place of religious significance; or

(b) except with the written consent of the lawful occupier thereof in respect of—

(i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;

(ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise bona fide prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);

(iii) any land from which, during the year immediately preceding, agricultural crops have been reaped;

(iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip-tank, dam, or other body of water, not being public water as defined in the Water Resources Act, Cap. 72:03

but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;

(c) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;

(d) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township; or

(e) in respect of any land comprising a street, road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof. Cap. 69:02

(f) in respect of a production area (as defined in section 3 of the Petroleum (Exploration and Production) Act), except with the written consent of the holder of the petroleum production licence concerned. Cap. 61:02

(2) Any dispute as to whether or not subsection (1) (b) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.

(3) Any consent under subsection (1) (a), (c), (d) or (e) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(4) For the purposes of subsection (1) (a), "public purpose" means a purpose prescribed as such.

[Ch6101s104]104. Right to graze stock, etc.

(1) The lawful occupier of any land in a reconnaissance area, a prospecting area, a mining area or a claim area, retains any right which he may have to graze stock upon or to cultivate the surface of

the land, except in so far as the grazing or cultivation interferes with reconnaissance, prospecting or mining operations in any such area.

(2) The lawful occupier of land in a mining area or a claim area shall not erect any building or structure in the area without the consent of the holder of the mining licence or claim concerned; but if the Minister considers that the consent is being unreasonably withheld, he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.

(3) The rights conferred by an Authority shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier, or of the land subject to the Authority, or on which rights under the Authority are exercised, consistent with the reasonable and proper conduct of operations pursuant to the Authority.

[Ch6101s105]105. Compensation for disturbance of rights, etc.

(1) Where, in the course of reconnaissance, prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused—

(a) the holder of the Authority, by virtue of which the operations are carried on; or

(b) if the operations are carried on by or on behalf of a person who is not the holder of an Authority or otherwise than in accordance with an Authority, every person by or on whose behalf the operations are carried on,

is liable to pay to the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

(2) The amount of the compensation payable to a lawful occupier pursuant to this section may be determined by agreement between the holder of the Authority, or the person referred to in subsection (1) (b), concerned and the lawful occupier or, if not so agreed, may be assessed by the Commissioner under Part XI.

[Ch6101s106]106. Notice of intention to commence reconnaissance or prospecting operations, etc.

(1) Subject to such exceptions as may be prescribed, the holder of a reconnaissance or an exclusive prospecting licence, before commencing prospecting operations in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

(2) The reference in subsection (1) to “prospecting operations” includes a reference to reconnaissance operations, but only to the extent that the reconnaissance operations involve surface or subsurface techniques.

[Ch6101s107-109]107—109

[PART X: Affecting sections 107–109 repealed by 2 of 1983].

PART XI

DISPUTES

[Ch6101s110]110. Commissioner may decide disputes

(1) The Commissioner may inquire into and decide all disputes between persons engaged in reconnaissance, prospecting or mining operations, either among themselves, or in relation to themselves and third parties (other than the Government) not so engaged, in connexion with—

- (a) the boundaries of any reconnaissance, prospecting, mining or claim area;
- (b) any act committed or omitted, or alleged to have been committed or omitted in the course of, or ancillary to, reconnaissance, prospecting or mining operations;
- (c) the assessment and payment of compensation pursuant to this Act; or
- (d) any other matter which may be prescribed.

(2) Subject to subsection (3), the Commissioner may, in his discretion, refuse to decide any dispute referred to him under this Part and, if he does so, he shall notify the parties to the dispute in writing accordingly.

(3) The Commissioner shall not refuse to act under subsection (1) (c) in respect of any compensation to be assessed for the purposes of section 105.

(4) The Commissioner may make any decree or order which may be necessary for the purpose of giving effect to his decision in proceedings pursuant to this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

[Ch6101s111]111. Enforcement of Commissioner's decrees and orders

(1) The Commissioner may send a copy, certified under his hand, of any decree or order made by him to the Registrar of the High Court, and the High Court shall enforce the decree or order of the Commissioner in the same manner in which it would enforce its own decrees or orders; but no such decree or order shall be so enforced until the period for an appeal under section 112 has passed or, if there is such an appeal within that period, unless the Minister rejects the appeal or the appeal is withdrawn.

(2) Where on an appeal under section 112 the Minister varies or alters any decree or order of the Commissioner or makes a new decree or order, the appeal shall be treated, for the purposes of subsection (1), as having been dismissed and the decree or order as so varied, altered or made shall be enforced under that subsection.

(3) The fees payable upon the enforcement of a decree or order are those which would be payable upon the enforcement of a like decree or order made by the High Court.

[Ch6101s112]112. Appeal to Minister

(1) Any person aggrieved by a decision, decree or order of the Commissioner made or given pursuant to this Part may appeal to the Minister within the period of thirty days after the date on which notice of the decision, decree or order is given to that person.

(2) No appeal lies to the Minister against a decision of the Commissioner under section 110 (2).

(3) On appeal under subsection (1), the Minister may rescind or affirm the decision, decree or order appealed from or make a new decision, decree or order, and that decision, decree or order is final.

[Ch6101s113]113. Jurisdiction of courts excluded

(1) No person shall commence proceedings in a court in respect of any dispute of a kind referred to in section 110, or prescribed pursuant to section 110 (1) (d), unless the Commissioner has refused pursuant to subsection (2) of that section to decide the dispute.

(2) Where the Commissioner refuses pursuant to section 110 (2) to decide a dispute the period of limitation for bringing any action with respect to the matter giving rise to the dispute commences when the Commissioner so refuses

[Ch6101s114]114. Regulations with respect to proceedings

The Regulations may make provision with respect to—

(a) the initiation and conduct of proceedings under section 110 and the keeping of records and notes of evidence concerning any such proceedings; and

(b) appeals under section 112.

PART XII

MISCELLANEOUS

[Ch6101s115]115. Right to take building and industrial minerals

(1) Subject to this section and the Regulations, nothing in this Act operates to prevent—

(a) a citizen of Malawi from taking minerals of any kind from customary land, to the extent and in the manner which custom permits, and from which it has been customary to take minerals of that kind;

(b) a person from taking from land, in respect of which he is the lawful occupier, building and industrial minerals for the purpose of construction, on the land, of any dwelling house, factory, workshop or store, including the outbuildings or appurtenances thereof;

(c) any forest officer, game control officer or national parks officer, in his official capacity, from taking in a forest reserve, a game reserve or a national park, as the case may be, building and industrial minerals for the purposes of building, bridge-building, road-making and other constructional purposes in the reserve or park;

(d) the exercise of the right under the proviso to paragraph (a) of section 15 of the Land Act; Cap. 57:01

(e) the exercise of the power under section 29 of the Public Roads Act; Cap. 69:02

(f) the Capital City Development Corporation established under the Capital City Development Corporation Act from taking from the land designated under section 9 of that Act building and industrial minerals for the purpose of building, bridge-building, road-making and other constructional purposes on that land. Cap. 39:02

(2) Nothing in subsection (1) or in any Act referred to in subsection (1) shall be treated as authorizing a person to take any mineral from a prospecting area, a mining area or a claim area without the written consent of the holder of the prospecting licence, mining licence or claim concerned, as the case may be.

(3) Any dispute as to whether or not a person is entitled to take minerals pursuant to subsection (1) (a) shall be decided by the Minister responsible for land matters whose decision is final.

(4) In this section—

“forest reserve” and “forest officer” have the respective meanings assigned by section 2 of the Forest Act: Cap. 63:01

“game reserve” and “game control officer” have the respective meanings assigned by sections 10 and 2 of the Game Act; Cap. 66:03

“national park” and “national parks officer” have the respective meanings assigned by section 2 of the National Parks Act. Cap. 66:07

[Ch6101s116]116. Scientific investigation

(1) The Commissioner may, by instrument in writing, consent to the carrying on by any person of reconnaissance or prospecting operations in the course of a scientific investigation with respect to the geology or mineral resources of Malawi.

(2) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.

(3) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance or prospecting operations specified in the instrument—

(a) in the area; and

(b) subject to the conditions (if any),

specified in the instrument, in the course of the scientific investigation.

(4) Subject to subsections (5) and (6), any authorized officer, or any person authorized in writing for the purpose of this section by the Commissioner, for the purpose of collecting information on the geology and mineral resources of Malawi, may enter on any land and, for that purpose, carry on any prescribed operation.

(5) An Authorized officer or a person authorized shall not, pursuant to subsection (4), enter on any land or place referred to in section 103 without obtaining the consent required under that section in relation to the land or place.

(6) Where the doing of any act is regulated or prohibited by a written law (other than this Act) nothing in this section shall be construed as authorizing the person specified in the instrument to. do the Act—

(a) otherwise than in accordance with the written law; and

(b) without first obtaining the licence, permit, authority, or other instrument (if any), required under the written law for the doing of the act.

(7) Notwithstanding any provision of that written law, if the President is satisfied that any licence, authority, or other instrument, required in pursuance of subsection (6) (b) is being unreasonably withheld he may, in his absolute discretion, direct the issue thereof.

[Ch6101s117]117. Power of Commissioner and authorized officers

(1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times,—

(a) may enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with reconnaissance, prospecting or mining operations;

(b) may inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (a);

(c) may take or remove for the purpose of analysis or testing, or for use in evidence in connexion with an offence against this Act, samples of minerals or other substances from a mine or any area where any of the operations referred to in paragraph (a) are being carried on;

(d) may inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);

(e) may, with respect to the health and safety of persons employed by a holder of a Mineral Right or a claim in or in connexion with any of the operations referred to in paragraph (a), issue

directions to and impose restrictions on the holder or any persons so employed, by instrument in writing;

(f) may order, by instrument in writing—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (a); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed; or

(g) may make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

(4) On an appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or an authorized officer's powers under this section.

(7) Any person who—

(a) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or

(b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this section,

is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

[Ch6101s118]118. Removal of minerals

(1) Minerals shall not be removed from any land from which they have been obtained, nor disposed of, in any manner, except—

(a) subject to subsection (2), by the holder of a Mineral Right, a non-exclusive prospecting licence or a claim for the purpose of sampling or analysis;

(b) by such a holder in accordance with the terms of the Mineral Right, non-exclusive prospecting licence or claim concerned; or

(c) as otherwise permitted by this Act.

(2) The holder of a Mineral Right, a non-exclusive prospecting licence or a claim shall not, pursuant to subsection (1) (a), take or send out of any land samples of minerals without the written consent of the Commissioner.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or

(b) in the case of a body corporate, to a fine of ten thousand Kwacha.

[Ch6101s119]119. Permit to export minerals

(1) The Minister may grant to any person a permit to export minerals from Malawi on conditions determined by the Minister and specified in the permit; but the grant of such a permit does not exempt the person concerned from complying with the requirements of any other law relating to the export of minerals.

(2) Any person who exports any mineral from Malawi otherwise than under and in accordance with a permit granted under subsection (1) is guilty of an offence and liable on conviction—

(a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or

(b) in the case of a body corporate, to a fine of twenty thousand Kwacha.

(3) This section shall not apply with respect to such minerals as may be prescribed.

[Ch6101s120]120. Acquisiton of land

Where the President considers that any land is required to secure the development or utilization of the mineral resources of Malawi he may direct that the land be compulsorily acquired under the Lands Acquisition Act. Cap. 58:04

[Ch6101s121]121. Production of books, etc.

The Minister may direct the holder of a Mineral Right or a claim, at a reasonable time and place specified in the direction, to make available to, or to produce for inspection by, the Commissioner or an authorized officer, any books, accounts, vouchers, documents or records of any kind, concerning the Mineral Right or claim, and if the holder fails or neglects to do so he is guilty of an offence and liable on conviction to a fine of one thousand Kwacha.

[Ch6101s122]122. Identity, of persons exercising certain rights, to be established

A person exercising any right under a reconnaissance licence, a prospecting licence or a non-exclusive prospecting licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of such a licence; and if he fails to do so he may be treated as a trespasser.

[Ch6101s123]123. Removal of property by holder of Mineral Right

(1) Subject to any relevant agreement of a kind referred to in section 10, where a Mineral Right has been wholly or partly determined or cancelled, or has expired, the Minister may, by notice served on the person who is or was the holder of the Mineral Right, direct that person to remove or cause to be removed from the relinquished area concerned, all property brought into that area by any person engaged or concerned in the operations authorized by the Mineral Right, or to make arrangements that are satisfactory to the Minister with respect to that property.

(2) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice by which the direction was given is guilty of an offence and liable on conviction to a fine not exceeding five thousand Kwacha.

[Ch6101s124]124. Removal and sale of property

(1) Where a direction under section 123 has not been complied with, the Minister—

(a) may do or cause to be done all or any of the things required by the direction to be done;

(b) may remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the relinquished area concerned;

(c) may dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (b); and

(d) may, if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction or otherwise as he thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that he believe to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—

(a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;

(b) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under section 123 to be done by the person; and

(c) all or any part of any fees or amounts due and payable under this Act by the person.

(3) The costs and expenses incurred by the Minister under subsection (1)—

(a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic; or

(b) if incurred in relation to the doing of anything required by a direction under section 123 to be done by a person who is or was the holder of a Mineral Right, are a debt due by that person to the Republic,

and to the extent to which they are not recovered under subsection (2) are recoverable in a court of competent jurisdiction, as a debt due to the Republic.

(4) Subject to subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

[Ch6101s125]125. Obstruction of holder of Mineral Right, etc.

Any person who, without reasonable excuse, obstructs, molests, hinders or prevents the holder of a Mineral Right, a non-exclusive prospecting licence, or a claim, in or from the doing of any act which that holder is authorized to do by this Act, is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or both.

[Ch6101s126]126. Offence committed by body corporate

When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was

purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

[Ch6101s127]127. Miscellaneous offences

Any person who—

(a) in, or in connexion with, any application under this Act or in response to any invitation or requirement of the Minister or the Commissioner under this Act (otherwise than under section 117), knowingly or recklessly gives information which is false or misleading in a material particular;

(b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(c) places or deposits, or is accessory to the placing or depositing of, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place;

(d) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore with the intention to cheat, deceive or defraud,

is guilty of an offence and liable on conviction—

(e) in the case of an individual, to imprisonment for a term of two years; or

(f) in the case of a body corporate, to a fine of thirty thousand Kwacha.

PART XIII

REGULATIONS

[Ch6101s128]128. Regulations

(1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, but without limiting the generality of subsection (1), the Regulations may include provision for or with respect to—

(a) reconnaissance operations, prospecting for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to reconnaissances or prospecting operations;

(b) mining for minerals and the carrying on of related operations, and for those purposes the execution of works, the methods which may or may not be used and the duties of specified persons in relation to mining operations;

(c) the functions of officers acting in the administration of this Act;

(d) the regulation of matters relating to sanitation and health;

(e) the reporting of cases of accident or death occurring in the course of reconnaissance, prospecting or mining operations, or in any related operations, and the holding of inquiries into accidents;

(f) the demarcation of reconnaissance, prospecting or mining areas;

(g) the determination and amount of royalty payable, and the manner of the payment and collection of royalty;

(h) the circumstances in which fees or rents may be charged and the amounts thereof;

(i) the making of searches in connexion with claims or Mineral Rights, or interests created therein, the granting of certificates in connexion therewith, and the effect of any such certificate;

(j) the issue and conditions of a non-exclusive prospecting licence and the exercise of rights thereunder;

(k) the pegging of claims (including the number and class of claims which may be pegged), and the registration of claims;

(l) the exercise of rights in, and the duties to be performed (including work obligations) in relation to, land subject to a claim;

(m) the transfer of, and the creation of shares in, a claim, and the respective rights of the transferor and transferee;

(n) the amalgamation, surrender or cancellation of claims, whether in respect of all or some only of the land in claim areas; or

(o) amending the First Schedule to this Act.

(3) Regulations made pursuant to subsection (2) (g)—

(a) may prohibit the export of any mineral unless or until royalty payable thereon has been paid or secured;

(b) may specify the person or persons by whom royalty shall be paid, and may specify whether two or more persons are jointly and severally liable to pay royalty;

(c) may provide for the examination of mineral consignments and the issue of export permits in respect thereof; and

(d) may provide for the performance by persons identified in the Regulations of functions with respect to royalty and its collection.

(4) The power under this section to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and

(b) so as to make, as respects the cases in relation to which it is exercised,—

(i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of case for different purposes of this Act; or

(ii) any such provision either unconditionally or subject to any specified condition.

PART XIV

TRANSITIONAL PROVISIONS AND SAVINGS

[Ch6101s129]129. Transitional provisions and savings

The transitional provisions and savings in the Second Schedule shall have effect.

[Ch6101s130]130. Repeals

RepealsThe following Acts were repealed—

Mining Act (Cap. 61:01);

Mining Regulation (Oil) Act (Cap. 62:01);

Radio-active Minerals Act (Cap. 62:02),

and all subsidiary legislation made thereunder was revoked except the Mining (Safety) Regulations (see post p. 90).*

FIRST SCHEDULE (s. 66)

RECORDS AND REPORTS

1. Duties of holder of reconnaissance licence

(1) Subject to subparagraph (4), the holder of a reconnaissance licence—

(a) shall furnish such information in connexion with the programme of reconnaissance operations as the Minister may, from time to time, require; and

(b) shall, at half-yearly intervals commencing six months after the grant of the licence, submit to the Minister reports on the progress of the programme of reconnaissance operations.

(2) Where a reconnaissance licence is determined or cancelled, or expires, the person who was the holder of the licence immediately before the determination, cancellation or expiration shall, not later than three months thereafter, submit to the Minister a report setting forth his evaluation of the mineral prospects of the former reconnaissance area.

(3) A report submitted pursuant to subparagraph (2) shall be accompanied by the negatives of all aerial photographs taken in the course of carrying on the programme of reconnaissance operations, together with—

(a) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts made by or for the former holder;

(b) copies of all tests and analyses made by or for that holder;

(c) copies of all reports made by or for that holder, including interpretations concerning the mineral prospects in the reconnaissance area; and

(d) a statement of the costs incurred by that holder in the performance of the programme of reconnaissance operations.

(4) The Minister may, on application made to him by the holder or former holder of a reconnaissance licence, dispense with or modify all or any of the requirements of subparagraph (1), (2) or (3).

2. Duties of holder of exclusive prospecting licence

(1) Subject to subparagraph (2), the holder of an exclusive prospecting licence—

(a) shall keep; at the address referred to in section 66 (2) (a), full and accurate records of his prospecting operations which shall show—

(i) boreholes drilled;

(ii) strata penetrated; with detailed logs of the strata;

(iii) minerals discovered;

(iv) the results of any seismic survey or geochemical or geophysical analysis;

(v) the results of any analysis or identification of minerals removed under section

(vi) the geological interpretation of the records maintained under subparagraphs (i) to (v) exclusive;

(vii) the number of persons employed;

(viii) other work done in connexion with the exclusive prospecting licence;

(ix) costs incurred; and

(x) such other matters as may be prescribed; and

(b) shall submit, at least once in every three months of the term of the licence, copies of those records to the Minister, together with any reports prepared as a result of those records.

(2) The Minister may, on application made to him by the holder of an exclusive prospecting licence, dispense with or modify all or any of the requirements of subparagraph (1).

3. Duties of holder of mining licence

(1) Subject to subparagraph (2), the holder of a mining licence shall—

(a) keep, at the address referred to in section 66 (2) (a), full and accurate technical records of his mining operations in the mining area, in such form as the Minister may approve;

(b) keep at that address copies of all maps, geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and tests, and all other data, obtained and compiled by the holder in respect of the mining area;

(c) keep at that address accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; and if the holder is engaged in any other activity not connected with his mining operations he shall maintain separate books of account in respect of his mining operations;

(d) submit to the Minister such reports, records and other information as the Minister may, from time to time, require concerning the conduct of operations in the mining area; and

(e) furnish the Minister with a copy of every annual financial report within three months of the end of each financial year showing the profit or loss for the year and the state of financial affairs of the holder at the end of each financial year.

(2) The Minister may, on application made to him by the holder of a mining licence, dispense with or modify all or any of the requirements of subparagraph (1).

4. Duty on termination of Mineral Right, etc.

Where—

(a) a Mineral Right terminates pursuant to section 56 (1) (b) or 57; or

(b) the term of an exclusive prospecting licence or mining licence expires, the person who was the holder of the Mineral Right immediately before the termination or expiration shall deliver to the Minister—

(c) all records which the former holder maintained pursuant to this Act with respect to the Mineral Right;

(d) all plans or maps of the area of land that was subject to the Mineral Right and which were prepared by or on the instructions of the former holder; and

(e) such other documents as the Minister may, by notice given to the former holder, require him to so deliver.

SECOND SCHEDULE (s. 129)

TRANSITIONAL PROVISIONS AND SAVINGS

1. Definitions

In this Schedule—

“the commencement” means the 1st day of June, 1981;

“the repealed Act” means the Mining Act repealed by section 130 (1).

2. General savings

Except insofar as the context or subject-matter otherwise indicates or requires, nothing in this Schedule affects—

(a) anything duly done or commenced to be done under the repealed Act;

(b) any liability incurred under the repealed Act;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of the repealed Act; or

(d) any investigation, inquiry, legal proceedings or remedy in respect of any such liability, penalty, forfeiture or punishment,

and any such investigation may be continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced, as if this Act had not been enacted.

3. Prospecting rights

A prospecting right issued under section 13 of the repealed Act that is in force immediately before the commencement is deemed to be a non-exclusive prospecting licence issued on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the prospecting right issued under section 13; and

(b) authorizing the holder of the right so issued to prospect in all areas covered by the right for any mineral for which he is authorized by virtue of the right so issued to prospect,

and the provisions of this Act apply accordingly.

4. Exclusive prospecting licence

(1) An exclusive prospecting licence granted under section 18 of the repealed Act that is in force immediately before the commencement is deemed to be an exclusive prospecting licence granted on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the licence granted under section 18; and

(b) authorizing the holder of the licence so granted to prospect in the area of land identified in the licence for any mineral identified in the licence,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of an exclusive prospecting licence granted under section 18 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the exclusive prospecting licence.

5. Claims

(1) A claim that was registered under the repealed Act, and that subsists immediately before the commencement, is deemed to be a claim registered on the same conditions under this Act, and the provisions of this Act apply accordingly.

(2) The period of validity of a claim to which subparagraph (1) applies is the same as it would have been if this Act had not be enacted, but without prejudice to any right of renewal under and in accordance with this Act.

6. Mining leases

(1) A mining lease granted under section 43 of the repealed Act that is in force immediately before the commencement is deemed to be a mining licence granted on the same conditions under this Act on the commencement—

(a) for the unexpired term (as at the commencement) of the lease granted under section 43; and

(b) over the area of land subject to the lease so granted in respect of the minerals to which that lease relates,

and the provisions of this Act apply accordingly.

(2) The Commissioner shall cause the name of the person who, immediately before the commencement, was the holder of a mining lease granted under section 43 of the repealed Act to be recorded pursuant to section 58 as the registered holder of the mining licence.

7. Mineral permits

A permit issued under section 98 of the repealed Act that is in force immediately before the commencement is deemed to be a mineral permit granted on the same conditions under this Act on the commencement, and the provisions of this Act apply accordingly.

8. General provision

For the avoidance of doubt it is hereby declared that any prospecting right, exclusive prospecting licence, mining lease or permit to which this schedule applies, is subject to the provisions of this Act which apply to the corresponding instrument under this Act, including, in particular, the provisions of this Act relating to cancellation.

9. Rules

The Minister may, by rules under this paragraph, make whatever provisions seem to him to be necessary or desirable for a smooth transition from arrangements under the repealed Act to arrangements under this Act.