

Malawi

Cotton Act

Chapter 65:04

Legislation as at 31 December 2014

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Malawi

Cotton Act

Chapter 65:04

Commenced on 1 February 2014

[This is the version of this document at 31 December 2014 and includes any amendments published up to 31 December 2017.]

[Note: This version of the Act was revised and consolidated in the Fourth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the establishment of the Cotton Council; to provide for the regulation, improvement and development of the cotton industry and to provide for matters related thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Cotton Act.

2. Interpretation

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

"**administrative penalty**" means a penalty that may be imposed by the Council pursuant to [section 77](#);

"**agro-inputs**" include certified seeds, fertilizers, agro-chemicals and equipment necessary for the application of such agro-chemicals;

"**buyer**" means any person who pays a grower money in exchange of ownership of seed cotton;

"**buying licence**" means a buying licence issued under [section 41](#);

"**contract farming**" means a binding arrangement, whether written or oral between a grower and a buyer to produce and sell seed cotton under pre-agreed conditions;

"**cotton buyer**" means a person licensed as such under this Act;

"**Cotton Development Fund**" means the fund established pursuant to [section 64](#);

"**cotton lint**" means the fibrous component of ginned cotton;

"**cotton plant**" means the growing plants, cuttings, buds and grafts, seeds, leaves, bolls or any portion of the cotton plant in a natural state;

"**cotton seed**" means seed produced from seed cotton whether fuzzy or de-linted;

"**cotton seed dressing**" means chemical approved by the Ministry against pre-plant and post-emergent plant pest and diseases;

"**cotton quarantine area**" means an area declared to be as such under this Act;

"**Council**" means the Cotton Council of Malawi established under [section 3](#);

"**extension officer**" means an extension officer appointed in accordance with the provisions of this Act;

"**foreign material**" means any physical material that is aggregated with seed cotton, cotton seed or lint that is not related to cotton, and includes sand, stones, metallic objects, feathers, plastics, polypropylene and water;

"**ginnery**" means any premises wherein seed cotton is separated into cotton lint and cotton seed;

"**ginning licence**" means a ginning licence issued under [section 52](#) that grants a person the right to gin seed cotton;

"**grower**" means any person who grows cotton;

"**inspector**" means a cotton inspector appointed in accordance with the provisions of [section 18](#);

"**licensed ginner**" means a holder of a valid ginning licence;

"**member**" means a member of the Council and includes the Chairperson of the Council;

"**nesting**" means the process of concealing materials of a non-cotton nature in a consignment of cotton intended for sale;

"**seed cotton**" means the component of cotton harvested from the cotton plant, graded or ungraded comprising lint still affixed to seed;

"**society**" means a cooperative society registered under the Cooperative Societies Act; and

[Cap. 47:02]

"**trader**" means any person who buys seed cotton for the purpose of resale.

Part II – The Cotton Council of Malawi

3. Establishment of the Cotton Council of Malawi

There is established a council to be known as the Cotton Council of Malawi which shall—

- (a) have perpetual succession and a common seal;
- (b) in its corporate name, be capable of suing and being sued;
- (c) be capable of purchasing or acquiring and managing in any manner and alienating any property;
- (d) be capable of entering into any contract or agreement; and
- (e) be capable of doing all such other things or acts for the proper performance of its functions under the provisions of this Act which may lawfully be done or performed by a body corporate.

4. Composition of the Council

- (1) The Council shall consist of the following members appointed by the Minister—
 - (a) a representative of an association of owners of estates that produce cotton;
 - (b) two representatives of cotton growing smallholder farmers associations;
 - (c) a representative of cotton seed producer association;
 - (d) a representative of cotton buyers and ginner's association;
 - (e) a representative of cotton processors association;
 - (f) a representative of pesticide suppliers association;

- (g) the following *ex officio* members—
 - (i) the Secretary responsible for Agriculture or his designated representative;
 - (ii) the Secretary responsible for Industry and Trade or his designated representative;
 - (iii) the Secretary for Justice or his designated representative; and
 - (iv) the Secretary to the Treasury or his designated representative.
- (2) The Minister shall appoint the Chairperson of the Council from among members of the Council and the members of the Council shall elect a Vice-Chairperson from among their number.
- (3) A member, *ex officio* or any person employed in the public service shall not be eligible to be appointed Chairperson or elected Vice-Chairperson of the Council.
- (4) Every member shall attend meetings of the Council in person or through a designated representative and, where a member is unable to attend any meeting of the Council, he may request that his apologies for failure to attend be registered.
- (5) A member shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.
- (6) A member, other than an *ex officio*, shall hold office for a period of three years from the date of his appointment and may be eligible for re-appointment for another three year term.
- (7) The Minister shall publish in the *Gazette* the names of all members as first constituted, and every change in the membership thereafter.

5. Vacation of members from office

- (1) The office of a member, other than a member, *ex officio*, shall become vacant—
 - (a) upon the expiry of the period of his appointment;
 - (b) upon his death;
 - (c) if he is adjudged bankrupt;
 - (d) if he is convicted of an offence—
 - (i) under [section 7](#); or
 - (ii) under any other written law, and sentenced to a term of imprisonment without the option of a fine;
 - (e) if he is convicted of an offence involving fraud or dishonesty;
 - (f) if he is absent, without any reasonable justification, from three consecutive meetings of the Council of which he has had notice;
 - (g) upon his giving the Minister one month written notice of his intention to resign his office;
 - (h) when he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;
 - (i) when any circumstance arises that, if he were not a member, would cause that member to be disqualified for appointment as a member;
 - (j) when, on the recommendation of the majority of members, the Minister so directs; or

- (k) when the member assumes a public office.
- (2) Whenever there is a vacancy in the office of a member, the Minister shall, in consultation with the nominating association, appoint another person to fill the vacancy and the person so appointed shall hold office for the remaining term of his predecessor:

Provided that, when the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.
- (3) Subject to [section 6](#) (6), the Council may act notwithstanding any vacancy in the membership of the Council.

6. Meetings of the Council

- (1) The Council shall meet at such place, and such time, as the Chairperson may determine, and shall meet at least once in every three months.
- (2) Six members of the Council shall constitute a quorum at any meeting of the Council.
- (3) An ordinary meeting of the Council shall be convened after giving the members at least fourteen days written notice with an agenda attached to the notice.
- (4) The Chairperson may, at his discretion, and shall at the written request of four or more members of the Council and within seven days of such request, cause an extraordinary meeting of the Council to be summoned at such place and time as he may appoint.
- (5) The Chairperson, or in his absence, the Vice-Chairperson shall preside at meetings of the Council.
- (6) In the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their numbers to preside over a meeting of the Council, and the member so elected shall exercise all the powers and perform all the duties of the Chairperson.
- (7) Subject to this Act, the Council may make rules for the regulation of its proceedings and business, or the proceedings and business of any of its committees, and may vary, suspend or revoke any such rules.
- (8) Minutes of each meeting of the Council or a committee of the Council shall be kept by the Executive Director of the Council, who shall act as the Secretary at the meeting.
- (9) Minutes of each meeting of the Council or a committee of the Council shall be confirmed at the next meeting.
- (10) The decision of the Council at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall, in the event of an equality of votes, have a casting vote in addition to his deliberative vote.

7. Disclosure of interest

- (1) If a member has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Council at which the matter is the subject of consideration by the Council, he shall, as soon as practicable after the commencement of the meeting, disclose the fact to the Council and shall not take part in the consideration or discussion of, or vote on any question with respect to the matter.
- (2) Any member who contravenes subsection (1) commits an offence and on conviction shall be liable to a fine of K100,000 and to imprisonment for twelve months.

8. Invited persons

- (1) The Council may, at its discretion, invite any person to attend any meeting of the Council for the purpose of assisting or advising the Council on any matter under consideration by the Council.
- (2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Council at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Council.

9. Committees of the Council

- (1) For the better carrying into effect of the purposes for which the Council is established, the Council may establish such committees, as the Council may deem appropriate, to perform such functions and responsibilities as the Council shall determine.
- (2) The Council shall appoint the chairperson of each committee from among the members.
- (3) The Council may include any person with relevant expertise in cotton industry as a committee member but the person shall not become a member of the Council by virtue of this appointment.
- (4) The provisions of [section 6](#) relating to the meetings of the Council shall apply *mutatis mutandis*, to the meetings of any committee.

10. Allowances and expenses of members

- (1) Members of the committees of the Council shall be paid such allowances as may be determined by the Council and approved by the Minister from time to time.
- (2) The Council may make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Council or a person invited under [section 8](#), connected with the business of the Council or the committee.

11. Functions of the Council

- (1) The Council shall exercise its powers and perform its functions in such a manner that it best promotes and fosters the development of the cotton industry in Malawi.
- (2) The functions of the Council shall include carrying out such activities and doing such things as are necessary, advantageous, proper or for the benefit of cotton growers and the cotton industry.
- (3) Without prejudice to the generality of subsection (2), the functions of the Council shall include to —
 - (a) advise the Government on matters of policy, strategies and other matters regarding the cotton industry;
 - (b) monitor the following groups of persons, in liaison with the Minister, through registration, on terms and conditions prescribed by the Council—
 - (i) growers;
 - (ii) buyers;
 - (iii) ginners;
 - (iv) processors; and
 - (v) all other persons dealing with cotton;

- (c) advise the Government on production, marketing, quality and standards of cotton;
 - (d) facilitate domestic as well as international cotton market research;
 - (e) advise Government on development and application of new technologies in the cotton industry;
 - (f) ensure that national environmental protection standards are applied in production of cotton and cotton products;
 - (g) promote the formation of associations of stakeholders and monitor and advise on their activities;
 - (h) collect, maintain and disseminate statistical information on production and processing of cotton;
 - (i) protect the interests of farmers against syndicate of buyers;
 - (j) oversee the implementation of the Council policies; and
 - (k) carry out any other function advantageous to the cotton industry in Malawi and to meet the objectives of the Act.
- (4) The Council may delegate the exercise of its powers to its members or its Secretariat at any time when the Council is not meeting.
- (5) The exercise of powers under subsection (4) shall, unless and so far as the Council may otherwise require, be reported without unreasonable delay to a meeting of the Council.
- (6) The Council, if satisfied, may indorse the decision made under the delegated powers by its members or Secretariat.

12. Powers of the Council

- (1) The Council shall have power to—
- (a) grant permits or licences to operators, ginners buyers and exporters of seed cotton, cotton seed, cotton lint;
 - (b) issue export permits for seed cotton, cotton seed, cotton lint and other cotton by-products;
 - (c) ensure the compliance of established quality standards for cotton seed, seed cotton and cotton lint by persons licensed under this Act;
 - (d) provide for a forum for discussions and negotiations among various stakeholders in the cotton industry;
 - (e) determine the quantity of cotton seed required for the purpose of planting having regard to geographical location;
 - (f) hear and settle disputes amicably among the stakeholders in the cotton industry; and
 - (g) do anything or enter into any transaction which, in the opinion of the Council, aims to facilitate the proper and efficient carrying out of its activities and the proper exercise of its functions under the provisions of this Act.
- (2) The Minister may, if he considers it expedient, direct the Council to perform any commercial function for a specified period.
- (3) The Council shall have power, for the purpose of carrying out its functions, to do all such acts and things as appear to be requisite, advantageous or convenient for or in connection with the

carrying out of its functions incidental or conducive to their proper discharge, and may carry out any activity in that behalf either alone or in association with the Government, a local authority or any other person or body of persons.

13. Policy directions to the Council

The Minister may give to the Council policy directions of a general or specific nature regarding the carrying out of its functions and the exercise of its powers in relation to matters appearing to the Minister to affect the national interest and the Council shall give effect to every such policy direction.

14. Research and training institute

The Council shall support institutions engaged in research or training for cotton industry for the following objectives—

- (a) to generate foundation seed and manage a seed multiplication programme;
- (b) to ensure that new varieties of cotton comply with local and international standards;
- (c) to facilitate research in cotton;
- (d) to facilitate the development of new varieties of cotton;
- (e) to regulate the extension services in cotton production; and
- (f) promote capacity building in cotton production.

Part III – Secretariat of the Council

15. Establishment and composition of the Secretariat

- (1) There is hereby established a Secretariat of the Council for the purposes of performing duties assigned to it and day to day administration and implementation of the Act.
- (2) The Secretariat of the Council shall consist of an Executive Director, any other office the Council may deem necessary and such other suitably qualified officers as may be required for the proper administration of this Act.

16. Appointment of Executive Director and other staff

The Council shall appoint an Executive Director and such other officers as the Council may consider necessary to assist the Council in the execution of its duties, on such terms and conditions of service as the Council may determine.

17. Duties of the Executive Director

- (1) The Executive Director shall perform such duties as the Council shall assign to his or her office and ensure the effective administration and implementation of this Act.
- (2) Without derogation from the generality of the duties of the Executive Director conferred under subsection (1), the director shall be responsible for the day to day administration of the Council.

18. Cotton Inspectors

- (1) The Council shall establish an office of Cotton Inspectors.

- (2) The Executive Director, with approval by the Council, shall appoint Cotton Inspectors.

19. Duties of Cotton Inspectors

- (1) The duties of Cotton Inspectors shall include supervising the purchase of seed cotton, ginning and export of cotton lint, cotton seed and other cotton products.
- (2) In discharging the duties conferred on the Cotton Inspectors under subsection (1), the inspectors shall, among others, have power to—
 - (a) inspect seed cotton, cotton seed, cotton ginneries and cotton warehouses;
 - (b) to ensure that farmers are applying and using the authorized pesticides specified in the First Schedule hereto;
 - (c) take samples and verify the quality of seed cotton, cotton seed and cotton lint as provided for in this Act or as may be prescribed; and
 - (d) check the weights, scales and other instruments used in cotton industry.
- (3) The Minister may, in consultation with the Council, by notice published in the *Gazette*, amend the First Schedule.

Part IV – Cotton production

20. Varieties of cotton

- (1) The Minister shall prescribe specific varieties of cotton to be grown in respective parts of Malawi.
- (2) A person shall not grow a cotton variety that is different from the variety, which the Minister has prescribed to be grown in a particular area.
- (3) Any person who contravenes the provisions of this section commits an offence.

21. Restriction on cotton seed importation, breeding and multiplication

- (1) A person shall not import, breed or multiply cotton seed or cotton plant for any purpose without a permit issued by the Council.
- (2) Any person who contravenes the provisions of this section commits an offence and shall be liable to an administrative penalty.
- (3) The Council shall destroy the seeds or plants referred to in subsection (1) and the cost for the destruction thereof shall be payable by the person responsible.
- (4) The Council shall make arrangements for multiplication of foundation and certified cotton seeds for planting.

22. Certified seeds grown

- (1) Every grower shall only grow cotton seeds that have been certified by the Seed Services Unit of the Ministry responsible for agriculture.
- (2) Any person who contravenes the provision of this section commits an offence and shall be liable to an administrative penalty.

23. Reservation of cotton seeds

- (1) The Council shall cause to be reserved such quantity and quality of cotton seeds as the Minister may, from time to time, by notice in writing, direct, and shall hold such cotton seeds to the direction of the Minister.
- (2) The Council, in consultation with the Ministry, may require any person to set aside for distribution to growers any cotton seed in his possession and may require any person to produce any cotton seed required for distribution in advance of any other cotton seed that he is producing through ginning raw cotton.
- (3) Any cotton seeds reserved under subsection (1) shall become the property of the Minister from the date of the notice to reserve the seeds.
- (4) All cotton seeds reserved pursuant to the provisions of subsection (3) shall be treated or dressed, bagged, transported, delivered, stored and sold to the public in the prescribed manner.
- (5) Every package of cotton seed offered for sale shall be labelled in accordance with specifications set out under the provisions of the Seed Act or any other written law.

[Cap. 67:06]

24. Distribution and planting of cotton seed

- (1) The Council shall, in liaison with the Minister, annually cause certified cotton seed to be distributed to growers for purposes of planting.
- (2) The distribution of cotton seed under subsection (1) shall be made through persons duly authorized and in consultation with the seed certification unit of the Ministry responsible for agriculture, and no person shall dress and distribute certified cotton seed without a written authority from the Council.
- (3) A person shall not plant cotton seed other than the seed which the Council, in liaison with the Ministry, has caused to be distributed.

25. Power to prohibit movement of cotton seed

- (1) The Minister may, in consultation with the Council, and by notice published in the *Gazette*, prohibit the export or import of cotton seed either generally or from any specified area for a specified period or until a further notice is issued in that behalf.
- (2) When the Minister has issued a prohibition according to subsection (1), any person shall not export or cause to be exported or import or cause to be imported, cotton seed.
- (3) Any person who contravenes this section commits an offence and on conviction shall be liable to an administrative penalty.

26. Declaration of quarantine area

- (1) The Minister may, in consultation with the Council, if he considers it necessary for the purpose of preventing an outbreak, or spread of any cotton, pest or disease, by order, declare any area to be a cotton quarantine area and may in such order—
 - (a) prohibit or regulate the sowing in such area of cotton seed or any other crop specified in the order known to harbour pest or disease of cotton; or

- (b) prohibit the removal from such area without a written permit issued by the Minister, of any seed cotton or cotton seed or any plant or any article which contains or, which in his opinion, is likely to harbour pest or disease of cotton.
- (2) The Minister may, by written notice, require any person to remove to any place or to destroy any seed cotton, cotton seed or cotton refuse in his possession or control, within the time specified in the notice, in such cotton quarantine area.
- (3) Where a person fails to comply with the notice referred to in subsection (2), the Minister may, after giving the person written notice of not less than seven days of his intention to do so, cause the removal or destruction of the seed cotton, cotton seed or cotton refuse to be effected and the person shall, without prejudice to any penalty which he may have incurred by reason of such failure, be liable to pay all costs of such undertaking, which costs shall be recoverable as a debt due to the Government.
- (4) Any person who contravenes or fails to comply with the provisions of any order or notice made or issued under this section commits an offence and shall be liable to an administrative penalty.

27. Prevention of diseases

- (1) The Minister may, by order, for the purpose of preventing or controlling the occurrence or spread of any pest or disease of cotton within any area specified in such order—
 - (a) require that within such area and time—
 - (i) all or any cotton plants, cotton residues or any plant specified in the order, be uprooted and burned by any person possessing or having control over the same; or
 - (ii) all or any seed cotton, cotton seed or cotton refuse be burned;
 - (b) any grower within such area forthwith to harvest such of his seed cotton as, in the opinion of the Minister, is ready for harvesting; or
 - (c) prohibit any person within such area from planting any cotton seed or cotton plant before a date specified in the order.
- (2) Any person who contravenes or fails to comply with any of the provisions of any order made under this section commits an offence and shall be liable to an administrative penalty.
- (3) Where any person fails to carry out the provisions of any order made under subsection (1), the Minister may, after giving not less than seven days' notice in writing of his intention to do so, cause such measures to be taken as may be necessary to carry out the provisions of the order and thereupon such person shall, without prejudice to a penalty which he may have incurred by reason of such failure, be liable to pay all the costs of such undertaking which costs shall be recoverable as a debt due to the Government.

28. Destruction of infested cotton material

- (1) The Minister may, in consultation with the Council, by notice in writing, direct the owner or any person having charge of any cotton seed, seed cotton or cotton plant harbouring or likely to harbour any cotton pest or cotton disease, to destroy such cotton seed, seed cotton or cotton plant either within any specified time or forthwith and in any specified manner.
- (2) Any person who, without reasonable excuse, fails to comply with the notice issued under subsection (1), commits an offence and shall be liable to an administrative penalty.
- (3) Any inspector may enter any premises in which any cotton seed, seed cotton or cotton plant in respect of which a notice has been issued under subsection (1) and destroy such cotton seed,

seed cotton or cotton plant immediately if a person on whom such notice has been served fails to comply with its provisions.

- (4) Notwithstanding subsection (1), if any authorized officer is of the opinion that any cotton seed, seed cotton or cotton plant is harbouring any cotton pest or cotton disease of such nature which justifies the immediate destruction of such seed or plant, the inspector may order and supervise the destruction of the cotton seed, seed cotton or cotton plant immediately.
- (5) No compensation shall be payable in respect of any cotton seed or plant destroyed in accordance with any of the provisions of this section.

29. Authorized pesticides

- (1) Every grower shall use only the pesticides prescribed under the First Schedule hereto, and the manner of the use shall be in accordance with the Pesticides Act.

[Cap. 35:03]

- (2) Any person who uses or causes to be used any pesticides other than the ones prescribed in the First Schedule hereto commits an offence and shall be liable to an administrative penalty.

[First Schedule]

30. Destruction of infested cotton plants

- (1) The Minister may, in consultation with the Council and by notice published in the *Gazette*, fix a date prior to which all cotton plants in a specified area shall be uprooted and destroyed in that year and may, in the same instrument, fix a date later in point of time before which no cotton may be planted in that area.
- (2) Upon the issue of the notice under subsection (1), it shall be the duty of every occupier of land in that area to uproot and destroy by fire or any other method prescribed in the notice, any cotton plants growing at the time of the publication of the notice or between that time and the date before which cotton may not be planted as specified in subsection (1).
- (3) Any person who contravenes the provisions of any notice published under subsection (1) commits an offence and shall be liable to an administrative penalty.

31. Exemption

The Minister may, in consultation with the Council, exempt any person from compliance with the provisions of any notice published under [section 27](#), if the Minister is satisfied that the exemption is desirable for the purpose of scientific or experimental work.

Part V – Regulation of the marketing and processing of cotton

32. Registration to engage in marketing and processing of cotton

- (1) On application by any person, the Council may, in accordance with the provisions of this Act and regulations made under this Act in the form contained in the Second Schedule hereto, register any person to undertake the following—
 - (a) deal in cotton seed;
 - (b) deal in seed cotton;
 - (c) operate a ginnery;

- (d) deal in cotton lint; and
- (e) export cotton lint, cotton seed, seed cotton and other cotton products.

[Second Schedule]

- (2) The Council may refuse to register an applicant under subsection (1) if the application does not meet the prescribed requirements.
- (3) The Council may revoke or suspend a registration where the registered person fails to comply with the terms and conditions of the registration and the revocation or suspension shall be in addition to any other penalty to which the registered person may be liable under this Act.
- (4) The Council shall not refuse to register a person solely by reason that the person has not previously been engaged in any of the undertakings.
- (5) A person aggrieved by any refusal, revocation or suspension of a registration may apply to the Court for judicial review regarding the decision of the Council.
- (6) A registration issued under this section shall be valid for one year but may be renewable on payment of the prescribed fee.
- (7) The Minister shall, on recommendation of the Council, prescribe the terms and conditions for registration including the form and method of application for registration under this section.
- (8) Every applicant shall pay the fees payable on application and on the issuing of the registration contained in the Ninth Schedule hereto.

[Ninth Schedule]

- (9) Every holder of a registration shall forward to the Council all information that the Council shall prescribe.

33. General offences and penalties

Any person who contravenes a provision of this Act or a condition of any registration, commits an offence and shall be liable to an administrative penalty and cancellation of the registration by the Council.

34. Replacement of a lost or destroyed registration

- (1) Where a registration issued under this Act is lost or destroyed, the holder of the registration may apply to the Council with proof, to the satisfaction of the Council, of the loss or destruction of the registration.
- (2) If the Council is satisfied with the application, it shall issue a certified copy of the registration on payment of a fee contained in the Ninth Schedule hereto.
- (3) A certified copy of the registration shall be a registration for the purpose of this Act.

Part VI – Marketing, licensing and warehousing

35. Cotton marketing season

The Council shall, in consultation with the Minister and the Ministry responsible for industry and trade, announce the commencement and closure of the cotton marketing season.

36. Grower to grade seed cotton

Every grower shall grade all seed cotton into the appropriate grades as determined under [section 37](#) before the sale of seed cotton.

37. Determination of the grades of cotton

The Council may by order, determine grades of seed cotton for sale at specified areas and for a specified period.

38. Prohibition against mixing different grades of seed cotton

- (1) A person shall not mix different grades of seed cotton.
- (2) Any person who knowingly or negligently sells seed cotton without first grading the same, or knowingly or negligently mixes unmerchantable cotton with graded cotton, commits an offence and on conviction shall be liable to an administrative penalty.
- (3) Any person who knowingly or negligently buys improperly graded seed cotton or graded cotton mixed with unmerchantable cotton, commits an offence and shall be liable to an administrative penalty.

39. Prohibition against inclusion of foreign materials and nesting

- (1) A person shall not allow or cause any foreign material to be present or nesting in any seed cotton meant for sale.
- (2) Any person who allows or causes any foreign material to be present or nesting in any seed cotton meant for sale, commits an offence and on conviction shall be liable to an administrative penalty.

40. Restriction on cotton buying

- (1) A person shall not buy seed cotton, unless he is a holder of a valid seed cotton buying licence.
- (2) Notwithstanding the provisions of subsection (1), where an association or cooperative society licensed as a cotton buyer, buys seed cotton through its members, such members shall not be required to be licensed as cotton buyers.
- (3) A cotton buyer shall not buy seed cotton at any place other than at a cotton buying post specified in his cotton buying licence.
- (4) Any person who contravenes any of the provisions of this section commits an offence and shall be liable to an administrative penalty.

41. Cotton buying licence

- (1) The Council shall, on application for the relevant licence as contained in the Third Schedule hereto, issue to the applicant a cotton buying licence in the form contained in the Fourth Schedule hereto.

[Third Schedule]

[Fourth Schedule]

- (2) The licence issued under this section shall entitle the holder thereof to buy seed cotton and shall specify the cotton buying post or posts at which the holder shall conduct the buying operations.

- (3) Any person who applies for a licence under this Act, on issue of the initial licence or renewal thereof, shall pay the applicable fees as set out in the Ninth Schedule hereto.

[Ninth Schedule]

- (4) A cotton buying licence shall, unless previously revoked or surrendered, remain in force up to the time specified in the licence for the specific growing areas but on application the Council may extend the validity of the licence on sufficient grounds.

42. Production of licence by a buyer

- (1) A cotton buyer shall produce his buying licence at all reasonable times upon request by an inspector.
- (2) Any buyer who fails, without reasonable cause, to produce his licence when so requested, commits an offence and shall be liable to an administrative penalty.

43. Non-assignability of cotton licence

A cotton buying licence shall not be assignable or transferable.

44. Cotton warehousing

- (1) A person shall not erect or operate a cotton warehouse for the purpose of storing seed cotton unless he obtains a prior written permission from the Council.
- (2) Any person who contravenes the provisions of this section, commits an offence and shall be liable to an administrative penalty.

45. Cotton buying posts

- (1) The Council may, by notice, order any premises or place to be a cotton buying post either temporarily or on permanent basis and a person shall not sell any seed cotton except at a cotton buying post.
- (2) Any person who contravenes the provisions of this section, commits an offence and shall be liable to an administrative penalty.

46. Purchase of seed cotton

- (1) The Council may, by order—
- (a) fix a date in each year prior to which no seed cotton shall be bought in any specified area;
 - (b) fix a date in each year after which no seed cotton shall be bought in any specified area; and
 - (c) fix hours and days on which the premises of cotton buyers shall be kept open for the purpose of conducting business.
- (2) Any cotton buyer who contravenes or fails to comply with the provisions of any order made under this section, commits an offence and shall be liable to an administrative penalty.

47. Prices to be linked to world market

All traders in cotton industry shall be guided in their dealing in respect of prices by taking into account, among other factors, the cost of production and the prevailing international market prices.

48. Conditions to be observed by cotton buyers

- (1) Every cotton buyer shall—
 - (a) at all times when his premises are open for business, display in the English and Chichewa version, and in any other local language commonly used in the area, in conspicuous letters, the prices offered by him per unit weight of each grade of seed cotton;
 - (b) display standard grade sample box approved by the Council;
 - (c) keep and render such accounts of his dealings in seed cotton as may be prescribed;
 - (d) display a weighing scale properly serviced, inspected and approved by the Weights and Measurements Department of the Ministry responsible for industry and trade or the Malawi Bureau of Standards;
 - (e) store all seed cotton in his possession in a cotton store at one or any of the cotton buying posts at which he is licensed to buy or in such storage facility as the Council may approve;
 - (f) buy seed cotton offered to him at the prices exhibited;
 - (g) keep all cotton separate according to grades;
 - (h) ensure that all cotton purchased by him is correctly graded; and
 - (i) submit to the Council a return of seed cotton purchased on contract farming or a return of seed cotton grown on customary land, in the Form A or B respectively as contained in the Fifth Schedule hereto.
- (2) A cotton buyer shall—
 - (a) not buy seed cotton at a price less than the price exhibited;
 - (b) not buy seed cotton without issuing produce receipts to the farmers in respect of all seed cotton purchased; and
 - (c) buy seed cotton and transfer payment to the seller not later than fourteen days after the purchase.
- (3) Any cotton buyer who contravenes or fails to comply with any of the provisions of this section commits an offence.

49. Inspection of premises and records

- (1) A cotton inspector may at all times—
 - (a) enter any premises used by cotton buyers for the purposes of inspecting the premises, any seed cotton and scales thereon;
 - (b) inspect and make copies of entries in any books of accounts or other documents required to be kept under the provisions of this Act; and
 - (c) suspend the seed cotton buying operation by seizing the weighing scale, impounding the seed cotton bought and revoking the buying licence.
- (2) Any person who obstructs an inspector lawfully exercising his powers under this section or refuses the inspector permission to exercise such power or fails to cooperate with the inspector in the exercise, by the inspector of any such power, commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for two years.

50. Records of transactions

- (1) Any person who buys or collects seed cotton, cotton seed and cotton lint shall keep on the premises on which such cotton is purchased or collected, proper books in which he shall record in duplicate, every day, the following particulars of each individual transaction—
 - (a) the name of the seller or owner;
 - (b) the grade of cotton;
 - (c) the weight of the cotton and the container; and
 - (d) the destination to which such cotton is dispatched.
- (2) Every person under obligation to keep books under subsection (1) shall forward such records to the Council and the Ministry, once every month in arrears.
- (3) Any person who contravenes the provisions of this section or who fails to produce the said books when required to do so by any inspector commits an offence and upon conviction is liable to an administrative penalty.

Part VII – Ginning and baling

51. Registration of a gingery

A person shall not erect or register or cause to be erected or registered a new cotton ginnery unless the following particulars have been submitted to and approved by the Council—

- (a) the name and address of the proposed ginner;
- (b) the name and address of each director or partner and the shareholding of each shareholder;
- (c) processing capacity of the ginnery;
- (d) planned production of the ginnery;
- (e) capacity number and area of warehouses;
- (f) existing transport facilities;
- (g) number and quality of skilled, semi-skilled and non-skilled personnel employed or to be employed; and
- (h) financial credit worthiness from a reputable bank.

[Please note: numbering as in original.]

- (2) A person granted a registration certificate shall complete construction of the ginnery within two years from the date of the issuance of the certificate.
- (3) The certificate of registration shall not be transferred to another person.
- (4) A person shall not operate a ginnery unless the ginnery has been duly inspected and certified by the Council.
- (5) The Council may, in its discretion, limit the number of ginneries which may be constructed or operated in any particular area.
- (6) Any person who contravenes the provisions of this section or of any orders made under this section commits an offence.

52. Ginning licence

- (1) A person shall not gin seed cotton or bale cotton lint unless he is a holder of a valid ginning licence issued by the Council, and any ginning licence shall, unless revoked or suspended, remain in force for a period of one year from the date of issue.
- (2) An application to gin or bale cotton shall be made to the Council in the form contained in the Sixth Schedule hereto and the Council shall issue to the applicant a licence in the Form contained in the Seventh Schedule hereto.

[Sixth Schedule]

[Seventh Schedule]

- (3) Any person who contravenes the provisions of subsection (1), commits an offence.

53. Conditions for ginning licence

- (1) A holder of a ginning licence shall be entitled to gin seed cotton and bale cotton lint on the premises and in accordance with such conditions as to machinery, plant, storage accommodation and output specified in the licence.
- (2) Any holder of a ginning licence who fails to comply with any order or condition lawfully made or imposed by the Council, commits an offence and shall be liable to an administrative penalty.
- (3) The Council may, for good and sufficient reasons, refuse to issue a ginner's licence, and in that event the Council shall inform the applicant the grounds for the refusal within fourteen days.
- (4) Every registered ginner shall forward to the Council and to the Minister, within twenty one days after completing ginning, a cotton and baling return in the Form contained in the Eighth Schedule hereto containing the details of all cotton ginned; and such details shall include—
 - (a) the quantities ginned during the season, specifying the amount of seed cotton ginned, cotton lint output, cotton seed output and other by-products;
 - (b) the grades into which these quantities are classified; and
 - (c) the appropriate ginning out-turn.

[Eighth Schedule]

54. Movement of seed cotton

- (1) A person shall not move or cause to be moved any seed cotton from one region to another except in accordance with a permit issued by the Council.
- (2) Any person who contravenes the provisions of this section commits an offence and shall be liable to an administrative penalty.

55. Register of ginneries

The Council shall keep and maintain a register of all ginneries in respect of which licences have been issued.

56. Ginning licence not assignable

A ginning licence shall not be assignable or transferable.

57. Duties of holder of ginning licence

- (1) It shall be a condition of every ginning licence that the licence holder shall—
- (a) maintain and work the ginnery in a proper and workmanship manner and in such a way as not to cause deterioration or damage to the seed cotton, cotton lint, or cotton seed handled therein;
 - (b) ensure that all seed cotton delivered to the ginnery is correctly graded and shall keep the cotton separate according to its appropriate grades;
 - (c) keep all seed cotton, cotton seed and cotton lint which has been salvaged from damage by fire or water separate from all other seed cotton, cotton seed and cotton lint and shall gin the seed cotton and bale the cotton lint only in accordance with the prescribed instructions from the Council;
 - (d) keep such records and make such returns as may be prescribed;
 - (e) keep all seed cotton, cotton seed and cotton lint in his possession or control properly stored in the ginnery buildings or stores;
 - (f) keep the ginnery and its precincts in a clean and sanitary condition;
 - (g) take all reasonable precautions for the prevention of fire as may be prescribed;
 - (h) if so required by the Council, gin before any other seed cotton in respect of seed of which the Council has given notice of its intention to exercise its powers under the provisions of [section 20](#);
 - (i) produce cotton lint free from all seeds or parts of seeds or other substances whatsoever which ought to have been removed therefrom by the processes of ginning if the same had been carried out in a proper and workmanship manner;
 - (j) gin all seed cotton which may be delivered to him for ginning up to the maximum capacity of the ginnery;
 - (k) ensure that seed cotton is always in satisfactory dry state before being fed to the gins and the rate of feed shall not exceed the maximum advised by the gin manufacturers;
 - (l) keep all gins adjusted so that whole seeds or pieces of seed do not pass into the ginned lint and that only lint passes over the rollers of roller gins or through the breast bars of saw gins;
 - (m) maintain gins in such a manner that oil, grease or any form of lubricant does not come into contact with the seed cotton, cotton seed or the ginned lint;
 - (n) fit gins so that the seed issuing from them contains, as far as possible, no unginning cotton and no avoidable broken seed;
 - (o) bale lint in such a manner that all hoops are intact and that the lint is adequately covered with approved bale wrappers;
 - (p) take all reasonable steps to exclude dirt and any extraneous matter from lint prior to and during baling;
 - (q) ensure that prior to removal from the ginnery, bales are stored in such a manner as to be protected from adverse weather conditions;
 - (r) keep all seed cotton delivered for ginning separate in the appropriate prescribed grades; and

- (s) commence ginning to ensure that all the seed required for planting shall be in the hands of those responsible for its distribution to growers by the dates prescribed by the Minister.
- (2) Any holder of a ginning licence who contravenes any of the provisions of this section, commits an offence and shall be liable to an administrative penalty.
- (3) Where any ginnery or any machinery in any ginner is being maintained or used in such a manner as to cause deterioration or other damage to any cotton handled in such ginnery, or cause danger to the workers in the ginnery the Council may suspend the ginning licence relating to such ginnery until such time as it is satisfied that the cause of such deterioration or other damage has been removed.
- (4) A holder of a ginning licence shall provide toll ginning services to a person who requests for such services within a reasonable time, and in any case the holder of a ginning licence shall provide the services within sixty days from the date of the application for toll ginning services was made.

58. Form of licences

- (1) Licences granted under this Act shall be—
 - (a) in the prescribed manner;
 - (b) valid for a specific period;
 - (c) subject to such terms and conditions as may be prescribed or endorsed therein; and
 - (d) issued subject to the payment of prescribed fees contained in the Ninth Schedule hereto.
[Ninth Schedule]
- (2) The Council may refuse to grant a licence to an applicant if the applicant does not meet the prescribed requirements.

59. Cancellation or suspension of a licence and appeal

- (1) The Council may cancel or suspend a licence, if the holder of the licence fails to comply with terms and conditions of his licence or for a good and sufficient cause; such cancellation or suspension, as the case may be, shall be in addition to any penalty to which the licence holder may be liable under this Act.
- (2) Any person aggrieved by the decision of the Council in refusing to grant a licence under [section 55](#) (2), or cancelling or suspending a licence under subsection (1), may appeal to the Minister within thirty days from the day of the refusal, cancellation or suspension.
- (3) A person aggrieved by the decision of the Minister may apply to the High Court for judicial review.

Part VIII – Purchase, sale and export of cotton lint and cotton seed

60. Sale or export of cotton lint and cotton seeds

Subject to the provisions of this Act, any person may purchase—

- (a) cotton lint and cotton seeds for export, or resale within Malawi; or
- (b) seed cotton for resale within Malawi.

61. Restriction on purchase and export of cotton

- (1) Any person shall not in any manner whatsoever—
 - (a) export any seed cotton, cotton lint or cotton seed, unless he is a holder of a valid export permit issued by the Council under the provisions of this Act;
 - (b) exchange, barter, or enter into any agreement for exchange or barter of cotton seed or cotton lint; or
 - (c) purchase, sell, export or dispose of, any seed cotton, cotton lint or cotton seed, unless he applies and obtains a licence from the Council in accordance with the provisions of this Act.
- (2) Any person who contravenes any provision of this section or contravenes any of the terms and conditions of a licence granted under this Act, commits an offence and shall be liable to an administrative penalty.

Part IX – Financial provisions

62. Funds of the Council

The finances of the Council shall include—

- (a) money appropriated by Parliament;
- (b) all charges levied by the Council;
- (c) all other fees, cesses, dues or rents received by the Council;
- (d) all the interest on money invested by the Council;
- (e) revenues from commercial activities such as sale of seed cotton, cotton seed and cotton lint from farms of the Council;
- (f) donations and gifts from any other sources; and
- (g) donor funded projects.

63. Application of funds of the Council

The Council, may use any funds available to it under [section 62](#) for all or any of the following purposes—

- (a) remuneration of members of staff and technical advisers of the Council;
- (b) provision of offices and of houses for members of the staff of the Council and of furniture and equipment therefor, as the Council may deem necessary;
- (c) payment of such remuneration, travelling and other expenses and subsistence allowances to members of the Council on such scale and subject to such conditions as may be approved by the Minister;
- (d) experiment, investigation and research in connection with the cotton industry;
- (e) collection and dissemination of statistics and other information relating to cotton and its production and distribution;
- (f) promotion of exhibition for the display of cotton;

- (g) establishment or support of libraries, laboratories, experimental stations, workshops and factories, and the provision of facilities ancillary thereto;
- (h) the promotion of the merits of Malawi cotton and increasing its sale by efforts to extend existing markets and exploiting new markets and matters incidental thereto;
- (i) the payment of expenses and other charges incurred by the Council or for which the Council may become liable in the course of its operations;
- (j) assisting the cotton industry of Malawi in such manner as the Council may think fit; and
- (k) for any purpose that the Council deems will promote or enhance the development of the cotton industry.

64. Investment of funds and borrowing powers

- (1) The Council may, with the approval of the Minister, invest any funds which may, from time to time, be standing to its credit, and which are not immediately required for any of the purposes specified in [section 63](#) in such investments as the Minister may approve.
- (2) The Council may, subject to the Public Finance Management Act and with the approval of the Minister, raise or borrow sums of money for the purposes of discharging its functions under this Act, and may, for that purpose, mortgage or charge the whole or any part of its property.

[Cap. 31:02]

65. Powers to impose levy

There shall be raised, collected and paid in respect of all cotton processed or imported into Malawi, a cotton levy at such rate as the Minister may, after consultation with the Minister responsible for finance, impose, by notice published in the *Gazette*.

66. Payment of levy

Any levy imposed under the provisions of [section 65](#) shall be paid by all cotton buyers, processors, exporters and importers and such levy shall be collected and expended as prescribed by the regulations made under this Act.

67. Establishment of the Cotton Development Fund

- (1) The Council shall cause to be established a fund for cotton development to be known as the Cotton Development Fund (hereinafter referred to as the "Fund") into which moneys realized from cess or levy shall be paid and the Council shall collect such cess or levy on behalf of the Board of Trustees.
- (2) The sources of money for the Fund shall include—
 - (a) any cess or levy determined by the Minister for the purpose;
 - (b) any other source as may be determined by the cotton stakeholders from time to time; and
 - (c) any donations, or grants from Government, donor agency or individuals.
- (3) The purpose of the Fund shall include financing the following activities—
 - (a) research and development;
 - (b) extension services;

- (c) training and human resource development;
 - (d) subsidising prices for cotton seeds for planting and agro-inputs;
 - (e) the administration of the Fund; and
 - (f) such other activities beneficial to the cotton industry as may be deemed fit by Council.
- (4) The Fund shall be managed by a Board of Trustees to be appointed by the Minister on recommendation of stakeholders from names proposed by the following institutions—
- (a) Cotton Growers Association;
 - (b) Cotton Ginners Association;
 - (c) the Ministry responsible for Agriculture; and
 - (d) the Society of Accountants in Malawi.
- (5) The Executive Director of the Council shall be a member of the Board of Trustees of the Fund, and shall also be the Secretary of the Board of Trustees of the Fund.

68. Audit of accounts

- (1) The Council shall cause to be kept such books of accounts and other books in relation thereto and to all its undertakings, funds, activities and property.
- (2) The Minister may from time to time require, and shall, within a period of four months after the end of the Council's financial year or within such longer period as the Minister may approve, cause to be compared, signed and transmitted to the auditor—
- (a) a balance sheet showing in detail the assets and liabilities of the Council; and
 - (b) such other statements of account as the Minister may require.
- (3) The accounts of the Council shall be examined, audited and reported upon annually by the Auditor General or by an auditor appointed by the Council and approved by the Auditor General.
- (4) The Council shall produce and submit to the auditor all books and accounts of the Council, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto.
- (5) The auditor shall be entitled to require from all members, officers, employees and agents of the Council such information and explanation as he may consider necessary for the performance of his duties as an auditor.
- (6) The expenses of and incidental to the audit shall be paid by the Council.

69. Report and accounts to be submitted to Minister

- (1) The Council shall, within a period of six months after the end of its financial year or within such longer periods as the Minister may approve, submit to the Minister, a report of its operations during such year and the yearly balance sheet and such other statements of account as the Minister may require together with the auditor's report thereon.
- (2) The Council shall, if the Minister so requires, publish the report, the balance sheet and the other statements in such manner as the Minister may specify.
- (3) The Minister shall lay before the National Assembly the Council's report, the auditor's report, the balance sheet, and such other statements of account as he may have required under subsection (1).

- (4) The Minister shall lay the reports, balance sheet and statement referred to in subsection (3) herein within thirty days after receipt of the reports and statements by him or if the National Assembly is not then sitting, within a reasonable time after the commencement of the next sitting.

70. Financial year of the Council

The financial year of the Council shall be a period of twelve months from 1st July to June 30th of the next year or on such other date as the Minister may specify by order published in the *Gazette*:

Provided that the first financial year of the Council may be shorter or longer than the period of twelve months.

71. Council to operate on sound financial principles

The Council shall perform its functions in accordance with sound financial principles.

Part X – Miscellaneous provision

72. Immunity of members and employees of the Council

No action or other proceedings shall lie against a member or an employee of the Council in respect of any act or a thing done or omitted to be done in good faith in the exercise of his powers, duties and functions under this Act.

73. Government institutions and private companies and others, to cooperate with the Council

Every ministry, department, other division of the Government, statutory corporation or private company, shall afford the Council all reasonable opportunity for consultation and shall, subject to any written law, provide the Council with any information that the Council may require.

74. Fees

- (1) Any person who applies for registration or for a licence, as the case may be, under this Act shall, upon issue of an initial registration or licence and on renewal thereof, as the case may be, pay the applicable fees specified in the Ninth Schedule hereto.

[Ninth Schedule]

- (2) The Minister may, on the advice of the Council, from time to time, revise the fees referred to in subsection (1) by notice published in the *Gazette*.

75. Regulations

- (1) The Minister may, on the recommendation of the Council, make regulations for, or with respect to, any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may make provision with respect to—
- (a) governing the cultivation, baling, marketing, transportation, warehousing, ginning, importation and exportation of cotton;

- (b) the forms and particulars to be included in any return, information or statistics to be submitted by cotton growers, buyers, ginnery operators, exporters and importers under the provisions of this Act;
 - (c) the grading or classification and definitions of grades fixed in respect of cotton whether locally manufactured or imported;
 - (d) the inspection of all cotton whether locally grown or ginned or imported and for the appointment of inspectors and prescribing their additional duties or powers;
 - (e) the grading, sampling, inspection, weighing and determination of quality of cotton;
 - (f) for records or information to be kept and returns to be made by the cotton growers, buyers, ginnery operators, exporters and importers of cotton;
 - (g) prohibiting or control of the import or export of cotton seed, seed cotton or cotton lint;
 - (h) the variety and quality of cotton seed to be used for sowing in any specified area or region;
 - (i) packing materials to be used for packing seed cotton by farmers and ginners;
 - (j) handling of seed cotton in the gins;
 - (k) the method of bagging, transporting, delivery, storing and supplying to growers of cotton seed which has been reserved under the provisions of [section 20](#);
 - (l) regulating and controlling the lay-out, erection and use of cotton buying posts and their inspection and management;
 - (m) control of erection of ginneries and conditions upon which they may be erected, maintained and operated;
 - (n) the conditions upon which ginning licences may be issued;
 - (o) the regulation of the purchase and sale of seed cotton;
 - (p) prevention of the outbreak of fire at cotton buying posts or other premises used for seed cotton buying;
 - (q) the procedure on appeals of aggrieved parties;
 - (r) determining the rate of levy to be imposed on cotton;
 - (s) the fees to be paid for anything to be done under this Act;
 - (t) the manner in which seed cotton, cotton seed and cotton lint shall be stored, providing for the storage of different types of seed cotton and cotton seed separately and prescribing the specification in conformity with which cotton warehouses shall be built and maintained;
 - (u) the methods of packing seed cotton and prescribing the maximum weight which may be packed in any one bag or bale;
 - (v) the types of containers used in transporting seed cotton; and
 - (w) regulating the weighing of seed cotton.
- (3) Regulations made under this section may be applicable to the whole of Malawi or to any specified part thereof.

76. Council to make rules

The Council may, with the approval of the Minister, make rules for the better carrying out of its functions and powers under this Act, and without prejudice to the generality of the foregoing, the Council may make rules—

- (a) regulating the applications for, and the issue of any licence or permit authorized to be issued under this Act;
- (b) regulating the ginning of seed cotton;
- (c) regulating the purchase, receipt, storage, baling, disposal and export of cotton lint and cotton seed;
- (d) regulating and prescribing powers, duties, functions, responsibilities and remuneration of officers, employees and agents of the Council and of inspectors;
- (e) prescribing the fee for any service to be rendered by the Council to ginners, growers and other persons; and
- (f) regulating the submission of returns by ginners, growers, agents and other persons engaged in the cotton industry.

77. Administrative penalties

- (1) If the Council is satisfied, on reasonable grounds, that a person has contravened a provision of this Act, the Council may impose administrative penalties on the person by doing one or more of the following—
 - (a) giving the person a written warning;
 - (b) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—
 - (i) to remedy the effects of the contravention;
 - (ii) to compensate persons who have suffered loss because of the contravention;
 - (iii) to ensure that the person does not commit further contravention of the provisions this Act or any regulations made hereunder; or
 - (c) requiring the person to pay a monetary penalty as may be determined by the Council with the approval of the Minister.
- (2) Before taking action under subsection (1), the Council shall give the person written notice of the proposed action, specifying the grounds for it and the facts supporting those grounds, and allowing twenty-one days after the notice is given for the person to ask for a hearing on the matter.
- (3) If the person requests a hearing on the matter, the Council shall hold a hearing before taking the action. The hearing shall be held in private, unless the person consents to the hearing being held in public.
- (4) A person on whom an administrative penalty has been imposed but fails or refuses to comply with the administrative penalty, commits an offence and shall, on conviction, be liable to a fine of K1,000,000 and to four years imprisonment.
- (5) Where the administrative penalty imposed by the Council is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay the monetary penalty for more than

thirty days from the date of the initial demand in writing by the Council the amount in respect of the monetary penalty shall be recoverable by the Council as a civil debt.

- (6) The Council may, on application, waive payment of some or all of a monetary penalty imposed under subsection (1) (c).

78. Offences by bodies corporate relating to state of mind

- (1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—
- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and
 - (b) the director, employee or agent had the state of mind.
- (2) A reference in subsection (1) to the state of mind of a person includes a reference to—
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

79. Offences by bodies corporate relating to liability of directors

Where an offence against a provision of this Act or regulations made hereunder is committed by a body corporate, each director of the body corporate shall be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that he took reasonable precaution and exercised due diligence to avoid the commission of the offence.

80. Penalties for offences by bodies corporate

Where a body corporate is convicted of an offence under this Act, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

81. Penalties for continuing or subsequent offences

- (1) Any person convicted of a continuing or a subsequent offence under this Act, shall be liable to a fine of K10,000 every day during which the offence is continued or to imprisonment for six years as the case may be.
- (2) Where in this Act a penalty is provided for a continuing or subsequent offence, the penalty shall apply—
- (a) in the case of a continuing offence, if the person continues to contravene the provision of this Act after he has already contravened that provision; or
 - (b) in the case of a subsequent offence, if that person contravenes the same provision of this Act of which he has already been convicted.

82. General penalty

Any person who commits an offence against a provision of this Act where no penalty is provided for shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for four years.

83. Penalties for contravening regulations

Any regulations made under this Act may, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K1,000,000 and imprisonment for up to four years for contravention of any provision of such regulation.

[Cap. 1:01]

84. Repeal and savings

- (1) The Cotton Act is hereby repealed.
- (2) Any subsidiary legislation made under the Act repealed under subsection (1) in force immediately before the commencement of this Act—
 - (a) shall remain in force and be deemed to be subsidiary legislation made under this Act, unless it is in conflict with this Act; and
 - (b) may be amended or revoked by subsidiary legislation made under this Act.

[Cap. 65:04]

First Schedule

Authorized pesticides for cotton pest control in Malawi (Section 29)

Common Name	Chemical Group	Trade Names	Common Formulations	Target Pests
Imidacloprid Thiamethoxam	Chloranicotinyl Thianicotinyl	Gaucho Cruiser	WS FS	Aphids, elegant grasshopper, termites and other early pests
Carbaryl Profenofos Profenofos Triazophos	Carbamate Organophosphate Organophosphate	Sevin Curacron Hostathion	WP EC EC	All cotton pests except African ballworm, aphid, red spidermite, lygus and helopeltis
Dimethoate Sub-carbosulfen	Organophosphate Organophosphate	Rogor Pefekthian Marshall	EC EC	Aphid, red spidermite
Lambadacyhalothrin Cyfluthrin Fenvalcrate Cypermethrin Deltamethrin Polytrin C Fenpropathrin Cis-Cypermethrin	Pyrethroid Pyrethroid Pyrethroid Pyrethroid Pyrethroid Pyrethroid/ Organophosphate Pyrethroid Pyrethroid	Karate Baythroid Sumicidin Cypermethrin Decis, Decitab Danital Fastac	EC EC EC EC EC,TB EC EC	African bollworm

Second Schedule (Section 32)

Republic of Malawi Cotton Act (Cap. 65:04)

*Registration form to deal in cotton seed/deal in seed cotton/operate a ginnery/deal in cotton lint/export lint**

Section A Particulars of applicant

- A.1 Full Name of Applicant: _____
- A.2 Address of Applicant, or in the case of a body corporate, the registered office:

- A.3 Telephone Number of Applicant: _____ ; and _____
- A.4 Fax Number of Applicant: _____

- A.5 E-mail Address of Applicant: _____
- A.6 Contact Person: _____
Name: _____
Telephone No.: _____ Fax No.: _____
E-mail Address: _____
- A.7 Legal Form of Applicant (specify whether company, partnership, individual, cooperative, trust, or others): _____
- A.8 If the Applicant is a company provide the following details:
- (a) full names of shareholders and percentage holding
 - (b) full names and occupation of Directors
 - (c) Certificate of Incorporation
 - (d) Memorandum and Articles of Association

Section B Commencement date, purpose and duration of registration

- B.1 Desired date from which the registration (if granted) is to take effect: _____
- B.2 Duration of the registration from commencement date: _____ to: _____
- B.3 Purpose for registration: to deal in cotton seed/deal in seed cotton/operate a ginnery/ deal in lint cotton/ export lint*
- B.4 Type of application (first issue, or renewal): _____ to _____

*Delete whichever is inapplicable.

Section C Information on human resources

1. Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualification and number of years of experience in similar jobs; and
2. Provide details of top management personnel of the applicant.

Section D Permits from other government or regulatory authorities

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the purpose specified under B3 in the application.

Section E Environmental consideration

Provide a brief description of the likely negative impact of the activity specified under B3 on natural resources and environmental and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any is required) by the relevant authority.

Section F Additional information

Please provide any other relevant information which the applicant wishes to include with this application:

Third Schedule (Section 41)

Republic of Malawi Cotton Act (Cap. 65:04)

Form A Application for cotton buying licence in respect of cotton grown on private estate

The Licencing Officer:

I/We^{*} apply for a licence to purchase seed cotton grown on my/our^{*} _____ estate.

*Delete whichever is inapplicable.

The place at which purchase will take place is: _____

The hectarage of cotton under cultivation on my/our^{*} estate in the current season is:
_____ hectares.

The estimated production of seed cotton on my/our^{*} estate in the current season is:
_____ kg.

I/We^{*} enclose the licence fee of K _____

Signature of Applicant: _____

Address: _____

Date: _____

Form B Application for cotton buying licence in respect of cotton grown on customary land

The Licencing Officer:

I/We^{*} apply for a licence to purchase seed cotton grown on customary land.

The place at which purchase will take place is: _____

The following are the reasons which I/We^{*} wish to advance in support of this application:

I/We * enclose the licence fee of K _____

Signature of Applicant: _____

Address: _____

Date: _____

*Delete whichever is inapplicable.

Fourth Schedule (Section 41)

Republic of Malawi Cotton Act (Cap. 65:04)

Form A Cotton buying licence in respect of cotton grown on a private estate

No. _____

Licence is hereby granted to: _____ of: _____ to purchase seed cotton grown on the licensee's estate, subject to the Act, and to the following conditions* :

- (a) The amount of seed cotton to be purchased under this licence shall not exceed: _____ kg. This figure is subject to revision at any time during the validity of the Licence;
- (b) The licence is valid only for the purchase of seed cotton at the following place _____
- (c) The prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister.

This licence expires on the: _____, 20 _____

Fee K _____

Dated this _____ day of _____, 20 _____

Licensing Officer

Form B Cotton Buying Licence in Respect of Cotton Grown on Customary Land

No. _____

Licence is hereby granted to _____ of: _____ to purchase seed cotton grown on customary land, subject to the Act, and to the following conditions* :

- (a) The amount of seed cotton to be purchased under this Licence shall not exceed _____ kg;
- (b) The licence is valid only for the purchase of seed cotton at the following place: _____
- (c) The prices to be paid for seed cotton purchased under this licence shall be those from time to time fixed by the Minister.

This licence expires on the _____, 20 _____

Fee K _____

Dated this _____ day of _____, 20 _____

Licensing Officer

*Delete whichever is inapplicable.

Fifth Schedule (Section 48 (1) (i))

Republic of Malawi Cotton Act (Cap. 65:04)

Form A Return of seed cotton purchased on contract farming

To: The Executive Director

The Cotton Council of Malawi

P.O.Box _____

I hereby submit details of seed cotton purchased by me from contracted farmers during the week ended:
 _____, 20 _____

	During the week (kg)	Total to date (kg)
First grade cotton:	_____	_____
Other cotton:	_____	_____
Total:	_____	_____

Signature: _____

Address: _____

Date: _____

Form B Return of purchases of seed cotton grown on customary land

To: The Executive Director

The Cotton Council of Malawi

P.O. Box _____

I hereby submit details of seed cotton grown on customary land purchased by me at the under-mentioned centres during the week ended: _____, 20 _____

Place of Purchase	District	First grade cotton			Other cotton		
		Weight (kg)	Amount paid to growers		Weight (kg)	Amount paid to growers	
			K	t		K	t

Signature of Applicant: _____

Address: _____

Date: _____

Sixth Schedule (Section 52)

Republic of Malawi Cotton Act (Cap. 65:04)

Application for a licence to gin and bale

The Licencing Officer:

I/We^{*} apply for a licence to gin and bale.

The place at which ginning and baling will take place is: _____

The estimated amount of the cotton that can be ginned and baled is: _____ kg.

The following are the reasons which I/We^{*} wish to advance in support of this application:

I/We^{*} enclose the application fee of K _____

Signature of Applicant: _____

Address: _____

Date: _____

^{*}Delete whichever is inapplicable.

Seventh Schedule (Section 52)

Republic of Malawi Cotton Act (Cap. 65:04)

Licence to gin and bale cotton

Region: _____ District: _____

Name of licence holder: _____

Factory at: _____

Licence is hereby given to the above-named to gin and bale cotton at the factory stated in this licence.

This licence expires on the: _____

Fee: K _____

Dated this _____ day of _____, 20 _____

Licensing Officer

Region: _____

Eight Schedule (Section 53)

Cotton Act

Cotton ginning and baling return

To: Minister of Agriculture	The Executive Director	Address: _____
PO. Box 30134	Cotton Council of Malawi	_____
Capital City	PO. Box _____	Date: _____
LILONGWE 3		

I hereby inform you that the particulars relating to the quantities of seed cotton received and ginned at my factor at: _____ in the District of: _____ during the month of: _____, 20 _____ are as follows:

	Quantity Received at Ginnery		Quantity Ginned		Quantity of lint produced		Ginning Percentage	
	During the month kg	Total to date kg	During the month kg	Total to date kg	During the month kg	Total to date kg	During the month kg	Total to date kg
First grade cotton from customary land markets								
Other cotton from customary land markets								
First grade cotton from private estates								
Other cotton from private estates								

Signature: _____

This form must be completed by the holder of a ginning licence and forwarded to the Minister within fourteen days after the end of each calendar month during which his ginnery is in operation, provided that where no cotton is ginned during the month a NIL return shall be forwarded and when ginning is finished the Minister shall be notified.

Ninth Schedule (Section 74(1))

Fees

Matter	Amount	Payable
	K	t
1. Application for initial registration for—		
(a) dealing in cotton seed	20,000	00
(b) dealing in seed cotton	20,000	00
(c) operating a ginnery	20,000	00
(d) dealing in lint cotton	20,000	00
(e) exporting lint	20,000	00
2. Fee upon issue and renewal of registration for—		
(a) dealing in cotton seed	50,000	00
(b) dealing in seed cotton	50,000	00
(c) operating a ginnery	50,000	00
(d) dealing in lint cotton	50,000	00
(e) exporting lint	50,000	00
3. Replacement of registration	50,000	00
4. Application for licence to buy cotton	20,000	00
5. Fee upon issue and renewal of cotton buying licence	50,000	00
6. Application for licence to gin and bale cotton	20,000	00
7. Fee upon issue and renewal of licence to gin and bale cotton	50,000	00