

MALAWI GOVERNMENT

Act

No. 26 of 1988

I assent



LIFE PRESIDENT

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FIRST SCHEDULE

SECOND SCHEDULE

An Act to make provision with respect to Town and Country Planning and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

1. This act may be cited as the Town and Country Planning Act, 1988, and shall come into operation on such date as the Minister may appoint by notice in the *Gazette*.

2. In this Act, unless the context otherwise requires—

Short title and commencement

Interpretation

“accelerated development area order” means an order made, and referred to as such, under Part VI;

“advertisement” means any word, letter, model, sign, placard, board, notice, poster, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing includes any hoarding or similar structure used or adapted for use for the display of advertisements;

“authorized officer” means a person designated as such under section 5;

“Board” means the Town and Country Planning Board established under section 7;

“building” means any building, erection or structure erected on or made on, in or under any lands and includes the land on, in or under which the building, erection structure is situated;

“building operations” includes any road or other works, preliminary or incidental to the erection or buildings;

“building preservation order” means an order made, and referred to as such, under Part VI;

“Chairman” means the Chairman of the Board;

“Commissioner” means the Commissioner for Town and Country Planning appointed under section 3;

“declared area” means an area declared by order to be a Planning Area or a Land Development Control Area;

“development” in relation to any land means any building, re-building, engineering or mining operations in, on, under or over land and any material change in the use of land or building;

“development permission” is permission granted under Part V;

“District Physical Development Plan” means the plan referred to in *Division I* of Part IV;

“enforcement notice” means a notice served under section 45;

“exempted development” means development exempted by section 33 from the operation of this Act;

“grant of development permission” means the grant under section 36, of permission by the Minister or a responsible authority to develop land in accordance with the terms and conditions of the grant;

“improvement area order” means an order made, and referred to as such, under Part VI;

“land” includes land covered with water buildings and other things permanently affixed to land and any interest in land;

“land development control area order” means an order made, and referred to as such, under Part VI;

“Local Authority” has the meaning ascribed to that expression in the Local Government (Urban Areas) Act; Cap. 22:01

“Local Government Area” has the meaning ascribed to that expression in the Local Government (Urban Areas) Act; Cap. 22:01

“Local Physical Development Plan” means the plan referred to in *Division IV* of Part IV;

“National Physical Development Plan” means the plan referred to in *Division II* of Part IV;

“notice of revocation” means a notice served under section 42 of this Act revoking, to the extent set out in the notice, a grant of development permission;

“permitted development” means the development specified in the First Schedule;

“plan” means a plan made under this Act;

“Planning Area” means an area declared as such under Part IV;

“Planning Committee” means a Planning Committee appointed or declared under Part III;

“responsible authority” in relation to—

(a) a Planning Area, means the Planning Committee of that area; and

(b) any other area, means the Commissioner;

“stop notice” means a notice served under section 49;

“sub-division” means the division of any piece of land for the purpose of parting with possession or of disposing of any portion thereof, either by way of lease or sale or for the erection of a building upon any portion;

“sub-division control area order” means an order made, and referred to as such, under Part VI;

“sub-division agreement” includes any agreement whereby any person is given—

(a) any right whether vested or contingent to acquire, lease, or obtain possession of any portion of land, whether immediately or upon fulfilment of any condition or upon the happening of any event, or after the lapse of any time, or upon the exercise of any option or upon the payment of any sum, whether by instalments or otherwise; or

(b) a right to erect a building on any portion of land belonging to some other person;

“vacant land development area order” means an order made, and referred to as such, under Part VI.

PART II—OFFICE AND DUTIES OF THE COMMISSIONER

Commissioner for Town and Country Planning

Delegation of powers by the Minister to the Commissioner

Performance of Commissioner's functions, etc.

Indemnity of public officers

3. There shall be a Commissioner for Town and Country Planning who shall be a public officer.

4. The Minister may, subject to special or general directions, delegate all or any of the powers or duties conferred by this Act to the Commissioner.

5. 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.

6. A public officer shall 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—PLANNING AUTHORITIES

Establishment of Town and Country Planning Board

7.—(1) There shall be established a Town and Country Planning Board which shall have the jurisdiction and powers conferred upon it by this Act.

(2) In addition to any specific powers conferred upon the Board by this Act, the Minister may, if he thinks fit, require the Board to make a report or give advice to him on any matter which he shall refer to it.

(3) The Board shall consist of a Chairman who shall be a person knowledgeable and experienced in town and country planning and such other members being not less than six nor more than eight as the Minister may, by notice published in the *Gazette* appoint; and the Chairman and other members shall hold office—

(a) for a period of two years or such shorter period as the Minister may specify in the instrument of appointment; and

(b) upon such conditions as to remuneration and otherwise as the Minister may determine.

(4) The Minister shall appoint one of the members to be Vice-Chairman of the Board.

(5) In appointing the members of the Board, the Minister shall take into account the desirability of availing the Board of the services of persons having experience in, or knowledge of, the following matters—

- (a) town and country planning;
- (b) land management and valuation;
- (c) economics;
- (d) law;
- (e) civil engineering;
- (f) surveying;

- (g) housing;
- (h) architecture;
- (i) social welfare.

(6) The Chairman and any other member of the Board shall not incur any liability in respect of the exercise or performance or purported exercise or performance by him in good faith of any of the functions of the Board under this Act.

8.—(1) The Chairman or in his absence the Vice-Chairman shall preside at all meetings of the Board. Procedures
of the Board

(2) The quorum at any meeting of the Board shall be constituted by any five members.

(3) The Board has power to regulate its own procedures.

(4) The proceedings of the Board shall be deemed to be judicial proceedings within the meaning ascribed to that expression in the Penal Code. Cap. 7:01

9.—(1) Where a Planning Area has been declared by order under Part IV, the Minister shall appoint a Planning Committee which shall exercise any duties as are conferred upon it by this Act or any regulations and orders of the Minister under this Act. Appointment
of Planning
Committees

(2) A Planning Committee under subsection (1) may be appointed to exercise powers and duties in respect of more than one Planning Area.

(3) Subject to subsections (4) and (5) the Minister shall appoint the chairman and other members of a Planning Committee.

(4) Where a Planning Area lies wholly or in part within the boundaries of a Local Government Area, the Minister shall appoint the chairman and not less than two members of the Planning Committee from amongst the members of the Local Authority having jurisdiction within that Local Government Area.

(5) Where a Planning Area—

(a) lies wholly within the boundaries of one district, the Minister shall appoint as members of the Planning Committee at least two persons from amongst members of the District Council having jurisdiction over that district;

(b) lies within the boundaries of more than one district, the Minister shall appoint as a member of the Planning Committee at least one person from amongst members of each District Council having jurisdiction over part of that Planning Area.

(6) A Planning Committee may delegate to one or more sub-committees or to any officer authorized by it in writing any of its functions under this Act other than the functions of granting or revoking a grant of development permission.

Planning Committee may be committee of a Local Authority or District Council

10.—(1) The Minister may, with the concurrence of the Minister for the time being responsible for Local Government, by order, published in the *Gazette* designate a Local Authority or a District Council as a Planning Committee.

(2) A Planning Committee established under subsection (1) may, in addition to performing the functions of a Planning Committee under this Act, administer the rules relating to building operations applicable within the area of the Local Authority or the District Council as the case may be.

(3) The Minister may nominate not more than three persons to serve on the Planning Committee established under subsection (1) and such persons shall be deemed to be persons appointed to a committee in accordance with subsection (5) of section 56 of the Local Government (Urban Areas) Act or persons co-opted to a Committee under subsection (3) of section 22 of the Local Government (District Councils) Act, as the case may be.

Cap. 22:01

Cap. 22:02

(4) A Planning Committee established under subsection (1) shall be subject to all the provisions applicable to committees of a Local Authority in the Local Government (Urban Areas) Act or of a District Council in the Local Government (District Councils) Act, as the case may be.

Cap. 22:01

Cap. 22:02

(5) Any member of a Planning Committee established under subsection (1), or of a subcommittee thereof, who has any financial or proprietary interest in any matter coming before the Planning Committee or the subcommittee in respect of the exercise of any functions under this Act shall disclose such interest to the Committee or subcommittee and if it is any matter on which a vote is to be taken, he shall not vote on such matter.

Power of Minister to direct inquiries and seek advice

11. The Minister may, as he sees fit, cause inquiries to be made or seek advice from any person or body of persons established by him for that purpose on any matter concerning town and country planning in Malawi or any part thereof.

PART IV—PLANS AND PLAN-MAKING

Division I—General

Duties and powers of responsible authority with regard to plans generally

12.—(1) The responsible authority shall furnish the Minister with such particulars and information as the Minister may require concerning the preparation and content of any plan on the present and future planning needs and the probable direction and nature of development of any area in respect of which a plan may be prepared.

(2) The responsible authority may seek such information and opinions and consult with such persons and organizations as may be necessary to ensure the proper and expeditious preparation of a plan and all such persons and organizations shall, to the extent that they are able, comply with such requests for information and opinions.

(3) The responsible authority shall, during the preparation of a plan, other than a National Physical Development Plan, keep the District Council, the Local Authority and the District Commissioner having jurisdiction in the area for which the plan is being prepared informed of the progress of the preparation and the likely content of the plan and seek and take into account the view of those authorities on the plan.

(4) Where a plan is being prepared which will or is likely to involve the movement or relocation of people from their homes and places of work or the acquisition of land in the area or the redistribution of lands or the readjustment of the boundaries and areas of plots of land, the responsible authority shall, before reaching a decision on the matter, cause the substance of those proposals in the plan to be made known throughout the area of the plan in such manner as is likely to be effective for the purpose of bringing them to the attention of all persons affected by them and shall consider and take into account any representations made concerning the proposals.

13.—(1) When a plan, other than a National Physical Development Plan, has been prepared a copy shall be placed on deposit at the offices of the District Commissioner and also at the offices—

(a) of District Council in the case of a plan prepared for an area within a District; or

(b) of the Local Authority in the case of a plan prepared for the whole or any part of the area of the Local Authority and at such other places as the responsible authority shall see fit.

(2) Notice of such deposit and of the period in which any person may inspect and make representations on a plan shall be published in the *Gazette* and in at least one issue of the newspaper in general circulation in Malaŵi.

(3) The responsible authority shall cause the substance of the plan to be made known throughout the area for which it has been prepared in such manner as it considers to be most effective for the purpose of bringing it to the attention of the people residing and working in that area.

(4) The responsible authority may, and shall if so directed by the Minister or requested by a District Council or Local Authority, hold meetings with any organization or the requesting organizations and such other persons for the purpose of explaining the proposed plans and receiving representations and comments thereon.

(5) Any person may within sixty days of the notice of the deposit of a plan inspect and make representations on that plan.

(6) After the expiry of the period prescribed under subsection (5) for making representations on a plan, the responsible authority shall submit the plan to the Minister together with all such representations and comments and any recommendations made on

Consideration of plans other than National Physical Development Plan

them by the responsible authority for consideration by the Minister.

Approval of plans

14.—(1) The Minister may approve a plan with or without modification or reject it in whole or in part.

(2) Prior to making any decision on a plan which has been submitted to him, the Minister shall consider any representations and comments that have been made on that plan and may refer the plan and those representations and comments to the Board for its advice and may, as he sees fit, seek the advice of any other person on the plan as he may see fit.

Deposit of approved plan

15.—(1) When a plan has been approved by the Minister in respect of the whole or part of the area for which it has been prepared a copy of it shall be deposited in such places within the area and the substance of it shall be made known throughout the area in such manner as the Minister shall direct.

(2) Any approved plan shall be a public document and shall be available for inspection and use by members of the public at all reasonable times at the offices of the responsible authority and at such other places within the area to which the plan applies as the Minister shall direct.

Review, amendment and modification of plans

16.—(1) The Minister may require the responsible authority to review, or prepare modifications and amendments to, any plan or any part thereof.

(2) The responsible authority may review, modify and amend any plan that has been prepared, whether or not it has been approved by the Minister, as is in the opinion of the responsible authority necessary to take account of the changing circumstances of the area to which the plan relates.

(3) The provisions of sections 12 and 13 shall apply to any review, amendment or modification of a plan.

(4) The responsible authority shall submit to the Minister any modifications and amendments to a plan for his approval and if the Minister is of the opinion that new substantial policies and proposals are being introduced into the plan he may, prior to the granting of his approval therefor, direct inquiries to be made under section 11.

Revocation of plans

17.—(1) The Minister may, by order published in the *Gazette*, revoke any plan or part of a plan but such revocation shall not render illegal any action that has been taken by a responsible authority or any other person under, or in pursuance of, a plan.

(2) Any action in the process of being taken by a responsible authority or by any other person under or in pursuance of a plan that has been revoked shall unless the order of revocation otherwise provides, cease to be taken and if continued thereafter shall have no effect.

(3) Upon revocation of a plan under subsection (1) the Minister shall cause the substance of the revocation order to be made known in the area to which the plan applies in such manner as the Minister shall direct.

18.—(1) Where there is any conflict or discrepancy between the policies and proposals of an approved District Physical Development Plan and an approved Local Physical Development Plan applicable to the same area or between two or more approved Local Physical Development Plans applicable to the same area, the policies and proposals of the approved Local Physical Development Plan or, as the case may be, the most recently approved Local Physical Development Plan shall prevail.

Conflict
between
Plans

(2) Where there is a conflict between an approved plan and a plan that has been prepared but not yet approved, the policies and proposals of the approved plan shall prevail.

(3) Where there is a conflict between two or more plans applicable to the same area none of which have been approved, a Local Physical Development Plan shall prevail over any other plan or plans.

19. Nothing in this Part shall be so construed as to prevent the preparation and use by the Commissioner of advisory local physical development plans for urban areas, rural centres and villages for the physical development, redevelopment and use of any land.

Advisory
local
development
plans

Division II—National Physical Development Plan

20.—(1) The purpose of a National Physical Development Plan shall be—

Purpose and
content of
National
Physical
Development
Plan

(a) to provide a spatial framework for the co-ordination and implementation of programmes and projects of development;

(b) to assist with the development of an ordered hierarchy of urban and rural growth centres so as to contribute to a balanced pattern of development and an economical use of resources and facilities; and

(c) to provide guidelines for the development of services and facilities to desirable standards.

(2) A National Physical Development Plan shall consist of such statements of policies and principles and such background studies, reports, maps, plans and other materials containing such information and analysis of demographic, economic, energy, environmental, land use and tenure, physical, rural, social welfare, transportation, urban and other like matters as are necessary to enable the plan to achieve its purpose.

Res-
ponsibility
for the
preparation
of National
Physical
Development
Plan

Approval of
National
Physical
Development
Plan

21.—(1) The Commissioner shall be responsible for the preparation of a National Physical Development Plan.

(2) The Minister may require such information and such policies and proposals as he may see fit to be included in a National Physical Development Plan at the stage of its preparation.

22.—(1) When a National Physical Development Plan (in this section referred to as the "Plan") has been prepared it shall be submitted to the Minister for approval.

(2) The Minister may place the plan or an official summary thereof before Parliament for its consideration, and where he does so, he shall not make any decision on the Plan until after Parliament has considered it.

(3) The Minister may seek such advice on, and give such publicity to, the Plan as he sees fit.

(4) The Minister may approve the Plan with or without amendments or reject it in whole or in part.

Status of
National
Physical
Development

23. Where the Minister approves a National Physical Development Plan or where a National Physical Development Plan has been prepared but has not yet been approved by the Minister, all District Physical Development Plans and all Local Physical Development Plans and any programme or project of development shall, as far as is practicable, be so formulated and prepared as to have regard, to and take into account, the policies and principles of the National Physical Development Plan so approved or prepared.

Division III—District Physical Development Plans

Purpose and
content of
District
Physical
Development
Plans

24.—(1) The purpose of a District Physical Development Plan shall be—

(a) to elaborate on, and to apply, the principles and policies of the National Physical Development Plan, if any is in existence insofar as they are relevant to the district;

(b) to provide a survey of the conditions, resources and facilities within the district to which it relates;

(c) to identify the growth and service centres, the priorities and possible locations of major public investments and the communication and transportation facilities within the district; and

(d) to formulate a general land use plan for the district.

(2) A District Physical Development Plan may be made for—

(a) the whole or part of a district;

(b) more than one district; or

(c) parts of more than one district:

Provided that a District Physical Development Plan made for part of a district or parts of more than one district or more than one district shall be given a special name as appropriate other than that of the district or districts to which the plan relates.

(3) A District Physical Development Plan shall include—

(a) a technical report on the conditions, resources and facilities of the district;

(b) a statement of policies and proposals directed to assisting the making of decisions on the allocation of resources and the location of physical development within the district;

(c) such information about the description and analysis of the conditions of development in the district as may be necessary to explain and justify the statement of policies and proposals;

(d) background studies and reports;

(e) maps and plans showing present and future land uses and development; and

(f) such other matters as the District Planning Committee may request.

25.—(1) The Commissioner shall be responsible for the preparation of a District Physical Development Plan.

(2) With the consent of the Minister, the Commissioner may delegate the responsibility for preparing a District Physical Development Plan to a Planning Committee.

26.—(1) When a District Physical Development Plan has been approved by the Minister in respect of the whole or part of a District all Local Physical Development Plans and all programmes and projects of development proposed for the district or that part for which a District Physical Development Plan has been approved and all Local Physical Development Plans for areas bordering on or adjacent to the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

(2) When a District Physical Development Plan has been prepared but not yet approved all Local Physical Development Plans and all programmes and projects for development within the district shall, as far as is practicable, be so formulated and prepared as to have regard to, and take into account, the District Physical Development Plan.

Division IV—Local Physical Development Plans

27.—(1) Local Physical Development Plans shall include the following, namely—

(a) an *urban structure plan*, which shall be a land use plan or outline zoning scheme or outline zoning plan for the whole of an urban area;

(b) an *urban layout plan*, which shall be a detailed land use plan of a part of an urban area in which significant physical development is planned or is likely to or has begun to take place or there is need for development, redevelopment or revision and upgrading;

Res-
ponsibility
for prepara-
tion of
District
Physical
Development
Plan
Status of
District
Physical
Development
Plan

Types of
Local
Physical
Development
Plans

(c) an *urban civic plan*, which shall be a more elaborate design of a special area or areas of an urban area showing layout of buildings, carparking lots and landscaping among other details; and

(d) a *subject physical development plan*, which shall be a plan concerned with a particular subject matter.

(2) A Local Physical Development Plan other than a subject physical development plan shall be named after the place or area to which it relates and the kind of plan it is.

(3) A subject physical development plan shall be named after the subject particular matter with which it is concerned.

(4) More than one Local Physical Development Plan may be applied to any one area or place at the same time and one Local Physical Development Plan may apply to more than one area at the same time.

Content of
Local
Physical
Development
Plans

28.—(1) A Local Physical Development Plan shall include—

(a) summary of the principal features of the plan;

(b) a statement on the existing conditions of the place or area or subject matter with which the plan is concerned;

(c) a statement on planning policies and proposals;

(d) a statement on the relationship between the plan and the District Physical Development Plan to which it would relate and any other Local Physical Development Plans adjacent to it;

(e) maps and plans to show present and future land and transportation uses and the location of proposed developments; and

(f) guidance on land uses for purposes of making decisions on applications for development permission.

(2) The Minister may require any other matter to be included in any Local Physical Development Plan.

Declaration
of Planning
Area for
Local
Physical
Development
Plan

29.—(1) Where the Minister, after such consultations as he thinks it appropriate to make, considers that there is need for development which is taking place or is likely to take place in any area to be properly planned, organized and guided or that there is need for development to be encouraged in any area and that such planning or development can be better achieved by the preparation of a Local Physical Development Plan, he may by order published in the *Gazette*, declare that area to be a Planning Area.

(2) Where a Planning Area is declared in respect of land which is or part of which is customary land, the Minister may request the Minister responsible for land matters to declare that customary land to be public land under section 27 of the Land Act.

(3) A District Council or a Local Authority may request the Minister to declare under subsection (1) any part of its area of jurisdiction to be a Planning Area.

(4) An order made under subsection (1) shall not be made so as to have retrospective effect.

Cap. 57:01

(5) A copy of the order shall be deposited or displayed in such places within the Planning Area as the Minister may direct, and the Minister shall cause the substance of the order to be made known throughout the Planning Area in such manner as the Minister considers to be most effective for the purpose of bringing it to the attention of all persons likely to be affected by it.

30.—(1) The Commissioner shall be responsible for the preparation of Local Physical Development Plans.

Res-
ponsibility
for prepara-
tion
of Local
Physical
Development
Plan

(2) The Commissioner may delegate the responsibility for the preparation of the plans referred to in subsection (1) to a Planning Committee.

(3) Where the Commissioner delegates to a Planning Committee the responsibility for the preparation of a Local Physical Development Plan, the Planning Committee shall consult with the Commissioner on the need, and the resources likely to be available, for the preparation of such a plan.

31.—(1) When a Local Physical Development Plan has been approved by the Minister—

Status of
Local
Physical
Development
Plan

(a) all Government departments and all statutory bodies shall have due regard to the plan in formulating and preparing any project of public investment and development within the area to which the plan applies;

(b) the District Council, and the Local Authority having jurisdiction in the area to which the plan applies shall, so far as is practicable, comply with the plan in deciding or commenting on the location, priority and nature of any project of public investment or development; and

(c) the Planning Committee shall, in considering any application for development permission, have due regard to and, so far as is practicable, comply with the plan.

(2) When a Local Physical Development plan is in course of preparation or has been prepared but not yet approved all Government Departments and statutory bodies, the District Council, the Local Authority and the Planning Committee having jurisdiction in the area for which the plan is being or has been prepared shall, so far as is practicable in respect of their proposals for public investment and development or their decisions on applications for development permission, have regard to such policies and proposals as have been or are likely to be included in the plan.

PART V—DEVELOPMENT CONTROL AND ENFORCEMENT

Division I—Development Control

32.—(1) This Part shall apply to—

(a) all proposals for development within a Planning area other than development permitted or exempted under this Act;

Application
of this Part

(b) all proposals for development within a declared area other than development permitted by this Act;

(c) all proposals for the display of advertisements other than those permitted by this Act; and

(d) all proposals for sub-divisions within a sub-division control area.

(2) The control of development, advertisements and sub-divisions provided for in this Part shall apply whether the proposed activity on, or the proposed use of, land is to take place on private land, public land or customary land and no person or organization other than those provided for in this Act shall have any power or authority to grant permission for development or sub-division of land within a declared area or in respect of advertisements anywhere in Malaŵi.

Customary
Land
Cap. 57:01

33.—(1) Nothing in this Part shall affect the right of a Chief under section 26 of the Land Act to authorize the use and occupation of any customary land within his area in accordance with customary law but where that area falls within a declared area such authorization shall not operate as a development permission and it shall be the duty of the occupant of the customary land to apply for development permission unless the proposed development is an exempted development under this Act.

(2) An exempted development under this section is—

(a) the erection of a building of a traditional nature within the recognized boundaries of a village;

(b) the erection of a traditional house outside the generally recognized boundaries of a village:

Provided that this shall not authorize or render lawful the erection of such a house within a road reservation or on land where all development is prohibited in a declared area;

(c) the erection of a house made with non-permanent materials but in such case the provisions of the Public Health (Minimum Building Standards for Traditional Housing Areas) Rules or any rules replacing those rules shall apply to such a house;

(d) the erection of houses and other buildings in accordance with a simple layout plan prepared by or approved by the Planning Committee for use by a Chief in his authorization of the use and occupation of customary land in his area;

(e) the use of customary land in accordance with an urban layout plan approved by the Planning Committee for use by a Chief in his authorization for small-scale commercial and manufacturing purposes in buildings made with non-permanent materials.

(3) Where a simple layout plan has been prepared or approved by the responsible authority it shall be explained to and discussed with the Chief to whose area the plan relates.

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sub. leg. p. 75

(4) Where a simple layout plan under subsection 2 (d) has been supplied to a Chief, the Chief shall, in any case where he intends to authorize the use and occupation of customary land for the erection of any building within a declared area, comply with the provisions of that plan.

(5) Where a Chief fails to comply with a layout plan in his authorization of use and occupation of customary land for the erection of any building within a declared area, the Minister may, after consultation with a Planning Committee where the customary land is in a Planning Area, request the Minister for the time being responsible for land matters, to declare that customary land to be public land under section 27 of the Land Act.

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(6) The Minister shall cause the substance of this section to be made known throughout those parts of any declared area where the land is customary land in such manner as he considers to be most effective for the purpose of bringing it to the attention of any Chief or other person having authority over customary land.

34.—(1) The types and classes of development set out in the First Schedule shall, to the extent provided in that Schedule, be permitted development under this Act and shall be exempted from the requirement for development permission under this Part.

Permitted development
First Schedule

(2) The Minister may by order amend the First Schedule.

35. The types of development permission that may be applied for under this Part are as follows, namely—

Types of development permission

(a) an outline development permission and development permission for development within a declared area; and

(b) an advertisement permission for the display of advertisements anywhere in Malawi; and

(c) a sub-division permission for the sub-division of land within a sub-division control area.

36.—(1) An application for development permission under this Part shall—

Application for development permission

(a) be made to—

(i) the Planning Committee, in case of any development within a Planning Area;

(ii) the Commissioner, in every other case;

(b) be accompanied with a prescribed fee; and

(c) be in the prescribed form,

and shall include such other information as the Planning Committee or the Commissioner may require.

(2) The responsible authority may by written notice served on an applicant for the grant of a development permission require the applicant to do either or both of the following, namely—

(a) publish details of his application at a time or times in a place or places and in a manner specified in the notice;

(b) give details of his application to the persons and authorities and in a manner specified in the notice.

(3) A responsible authority shall in writing notify the applicant for a development permission of its decision on the application, giving, where it grants the permission, the conditions, if any, upon which it is granted and, where it refuses the permission, a brief statement of reasons for the refusal.

(4) The responsible authority shall within sixty days of the receipt of an application for development permission inform the applicant of the decision on the application, or where no decision has been taken, of the progress on the application and the likely date by which a decision will be taken.

Power to obtain information concerning applications

37.—(1) The responsible authority may by written notice served on the applicant for the grant of a development permission require the applicant—

(a) to furnish it, within such time as is specified in the notice, with such further information relevant to the application as may be specified in the notice;

(b) to permit it to enter on the land to which the application for the grant of development permission relates so as to enable it to view the site and the adjacent lands and developments.

(2) Where the applicant for the grant of development permission does not have such an interest in the land to which the application relates as would enable him to permit the responsible authority to enter the land, he shall obtain that permission from the person having such interest.

(3) The responsible authority may defer a decision on an application for the grant of development permission until it is satisfied on the matters in respect of which it requires information or entry onto the land to which the application relates.

Power of Minister concerning applications

38.—(1) The Minister may from time to time, by order published in the *Gazette*, or in any individual case, by directions or instructions in writing under his hand, withdraw an application or class of applications for development permission from the jurisdiction of the responsible authority and reserve the power to make a decision on that application or class of application to himself.

(2) The power of the Minister under sub-section (1) may be exercised in respect of any application that has been made to the responsible authority and in such case the responsible authority shall cease to take any action in respect of the application and shall send it together with any information concerning it to the Minister.

(3) An application to which sub-section (1) relates shall be made to the Minister and the Minister shall, in addition to any other powers conferred on him by this Act, have all the powers of a responsible authority under this Part in connexion with such application.

(4) The Minister may refer any application to which sub-section (1) relates to the Board for its advice or decision.

39.—(1) The responsible authority may, on receipt of an application for development permission, consult with and seek information from such of the following persons and authorities as may be necessary for the satisfactory disposal of the application, namely—

Consultation
in relation to
application

(a) the Commissioner of Lands;

(b) the Controller of Roads;

(c) the Chief Inspector of Factories;

(d) the person or authority responsible for the provision of other basic infrastructural services to the land to which the application relates;

(e) the Electricity Supply Commission of Malawi;

(f) the District Council or Local Authority having jurisdiction in the area of the land to which the application relates; and

(g) such other persons and authorities as the responsible authority may see fit to, consult or seek information from.

(2) The persons or authorities referred to in sub-section (1) or their representatives may be invited to attend and speak, without a right to vote, at any meeting convened by the responsible authority to consider any application for development permission.

(3) The persons or authorities referred to in sub-section (1) shall, where they are not invited, or are unable, to attend a meeting convened by the responsible authority to consider an application for development permission, provide the information or advice requested by the responsible authority within twenty-one days of the receipt of the request or where that is not practicable, they shall inform the responsible authority when they are likely to be able to provide that information or advice.

(4) The responsible authority shall not decide on any application for development permission in respect of which it has requested information or advice from any of the persons or authorities referred to in sub-section (1) until after the receipt of that information or advice or twenty-one days have elapsed since such information or advice was requested whichever is the sooner.

40.—(1) In considering any application for development permission, responsible authority shall, and subject to this Act, take such of the following matters into account as it considers necessary for the satisfactory disposal of the application, namely—

Consideration
of
applications

(a) any District Physical Development Plan or Local Physical Development Plan applicable to the area;

(b) such information and advice as it has received under section 39;

(c) the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land;

(d) the quality and economy of the proposed development, its proposed layout and the quality of its architectural design;

(e) consideration of noise, air, water and ground pollution, and any other detrimental effect the proposed development may have on amenity and built environment of the area and adjoining land uses;

(f) traffic considerations;

(g) the contribution the proposed development may make to economic and social facilities and welfare, including employment, within the area;

(h) the financial and other resources available to the person who has applied for development permission;

(i) whether the proposed development is desirable, convenient or necessary having regard to the public interest; and

(j) any other consideration which the Minister requires the responsible authority to have regard to.

(2) The responsible authority may in its discretion, grant an application for development permission either absolutely or subject to such conditions as it may think fit to impose or may refuse to grant an application for development permission.

(3) Without prejudice to the generality of sub-section (2), the responsible authority may in respect of a grant of development permission impose such conditions as are likely to advance any of the matters referred to in sub-section (1), including all or any of the following matters, namely—

(a) the timing and phasing of a development;

(b) the contribution including financial contribution which a developer will be required to make to the provision of infrastructure and car-parking in connexion with the development;

(c) landscaping and the preservation of trees and other natural resources on the land where the development is to take place;

(d) controlling the processes of development;

(e) land in the ownership or control of the developer which is contiguous to the land where the development is to take place;

(f) the duration of a development; and

(g) the nature of materials to be used in the construction of buildings and fences and the colour of external paintwork of buildings and fences.

41.—(1) A development permission shall lapse and shall cease to have any effect if the development to which it relates has not been commenced within two years of the date of the grant of that development permission. Time and completion of development

(2) A responsible authority may by written notice served on a person who has commenced but has not within two years of the date of that commencement completed a development, for which he has obtained a grant of development permission, require that person to complete that development within the time specified in the notice.

(3) A responsible authority may on the request of an applicant for a grant of development permission, or a person who has obtained a grant of development permission, extend the time limits referred to in sub-sections (1) and (2).

(4) A grant of development permission may provide that the development to which it relates shall be permitted for a limited period only.

42.—(1) A responsible authority may, and on the directions of the Minister shall, by written notice served on a person who has obtained a grant of development permission, revoke in whole or in part that grant of development permission. Revocation of grant of development permission

(2) A notice of revocation served under sub-section (1) shall include—

(a) a statement of reasons for the revocation;

(b) such directions as the responsible authority shall consider necessary as to the cessation of any development that has been commenced in pursuance of the grant of development permission;

(c) information on any claim to compensation that may be made in respect of revocation; and

(d) such other matters as may be prescribed by regulations.

(3) A grant of development permission in respect of which a notice of revocation has been served on any person shall, to the extent of the revocation, cease to be valid or to have effect and any development to be affected by the revocation and which takes place after the services of the notice of revocation shall be unauthorized development.

(4) A person upon whom a notice of revocation has been served shall comply in all respects with that notice.

43.—(1) A grant of development permission is personal to the person to whom it is made and where that person ceases to have an interest in the land which would entitle him without obtaining the permission of any person to enter and undertake building operations on the land, the grant of development permission shall Development permission personal to applicant

lapse and, unless it is transferred in accordance with this section, shall cease to have effect.

(2) Where a person has transferred or has made a contract to transfer his interest in land which is the subject of an application for a grant of development permission or in respect of which a grant of development permission has been made, or in case of a company, where a controlling interest in the company which made the application for development permission or to which a grant of development permission has been made, is to be or has been transferred to another person or company, the person in whose name the application for or to whom a grant of development permission has been made shall inform the responsible authority of the name and address of the person to whom, or company to which the land or controlling interest in the company, is being or has been transferred.

(3) A transferee of land or a land controlling interest in a company referred to in subsection (2) shall, if he intends to continue with the development which is the subject of the application for a grant of development permission apply in writing to the responsible authority for a transfer of the development permission.

(4) Sections 36 to 42 of this Act shall apply to any application for a transfer of a development permission made under this section.

Division II—Enforcement

Development
not to take
place without
permission

44.—(1) No person shall commence the development of any sub-division of any land or display any advertisement on any land or building to which this Part applies unless he has first obtained a grant of development permission or except where the development, sub-division or display of advertisement is permitted development under this Act.

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(2) Notwithstanding anything contained in the Deeds Registration Act, the Deeds Registrar shall refuse to accept for registration any document which effects or purports to effect a sub-division or which constitutes or purports to constitute a sub-division agreement to which sub-division subsection (1) applies, unless there is attached to such document a copy of the grant of development permission which permits such sub-division or sub-division agreement.

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(3) Notwithstanding anything contained in the Land Act, the Commissioner of Lands shall not sign, seal, execute or perfect any grant or lease of public land or customary land for the purpose of development to which this Part applies, unless the application for the grant or lease of public land or customary land is accompanied with a copy of a grant of development permission or a certificate from the responsible authority that such grant is not required for the development.

45.—(1) A responsible authority may, in any case where it considers that unauthorized development has taken place, by written notice (in this Act referred to as the “enforcement notice”) a copy of which shall be served on the owner and occupier of the land or building to which the notice relates, require that person or those persons to take such action in such time, being not less than thirty days from the date of the service of a copy of the enforcement notice, in relation to that development as may be specified in that notice.

Enforcement
notice

(2) An enforcement notice shall specify clearly and in a manner which may be easily understood—

- (a) the development to which it relates;
- (b) the activity on or in or the use of land or buildings alleged to constitute the unauthorized development;
- (c) the person or persons to whom it is addressed;
- (d) the time at which it comes into effect;
- (e) the action which must be taken to rectify the alleged unauthorized development and the time, being not less than sixty days, within which such action must be taken;
- (f) the powers of the responsible authority to enter the land and undertake the action specified in paragraph (e);
- (g) the penalties which may be imposed if the action specified in paragraph (e) is not undertaken; and
- (h) the right of the owner and occupier of the land or building, which is the subject of the enforcement notice, to object to or appeal against the enforcement notice.

(3) An enforcement notice shall continue to apply to development in respect of which it was served notwithstanding that it has been complied with.

(4) A person who has been served with an enforcement notice shall, subject to the provisions of this Act, be under a duty to comply with all the terms and conditions of the notice that has been served on him.

46.—(1) At any time within thirty days of the service of an enforcement notice, a person on whom such a notice has been served may by giving reasons in writing request the responsible authority to reconsider the enforcement notice.

Reconsideration of
enforcement
notice

(2) Where a written request in accordance with subsection (1) has been made to responsible authority, the enforcement notice shall continue in effect until varied, suspended or withdrawn under subsection (3) and, if varied, shall continue in effect in accordance with the variation.

(3) A responsible authority may, after reconsidering the case, either of his own volition or upon request made under subsection (1), confirm, vary, suspend or withdraw the enforcement notice.

(4) Where a request has been made under subsection (1), the responsible authority to whom the request is made shall, within thirty days of the receipt of the request, reconsider the enforcement notice and notify in writing the person who made the request of his decision thereon.

(5) A responsible authority may, but shall not be obliged to, give the person who has requested a reconsideration of an enforcement notice the opportunity to be heard orally by the responsible authority.

Matters to be taken into account on enforcement notice

47.—(1) A responsible authority shall, in considering whether to serve or in reconsidering an enforcement notice, take such of the following matters into account as it may consider necessary to determine the question before it satisfactorily, namely—

(a) the nature and extent of the unauthorized development;

(b) the harm to the natural and built environment and the degree of nuisance caused to adjacent development;

(c) the length of time the unauthorized development has existed;

(d) the likely expense to the person or persons who may be or have been served with an enforcement notice and their capacity to meet that expense;

(e) the benefits of the unauthorized development;

(f) the possible alternative measures which could be taken to rectify or regularize the unauthorized development;

(g) whether it is necessary, desirable or convenient, having regard to the public interest to serve or confirm an enforcement notice;

(h) any other material consideration; and

(i) any consideration which the responsible authority is directed by the Minister to take into account.

(2) A responsible authority may inspect or cause to be inspected on its behalf any development to determine whether, and if so, to what extent that development is unauthorized and may take into account the evidence obtained from such an inspection in any decision on whether to serve or confirm an enforcement notice.

(3) A responsible authority may seek and take into account any technical, professional and scientific advice which it considers to be necessary for a satisfactory decision to be made on an enforcement notice.

Action in pursuance of enforcement notice

48.—(1) The action which a responsible authority may require to be taken by a person on whom an enforcement notice has been served to rectify the unauthorized development to which the enforcement notice relates may be all or any of the following, namely—

- (a) to pull down or remove a structure in whole or in part;
- (b) to erect or re-erect a structure in whole or in part;
- (c) to restore land as near as may be to the appearance and state which it had before the unauthorized development took place including the replanting of any vegetation;
- (d) to display an advertisement in the place permitted by a development permission;
- (e) to cease any use of land or buildings; and
- (f) to do or take any action which in the opinion of the responsible authority will assist in the ending of the unauthorized development.

(2) Where a person on whom an enforcement notice has been served fails or refuses to take the action required by the enforcement notice to rectify the unauthorized development, the responsible authority may with all necessary workmen and other officers enter or authorize any other person to enter the land and take all such necessary action in respect of the unauthorized development and otherwise to enforce the notice as may seem fit.

(3) When the responsible authority has exercised the power under subsection (2) it may recover as a civil debt, in any court of competent jurisdiction, from the person or persons referred to in subsection (2) those expenses necessarily incurred by the responsible authority in the exercise of such power.

49.—(1) Where a responsible authority is of the opinion that a person is carrying out unauthorized development the responsible authority may serve a stop notice requiring that person to cease the activity or such portion of it as may be specified in the stop notice. Stop notice

(2) If a person feels aggrieved by the stop notice issued pursuant to subsection (1), he may appeal to the Board within thirty days from the date of the service of the notice.

(3) The Board may confirm, vary or rescind the stop notice appealed from and in doing so the Board may take into account any matters provided for in section 44 respecting enforcement notices.

50.—(1) A responsible authority may in any case where it considers that unauthorized development has taken place, by written notice served on the owner and occupier of the land or building in respect of which the unauthorized development has taken place, require that person or those persons to apply for a grant of development permission. Development permission subsequent upon unauthorized development

(2) The provisions of sections 36 to 41, inclusive, shall apply to any application for a grant of development permission made under this section.

(3) Where a notice under subsection (1) has been served on any person the responsible authority shall refrain from serving an

enforcement notice under section 45 (1) or stop notice under section 49 (1) on that person until after not less than thirty days from the date of the service of the notice under subsection (1).

(4) A grant of development permission issued under this section may be back-dated to the time at which the development to which it relates was commenced or is considered by the responsible authority to be likely to have commenced.

(5) A responsible authority may, if it sees fit in any case of unauthorized development of a minor nature, issue a grant of development permission after requiring an application from the owner and occupier of the land on which the unauthorized development has taken place.

Cleaning up
land and
buildings

51.—(1) A responsible authority may, in any case where it considers that—

(a) by reason of rubbish and other materials or goods left on land or of the general appearance of the land, that land is detrimental to the environment; or

(b) a building has become dilapidated, is run down or is in need of repair so that it detracts from the built environment, by written notice served on the owner of the land or building require the owner to take such action within such time, being not less than thirty days from the date of the notice, as may be specified in the notice, to clean up and thereafter maintain in a clean state the land or building.

(2) The action which a responsible authority may specify in the notice made under subsection (1), may be all or any of the following, namely—

(a) to remove rubbish and other material from the land;

(b) to fence the land;

(c) to cut down vegetation on the land to a reasonable height;

(d) to plant shrubs and flowers and thereafter maintain them;

(e) to paint or repaint the building in specified colours;

(f) to carry out minor repairs to the building;

(g) to tidy-up the land surrounding the building; and

(h) to take such other similar action as will contribute to the cleaning of the land.

(3) Where the owner of the land or building has not, within two months or such longer time as may be specified in the notice, cleaned up the land or building in the manner specified in the notice the responsible authority may with all necessary workmen and other officers enter, or authorize others to enter, on the land and carry out the actions specified in the notice.

(4) When the responsible authority has exercised the power under subsection (3) it may recover as a civil debt, in any court of

competent jurisdiction, from the owner of the land or building those expenses necessarily incurred by the responsible authority in the exercise of such power.

PART VI—SPECIAL AREAS

52.—(1) Subject to this Act, the Minister may, from time to time by order published in the *Gazette*, declare any area of land (in this Act referred to as the “special area”) to be subject to special powers of control and management of land as provided for in this Part. Declaration of special areas

(2) The following are the orders and their general purport which may be made by the Minister, namely—

(a) a *land development control area order*, for controlling the development of land other than land within a Planning Area;

(b) an *improvement area order*, for improving the physical layout, housing or other conditions of life of the inhabitants of the area;

(c) a *vacant land development order*, for empowering the Minister to bring about development in the public interest on vacant land;

(d) a *building preservation order* for preserving individual or group of buildings which have special architectural, cultural or historical significance;

(e) an *accelerated development area order*, for assisting in the planned development of an area designated for or experiencing rapid physical growth, including any rural growth area; and

(f) a *sub-division control area order*, for restricting and controlling sub-divisions or agreements to sub-divide land.

(3) With the exception of land development control area order and sub-division control area orders, a special area may be declared in respect of land within a Planning Area.

(4) The powers contained in any special area order for regulating, managing, controlling and bringing about the development of land within the special area shall be in addition to all other powers over land and respecting its development contained in this Act.

53.—(1) A land development control area order may be made in any case where the Minister is of the opinion that the development of land shall be controlled or where the Minister is requested by any other Minister to make an order. Land development control area order

(2) In particular, but without limiting the generality of subsection (1), an order made under subsection (1) may be for the purpose of—

(a) controlling ribbon development on either or both sides of a road or a line of rail;

(b) protecting the natural environment of land or water from the harmful effects of any or a particular class of development; and the proper cultivation of land in an area set aside for agricultural development;

(c) controlling and ordering development;

(d) facilitating the creation of planned village communities; and

(e) implementing a specific project involving major commercial, industrial, or mining development;

(3) A land development control area order may prohibit all or any or certain classes of development or use of land within the whole or any part of the area subject to the order, and may permit any development subject to such conditions as may be set out in the order.

(4) Where any development is permissible within a land development control area an application for development permission in respect of that development shall be submitted to the Commissioner.

(5) Subject to the provisions of the relevant land development control area order, the provisions of sections 36 to 43, inclusive, shall apply to any application for a grant of development permission made under this section.

(6) Where any land development control area order has been made for the purpose of controlling and regulating the cultivation or other agricultural uses of land the Commissioner shall, in considering any application for a grant of development permission, consult with the Secretary for Agriculture and have regard to and take into account any comments he may make on the application for a grant of development permission.

Improvement
area order

54.—(1) An improvement area order may be made in respect of any area of land developed primarily for residential purposes to a high density or in an unplanned and unauthorized manner or in a manner which makes further development or redevelopment of that land or adjacent land difficult to carry out or in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas.

(2) An improvement area order may make provision for the exercise of powers in respect of—

(a) the improvement of houses;

(b) the building or rebuilding of houses and other structures;

(c) the provision of roads, water and electricity in the area;

(d) the relocation of some or all of the residents of the area either within the area or elsewhere;

(e) the demolition of houses and other structures;

(f) the reallocation of land within the area to ensure a more beneficial occupation and a more suitable sub-division of the land;

(g) the demarcation of boundaries;

(h) the payment of compensation to residents of the area who suffer loss or inconvenience through the exercise of any of the powers of the order;

(i) the landscaping of the area; and

(j) such other matters as are in the opinion of the Minister conducive to the physical improvement of the residents of the area.

(3) Where the Minister wishes to make an improvement area order he may, prior to the making of such order, require the Commissioner or a Planning Committee to hold a meeting with the District Council or the Local Authority having jurisdiction over the area to which the proposed order relates and the residents of that area in order to explain to them the purport of the proposed order, to obtain any representations on the proposed order and to report the substance of the meeting to him.

(4) An improvement area order shall provide for the person who or authority which is to be responsible for implementing the order and such provision may establish a special committee of persons with relevant skills and knowledge to implement the order.

(5) When the Minister has made an improvement area order he shall cause the substance of the order to be made known throughout the improvement area in such manner as the Minister considers to be most effective for the purpose of bringing it to the attention of the residents of the area.

(6) The person or authority responsible for the implementation of the Order shall during the period of implementation keep the residents of the area informed of, and consider their representations on, the programme of implementation and in pursuance of their duty he or it shall consult with any existing committee of residents or may appoint a committee of residents to assist them generally in the implementation of the Order.

(7) Where an improvement area consists of or has within it customary land, the Minister may request the Minister for the time being responsible for land to declare the customary land to be public land in accordance with the provision of section 27 of the Land Act.

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55.—(1) A vacant land development order may be made in respect of any land in an urban area where the Minister, after making such inquiries as he sees fit, is satisfied that the person entitled to the land has either through absence from the country or otherwise unreasonably failed to develop the land.

Vacant land
development
order

Cap. 57:01 (2) When a vacant land development order has been made the Minister shall have the power to lease the land in accordance with the Land Act as if it were public land being leased.

(3) No land within a vacant land development area shall be leased in accordance with subsection (2) until a plan for the development of that land has been prepared by the Commissioner and approved by the Minister.

(4) Any person who obtains a lease of land in a vacant land development area shall develop it in accordance with the plan approved by the Minister under subsection (3).

(5) Any rent payable in respect of a lease granted under this section shall be paid to the Commissioner of Lands who shall, after making any deduction of any charges and necessary administrative costs, place such monies in a special account with the Reserve Bank of Malawi in the name of the Minister as trustee for the person entitled to the land.

Building
preservation
order

56.—(1) A building preservation order may be made in respect of any building or group of buildings the preservation of which is in the opinion of the Minister desirable for architectural, landscape, cultural or historical reasons.

(2) A responsible authority may, and shall if so directed by the Minister, cause a survey of the buildings in its area to be made with a view to determining whether any such buildings ought to be made the subject of a building preservation order.

(3) Where a responsible authority considers that a building preservation order may be made in respect of any building, it shall forward a draft of such an order to the Minister and cause a notice of the draft order to be affixed in a prominent place on each building to which the draft order relates.

(4) No person shall develop, demolish, alter or engage in any building operations other than essential repairs, or attempt so to do, in respect of any building which is subject to a building preservation order without first obtaining a grant of development permission from the responsible authority.

(5) In considering whether to grant, with or without conditions, or to refuse an application for development permission in respect of a building which is subject to a building preservation order, the responsible authority shall in addition to taking into account the matters contained in section 41(1) have regard to the importance of preserving the architectural, cultural and historical heritage of Malawi.

Accelerated
development
area order

57.—(1) An accelerated development area order may be made in respect of any area of land designated for the purpose of effecting rapid physical development or which in the opinion of the Minister is undergoing or is likely to undergo rapid physical development.

(2) The Minister may, in connexion with the making of an accelerated development area order—

(a) request the Minister for the time being responsible for land to declare any customary land in the area to be public land under section 27 of the Land Act; 57:01

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(b) require the Commissioner to prepare a plan for the area;

(c) require the responsible authority to expedite the consideration of any applications for development permission;

(d) establish with the concurrence of the Minister for the time being responsible for land matters a Committee (in this section referred to as the “task force”) of officers from the Department of Town and Country Planning and the Department of Lands and Valuation to ensure the rapid processing of applications for plots of land within the area;

(e) invite other departments of the government and statutory bodies and other organizations to nominate officers to the task force with a view to ensuring a co-ordinated approach to development within the area; and

(f) take such other action as will in his opinion facilitate the planned and orderly development of the area.

(3) An accelerated development area order may provide that, subject to such conditions as may be specified in the order, certain developments or classes of developments shall not require a grant of development permission or that developments otherwise permitted under this Act shall require a development permission.

(4) When an accelerated development area order has been made, the Minister shall cause the substance of the order to be made known throughout the area to which it relates in such manner as the responsible authority shall consider to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

(5) Where an accelerated development area order is made in an area which is not part of a planning area, the Commissioner shall be the responsible authority for the purpose of determining applications for development permission within the area and for this purpose sections 36 to 42, inclusive, shall apply to any application for a development permission made within an accelerated development area.

58.—(1) A sub-division control area order may be made in respect of any area of land outside a Planning Area or the area of jurisdiction of a Local Authority where the Minister is of the opinion that it is necessary, desirable or convenient in the public interest that the sub-division of land be controlled.

Sub-division
control area
orders

(2) An order shall not apply to the use, sub-division or occupation of customary land in accordance with customary law where such use, sub-division or occupation is for the purpose of—

(a) cultivation; and

(b) the building of a house or other structure with traditional or non-permanent materials.

(3) Applications for permission to sub-divide land within a sub-division control area shall be made to the Commissioner in a prescribed form.

(4) Subject to a sub-division control area order, Part IV shall apply to an application for a grant of development permission.

(5) No person shall sub-divide or enter into any sub-division agreement in respect of any land within a sub-division control area unless the prior written permission of the Commissioner has been given to such sub-division and except upon the conditions, if any, which may be attached by the Commissioner to any such permission have been complied with by the person to whom permission is granted:

Provided that this subsection shall not apply where the size of each of the plots of land resulting from such sub-division or sub-division agreement exceeds such minimum area as may be prescribed.

PART VII—DEVELOPMENT BY DEPARTMENTS OF GOVERNMENT

Application
of this Part

59.—(1) This Part shall apply to—

(a) any proposal for development by any department of the Government; and

(b) any proposal for development of offices, diplomatic or cultural facilities by any international organization or foreign government which if made by any other person or organization would require a grant of development permission.

(2) For the avoidance of doubt, it is declared that any proposal for development by any public corporation established by law in Malaŵi shall not, for purposes of this Act, be treated as a proposal for development by a department of the Government.

Regard to be
had to plans

60. In formulating any proposals for development, a department of the Government shall have regard—

(a) to the National Physical Development Plan or any plan applicable to the area in which the proposed development is to be located; and

(b) to section 40 (1) insofar as it is relevant.

Procedure on
proposals for
development
by depart-
ments of the
Government

61.—(1) The Minister responsible for the proposal for any development under this Part shall notify—

(a) where the proposed development is to be located in a Planning Area, the Planning Committee;

(b) where the proposed development is to be located in a land development control area, the Commissioner.

(2) The Minister or the responsible authority, as the case may be, shall forthwith cause the District Council, and Local Authority

having jurisdiction in the area where the proposed development is to be located to be notified of the proposed development.

(3) The responsible authority, the District Council and the Local Authority referred to in sub-section (2) shall as soon as may be practicable and in any case not later than sixty days from the date of notification of the proposal for development send any representations they may have on that proposal to the Minister.

(4) The Minister may, with the concurrence of the Minister responsible for the proposal for development, refer that proposal to the Board for its advice, and the Board shall, not later than thirty days from the date of the reference of the proposal to it, give its advice to the Minister on that proposal.

(5) The Minister shall inform the Minister responsible for the proposal for the development concerned of the advice and representations he has received on that proposal.

(6) The Minister responsible for the proposal for the development concerned shall consider and take account of the advice and representations he has received from the Minister and shall not authorize the commencement of the development with or without modifications until he has received and considered that advice and those representations.

PART VIII—ACQUISITION OF LAND AND COMPENSATION

62. Subject to the Constitution and to this Act, there shall be no general right to compensation in respect of any action, decision or plan taken or made under this Act which does not involve or amount to a taking or deprivation of property.

No general right to compensation under this Act

63.—(1) The Minister may, of his own motion or at the request of a responsible authority, whenever he is of the opinion that it is desirable or expedient in the interests of the implementation of any plan or of the proper control and furtherance of development of any land under this Act, so to do, acquire any land, either compulsorily or by agreement, paying such compensation therefor as may be agreed or determined in accordance with the law.

Acquisition of land

(2) Any acquisition of land and any payment of compensation therefor under this Act shall be in accordance with the Lands Acquisition Act.

Cap. 58:04

64.—(1) There shall be a right to the payment of compensation assessed, in accordance with the provisions of this Part in the following cases, namely—

Occasions when compensation payable for planning actions

(a) where, by reason of a refusal of a grant of development permission by the Minister or a responsible authority, the land which was the subject of the application for a grant of development permission has become incapable of any reasonable beneficial use;

(b) where a building has been destroyed in whole or in part by fire or other natural disaster and the Minister or a responsible authority refuses to allow a building of similar content to be

erected on the same or adjacent site in the ownership or occupation of the owner of the destroyed building;

(c) where the Minister or a responsible authority requires a building to be demolished, altered, removed, relocated or to cease being built or being used or a use of land to cease, such building and use of land, being at that time authorized and in accordance with any law or in respect of which the Minister has approved that compensation should be paid in the interests of the implementation of a plan or the proper control of land or the exercise of powers under Part IV;

(d) where a person is required to move from his house either permanently or on a temporary basis and take up residence elsewhere in the exercise of powers under an improvement area order;

(e) where as a result of the reallocation of land to effect a more desirable sub-division thereof in an improvement area, a person has suffered a diminution in the value of his land;

(f) where a development permission has been revoked and the holder of that permission has incurred expense necessarily arising out of commencing to develop or developing in accordance with the permission; and

(g) any other case where the Minister certifies that it would be just and desirable to pay compensation.

(2) For the purposes of determining where compensation is, and assessing the amount of compensation which may be, payable in accordance with this Part, the expression "incapable of any reasonable beneficial use" shall mean that the land cannot be used for any lawful purpose in keeping with surrounding uses so as to enable any person derive an income or produce from the land.

(3) Where a right to compensation has arisen in the circumstances referred to in paragraphs (a) and (b) of subsection (1) a claimant may, instead of pursuing a claim for compensation, by written notice (hereinafter called a "purchase notice") addressed to the Minister, require the Minister to purchase the land.

(4) On receipt of a purchase notice the Minister may—

(a) accept the notice and agree to purchase the land in accordance with the provisions of the Lands Acquisition Act as if it were a compulsory acquisition of land;

(b) reject the purchase notice but agree to pay compensation assessed in accordance with this Act;

(c) reject the purchase notice and direct the responsible authority to grant development permission for—

(i) the development in respect of which an application for development permission has been made; or

(ii) development as specified in the direction; and

(d) reject the purchase notice on the grounds that the land is not capable of yielding any reasonable beneficial use.

65.—(1) Compensation shall be assessed by the Minister.

Assessment
of compen-
sation
Second
Schedule

(2) An assessment of compensation made by the Minister in respect of the cases set out in paragraphs (a) to (g) of section 64 (1) shall be made as set out in the Second Schedule.

(3) The Minister may, by order published in the *Gazette* amend the Second Schedule.

(4) In assessing compensation under this section, the Minister shall unless so to do would in his opinion cause injustice, set off against any compensation payable, any increase in the value of the land which is the subject of the claim for compensation or any other land of the claimant adjacent to that *land* brought about by or reasonably likely to have been or to be brought about by any action or decision by the Minister, a responsible authority or any person or authority exercising powers under Part VI.

(5) The Minister may refer any question of compensation arising under this Part to the Board for its advice and the Board shall give its advice in the form of a written report to the Minister.

(6) An assessment of compensation made by the Minister under this section shall be final and shall not be subject to any appeal to or review by any court.

66.—(1) A claim for compensation under this Part shall be made in a prescribed form—

Claim for
compensa-
tion

(a) to the Minister; and

(b) within six months of the date on which the action or decision which gives rise to the claim was taken.

(2) The Minister may, by written notice served on a claimant, require the claimant to furnish him within such reasonable time as may be specified in the notice with such further information relevant to the claim as may be described in the notice to enable him to determine the claim satisfactorily and expeditiously.

(3) The Minister shall not be obliged to determine a claim in respect of which he has exercised the power contained in subsection (2) until he has received the information so required from the claimant.

PART IX—APPEALS

67.—(1) Any person—

(a) whose application for development permission has been refused, revoked or granted subject to conditions by a responsible authority;

Appeals to
the Board

(b) upon whom a completion notice has been served;

(c) upon whom an enforcement notice has been served and after reconsideration has been confirmed by a responsible authority;

(d) aggrieved by a decision directly applicable to him taken by any person or authority exercising powers under Part VI other than any powers exercised in respect of a vacant land development order;

(e) who has been served with a stop notice,
may appeal to the Board against that notice or decision.

(2) Where a person wishes to appeal against any notice or decision referred to in subsection (1), he shall submit a notice of appeal within thirty days of the receipt of the notice or decision to be appealed against, to the Board.

(3) The Minister shall prescribe rules of procedure to be followed in the making and hearing of appeals under this Part.

Powers of
Board on
appeals

68.—(1) The Board shall have, in relation to the hearing of any appeal under section 67 (1)—

(a) all the powers which the Minister or responsible authority has in considering an application for a grant of development permission, whether to revoke a grant of development permission or serve or confirm after reconsideration an enforcement notice or serve a completion notice or stop notice and shall exercise those powers in accordance with sections 36 to 42 and 45 to 49;

(b) the power to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:

Provided that the Board may in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;

(c) the power to award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed; and

(d) the power to do all things which it is required or empowered to do by or under this Act.

(2) The Board may in the exercise of its powers of appeal under this Part, confirm, with or without modifications, vary, amend, alter, reverse or substitute its own decision or any decision which an appeal has been brought before it.

(3) The decision of the Board on any appeal shall be—

(a) made in writing;

(b) sent to all the parties to the appeal and, where he was not a party, to the Minister; and

(c) available for public inspection.

(4) Subject to subsection (5) the decision of the Board on any appeal or any other matter on which it may or is required by the Minister to give a decision shall be final and shall not be subject to any appeal to any court.

(5) A party to any proceedings before the Board may, within thirty days of the decision of the Board on those proceedings, apply to the High Court for those proceedings to be reviewed on the grounds that the written decision of the Board discloses an error of law or a failure to comply with procedural requirements and the High Court may, if satisfied that the written decision does disclose an error of law or a failure to comply with procedural requirements and that such error or failure has caused substantial injustice to one or more of the parties to the proceedings, quash that decision and refer the matter back to the Board for its re-consideration.

(6) An application to the High Court for the review of the decision of the Board may be made by or against the Attorney General in accordance with the Civil Procedure (Suits by or Against the Government or Public Officers) Act. Cap. 6:01

PART X—MISCELLANEOUS

69.—(1) For the purpose of this Act, the Commissioner or an authorized officer may, at all reasonable times, enter any land or building— Powers of entry

(a) to inspect or survey the land or building for the purpose of preparing a plan;

(b) to determine whether any unauthorized development is being or has been undertaken on the land or in the building;

(c) to determine whether an order under Part VI shall be made in respect of the land or to enter such land in exercise of the powers under any order so made;

(d) to assess compensation under Part VIII; and

(e) to obtain information relevant to the determination of an application for development permission.

(2) In—

(a) the case of—

(i) paragraph (a), (c), (d) or (e) of subsection (1); and

(ii) paragraph (b) of subsection (1) in respect only of entry to a dwelling house or any enclosed court or garden attached to a dwelling house,

the Commissioner or an authorized officer shall give not less than seven days notice of his intention to enter;

(b) the case of paragraph (b) of subsection (1) if the entry is to land or building other than a dwelling house or any enclosed

court or garden attached to a dwelling house, it shall be sufficient if the Commissioner or an authorized officer gives not less than twenty-four hours notice of his intention to enter.

(3) Where the Commissioner or an authorized officer has entered upon any land or building under this section, he may make such examination and inquiries as are necessary to effect the purposes of the entry.

(4) Before exercising any powers under this section the Commissioner or an authorized officer shall identify himself to the person who is or appears to be in control of the land or building which is about to be or has been entered.

Registration of applications for development permission and enforcement notices

70.—(1) A responsible authority shall maintain a register in the prescribed form of all applications for development permission and all enforcement notices, made or served in the area of jurisdiction for which it is responsible.

(2) A register under this section shall be open to the public at all reasonable times at the offices of the responsible authority.

(3) A member of the public may with the permission of the responsible authority and on payment of the prescribed fee make a copy of any entry in the register.

Publication of information by Commissioner

71.—(1) The Commissioner may with the approval of the Minister publish such periodicals and reports as will in his opinion assist the citizens of Malaŵi and other persons to understand and comply with the purpose and practices of town and country planning.

(2) The approval of the Minister under this section may be given in general terms in respect of any particular publication or class of publications which the Commissioner wishes to publish.

(3) Any publication to which this section applies may be made available to the public with or without charge.

Offences

72.—(1) Any person who without lawful or reasonable excuse—

(a) fails to carry out any work or action required by an enforcement notice which has been served on him;

(b) obstructs or impedes any authorized officer or any member of the Board or any member of the Planning Committee, lawfully exercising a power of entry onto land or building, from entering any land or any building;

(c) fails to comply with any order, direction, notice or instruction lawfully given to him by an authorized officer exercising any powers conferred by this Act;

(d) fails to give information on any matter in respect of which he has been lawfully required so to do;

(e) tears down, defaces or otherwise marks or interferes with any notice lawfully affixed to any building or placed upon a board specially erected for that purpose in connexion with the administration of this Act;

(f) fails to comply with a condition subject to which a grant of development permission was made;

(g) sub-divides, or enters into any sub-division agreement with respect to any land or a portion thereof within any area in which such sub-division or sub-division agreement is prohibited;

(h) commences any development without a grant of development permission where such permission is required;

(i) displays an advertisement without a grant of development permission where such permission is required; or

(j) ignores a stop notice,

shall be guilty of an offence and liable to a fine of five thousand Kwacha or to imprisonment for a term of twelve months together with, in the case of a continuing offence, a further fine of hundred Kwacha for every day during which the offence continues after conviction.

73. This Act shall bind the Government.

Act to bind
Government
Regulations

74.—(1) The Minister may make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may prescribe—

(a) the forms of plans;

(b) the forms of applications for a grant of development permission;

(c) the forms of enforcement notices;

(d) the forms to be used in connexion with any claim for compensation;

(e) the procedures to be followed by a Planning Committee;

(f) forms of register of applications for development permission and of enforcement notices;

(g) fees payable under this Act;

(h) the remuneration of members of the Board and Planning Committee;

(i) the type of materials to be used in the construction of buildings and fences;

(j) the forms of notice of revocation; and

(k) the forms of purchase notices.

(2) The Minister may, with the concurrence of the Minister for the time being responsible for local government, make regulations providing for the exercise by District Councils and Local Authorities of any functions and duties conferred upon them by this Act.

PART XII—REPEALS AND SAVINGS

Repeals and
savings
Cap. 23:01
Cap. 23:03
Cap. 59:04

75.—(1) The Town and Country Planning Act, the Advertisement Act and the Planning (Sub-division Control) Act are hereby repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

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

FIRST SCHEDULE

s. 34

PERMITTED DEVELOPMENT

The following developments shall, subject to such conditions as may be imposed by a responsible authority be permitted developments within a Planning Area and a Land Development Control Area, namely—

(a) the building by the lessee or licensee of a house on a defined plot and in accordance with any conditions in the lease or licence under which the plot is held and any rules regulating building operations within a traditional housing area and subject to the provisions of section 33 of this Act;

(b) minor repairs which do not result in any extension of the external dimensions of a building and which does not materially affect either the use of the building or its external appearance;

(c) any changes of use of land within the same class of uses;

(d) the display of an advertisement within a building or on land;

(e) the display of an advertisement on a building or on site which—

(i) merely discloses the name of any business or undertaking carried on in such building or on such site or the name of the proprietor or manager of such business or undertaking; or

(ii) relates solely to any business or undertaking carried on or to the goods sold or the services provided in such building or on such site:

Provided that the space which may be occupied by all such advertisements on any external face of any such building shall not exceed one square foot for each foot length of the building frontage of that face and provided also that the area occupied by any such advertisement, however affixed to a building, shall be computed as if the advertisement as a whole were displayed flat against the face of the building;

(f) the display of an advertisement which relates solely to—

(i) a form of recreation which is or will be available upon the land;

(ii) an agricultural show, entertainment, meeting or sale which is being or is to be held upon the land; or

(iii) the sale or lease of the land, or the sale or hire of live-stock or implements or produce of the land, upon which the advertisement is displayed:

Provided that the advertisement shall only be displayed at any entrance to such land and that no more than one advertisement shall be displayed in respect of any one of such matters at any one entrance;

(g) the display of an advertisement which merely indicates—

(i) that a particular road or path is a private road or path or leads to a particular place; or

(ii) that a particular act is prohibited or permitted;

(h) the display or advertisements upon any railway station, yard, platform or station approach belonging to a railway company;

(i) the display of any traffic sign as defined in section 2 of the Road Traffic Act, and placed on or near any road in accordance with that Act or any notice or warning lawfully erected in accordance with the Railways Act; and

Cap. 69:01

Cap. 69:03

(j) the display of any advertisement of a class prescribed by the Minister if such advertisement conforms to specifications prescribed by him and is displayed in accordance with conditions prescribed by him.

SECOND SCHEDULE

s. 65

CALCULATION OF COMPENSATION

Compensation payable in respect of cases referred to in section 64 (1) (a) to (g) shall be calculated as follows—

(a) paragraph (a): the difference between the value of land immediately prior to the application for the grant of development permission, ignoring the possibility of obtaining a grant of development permission, and the value of the land after the refusal of development permission;

(b) paragraph (b): the different between the value of the land with the building on it in its existing state and use immediately before the fire or other natural disaster whereby it was destroyed and the value of the land as a cleared site in respect of which the Minister has issued a certificate stating what, if any, development would be permitted on the site;

(c) paragraph (c): the value of the building immediately before it was demolished, altered, removed, relocated or ceased to be used and the value of the land immediately before it ceased to be used together with the costs of relocation of the building and the activities that took place in the building or the land;

(d) paragraph (d): the cost of moving and relocation elsewhere together with a reasonable sum to compensate for the loss of a home;

(e) paragraph (e): the difference between the value of the land immediately before the re-allocation of land and re-subdivision of plots and the value of the land after the re-allocation of land and re-subdivision of plots taking into account the benefits accruing to the whole area which has been subject to such a process of re-allocation and re-subdivision;

(f) paragraph (f): the expense necessary incurred in commencing to develop or in developing land in respect of which a development permission has been revoked; and

(g) paragraph (g): such amount of compensation as the Minister shall consider just to provide.

“Amendments to certain written laws

76. The written laws specified in the *First Column* of the Third Schedule are amended in relation to the provisions thereof specified in the *Second Column* of that Schedule in the manner respectively specified in the *Third Column* of that Schedule.

THIRD SCHEDULE

s. 76

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>
URBAN AREAS (PUBLIC AND PRIVATE STREETS) ACT CAP. 23:02	s. 13	<p>(a) Renumber the existing provision as subsection (1).</p> <p>(b) Add thereto the following subsection—</p> <p>“(2) Any proposal by a council in respect of any area not being a Planning Area—</p> <p>(a) for the construction of new streets; or</p> <p>(b) for the stopping up, diverting or turning of a public street under section 10; or</p> <p>(c) for a public street to cease to be repairable by the Council under section 11, shall first be submitted by the Council to the Commissioner for Town and Country Planning and the Council shall take no action towards the implementation of such proposal without the written approval of the Commissioner for Town and Country Planning being first obtained.”.</p>

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>
	s. 18	(a) Renumber existing provision as subsection (1). (b) Add thereto the following subsection— “(2) In respect of a private street or proposed private street in any area not being a Planning Area, the Council shall not sanction any application made under section 16, nor waive any of the requirements of section 16 (1), nor impose any conditions under section 17 without first obtaining the written approval of the Commissioner for Town and Country Planning.”.
MALAWI HOUSING CORPORATION ACT CAP. 32:02	s. 3 (2) (b)	(a) Delete the semi-colon and substitute therefor a colon. (b) Add the following proviso thereto— “Provided that in respect of the development of housing estates the Corporation shall consult with the Planning Committee appointed under the Town and Country Planning Act for the area in which the housing estates are situated or, where there is no such Planning Committee, the Commissioner for Town and Country Planning, on the design and layout of the housing estates.”.
Cap. 23:01		Insert immediately after the words “Such scheme” the following words “shall as the Minister may see fit, be prepared by or with the assistance of the Commissioner for Town and Country Planning and”.
AFRICANS ON PRIVATE ESTATES ACT CAP. 33:01	s. 26 (2)	(a) Renumber the existing provision as subsection (1). (b) Add thereto the following subsection— “(2) In every lease granted under this Act there shall be implied a covenant with the Minister by or on behalf of the lessee that the lessee shall not
LAND ACT CAP. 57:01	s. 13	

First Column	Second Column	Third Column
		undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Town and Country Planning where such grant is required under the Town and Country Planning Act.”.
	Cap. 23:01	
	s. 31 (1)	(a) Delete the full stop and substitute therefor a colon.
		(b) Add the following proviso thereto—
		“Provided that before exercising any powers granted under this subsection, the Minister shall consult with and have regard to the views of the Minister for the time being responsible for the administration of the Town and Country Planning Act.”.
	Cap. 23:01	(a) Renumber the existing provision as subsection (1).
	s. 41	(b) Add thereto the following subsection—
		“(2) Any authorized officer deputed under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 5 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Town and Country Planning in respect of any matter concerning the use or development of the land so leased or to be leased.”.
ADJUDICATION OF TITLE ACT CAP. 58:05	s. 12	(a) Renumber the existing provision as subsection (1).
		(b) Add thereto the following subsection—
		“(2) In exercising any powers under subsection (1) (b), the Demarcation Officer shall consult

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>
		with and have regard to the views of the Commissioner for Town and Country Planning.”.
CUSTOMARY LAND (DEVELOPMENT) ACT CAP. 59:01	s. 13 (1) (a)	(a) Delete the semi-colon and substitute therefor a colon. (b) Add the following proviso thereto— “Provided that in such case the Demarcation Officer shall consult with and have regard to the views of the Commissioner for Town and Country Planning.”.
PUBLIC ROADS ACT CAP. 69:02	s. 8 (3) Cap. 23:01	Insert, immediately after the word “may”, the words”, after consulting the Minister for the time being responsible for Town and Country Planning,”.
	s. 10 (6)	Add thereto the following further proviso— “Provided further that in respect of paragraph (a) the highway authority shall consult with and have regard to the views of the Commissioner for Town and Country Planning before granting such consent.”.
	s. 12	(a) Renumber the existing provision as subsection (1). (b) Add the following subsection— “(2) Any powers conferred on the Controller of Roads or on any other person by regulations made under subsection (1) may only be exercised after consultation with the Commissioner for Town and Country Planning.”.
	s. 24 (3)	Insert, immediately after the words “Minister or highway authority may” where those words appear for the first time, the words, “, after consulting the Minister for the time being responsible for the administration of the Town and Country Planning Act,”.

Passed in Parliament this first day of November, one thousand, nine hundred and eighty-eight.



Clerk of Parliament