

**The Malawi Gazette Supplement, dated 18th February, 2011, containing  
a Bill**

**NOTICE**

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The following Bill, for introduction in Parliament, is published for general information.

LILONGWE, 18th February, 2011.

M. M. KATOPOLA  
*Clerk of Parliament*

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**ATOMIC ENERGY BILL, 2011**

**MEMORANDUM**

This Bill seeks to introduce comprehensive legislation to provide for the adequate protection of people as well as the environment against the harmful effects of radiation sources, nuclear material and radioactive materials.

Although currently Malawi has some legislation that contains reference to nuclear science and technology, the legislation is inadequate for the comprehensive regulation and management of radiation sources, nuclear material and radioactive materials. The regulatory framework is sectoral and therefore fragmented in nature and as such does not provide a comprehensive and coordinated approach to the regulation and management of atomic energy related activities. In most cases, the pieces of legislation address only an aspect, such as the need to safeguard the health of individuals or society and the need to minimize negative impacts to the environment.

Further, the current legislation that contains reference to nuclear science and technology does not provide for health and safety when handling radiation sources, nuclear material and radioactive materials activities and nuclear sources, security of nuclear sources from theft, sabotage, unauthorized access, illegal transfer or other malicious acts involving nuclear materials; and safeguard mechanisms for disaster preparedness responses in the event of nuclear related emergencies.

Some of the sectoral regulatory frameworks related to nuclear activities in the country include—

- (a) the Environment Management Act which provides for a general environmental management regulatory framework including waste management;
- (b) the Occupational Safety and Health Act which provides for safety or workers from ionizing radiation;

(c) the Mines and Minerals Act which provides for health hazards against exposure to radioactive substances;

(d) the Control of Goods Act which provides for import and export of radioactive substances; and

(e) the National Energy Policy of 2004, which discourages the development of nuclear power.

A comprehensive Atomic Energy legislation will address all aspects of radiation sources, nuclear material and radioactive materials including import, export, production, processing, handling, use, holding, storage, transportation and disposal and ensure that the implementation thereof is done in a coordinated manner and there is an institution that is ultimately responsible.

The Bill contains sixteen parts and addresses a number of issues including—

(a) the creation of an Atomic Energy Regulatory Authority (AERA);

(b) provisions for notification and licensing for those who want to engage in activities or practices involving radiation sources, nuclear material or any radioactive materials; responsibilities of a licensee; inspection and enforcement and compliance monitoring;

(c) provision for fundamental radiation safety principles to apply to activities and practices in Malawi involving radiation sources, nuclear material or any radioactive materials to ensure, amongst other things, the occupational safety of workers as well as the public from exposure to radiation;

(d) provision for emergency response and preparedness to accidents or incidents and other emergencies;

(e) provision for radioactive waste management;

(f) provision for transportation of radioactive material;

(g) provision for security, physical protection and safeguards; and

(h) provisions relating to mining and processing.

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**MALAWI GOVERNMENT**

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**(Published 19th August, 2011)**

**Act**

**No. 16 of 2011**

I assent

PROF. BINGU WA MUTHARIKA

PRESIDENT

18th August, 2011

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**An Act to provide for adequate protection of the people and the environment in present and future generations against the harmful effects of ionizing radiation by controlling and regulating the importation, exportation, production, processing, handling, use, holding, storage, transportation and disposal of radiation sources, nuclear materials, and any other radioactive materials; to provide for the establishment of the Atomic Energy Regulatory Authority and provide for its governance and management; and to provide for matters connected therewith and incidental thereto**

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Atomic Energy Act, 2011, and shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint, and the Minister may appoint different dates for coming into force of different parts of this Act.

Interpretation

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

“accident” means any event relating to a radiation source, including an operating error, equipment failure or other mishap, the consequences or potential consequences of which are not negligible from the point of view of radiation safety or nuclear security;

“activity” means the design, manufacture, construction, import, export, distribution, sale, loan, commissioning, use, operation, maintenance, repair, transfer, decommissioning or possession of radiation sources for industrial, education, research, agricultural and medical purposes; the transport of radioactive materials; the

mining and processing of radioactive minerals; the closing down of associated facilities; the cleanup of sites affected by residues from past activities; and radioactive waste management activities such as the discharge of effluent; any activity involving nuclear material as defined in the Safeguards Agreement;

“Authority” means the Atomic Energy Regulatory Authority established under section 5;

“Board” means the Board of Directors of the Authority appointed under section 6;

“clearance” means the removal of radioactive materials or radioactive objects within authorized activities and practices from any further regulatory control;

“disposal” in relation to radioactive waste, includes its removal, deposit, or destruction, its discharge, whether into water or into air or into a sewer or drain or its burial, and “dispose of” shall be construed accordingly;

“dose limit” means the prescribed maximum value of the effective amount of radiation to which a person has been exposed and which is determined in the manner prescribed in section 43;

“Executive Director” means the Executive Director of the Secretariat appointed under section 16;

“exemption” means a determination by the Authority that a source, practice or activity need not be subject to some or all aspects of regulatory control on the basis that the radiation risks to individuals, the public and the environment caused by the exempted practice or source may be sufficiently low as to be of no regulatory concern;

“export” means the physical transfer, originating from Malawi, into an importing state, of nuclear material and related equipment, information and technology, as defined by the Authority;

“facility” means irradiation installations, mining and milling facilities, waste management facilities and any other place where radioactive materials are produced, processed, used, handled, stored or disposed off or where radiation generators are installed on such a scale that consideration of protection and safety is required;

“import” means the physical transfer, into Malawi, originating from an exporting state, of nuclear material and related equipment, information and technology, as defined by the Atomic Energy Regulatory Authority;

“inspector” means a person appointed under section 37;

“International Atomic Energy Agency” or “IAEA” means the International Atomic Energy Agency established by the statute of the IAEA in 1957;

“International instrument” includes—

(a) the IAEA Statute and all instruments developed or issued thereunder;

(b) the Treaty on the Non-proliferation of Nuclear Weapons adopted at the United Nations Offices in New York, United States of America on 12th June, 1968, and came into force on 5th March, 1970;

(c) the African Nuclear-Weapon-Free Zone Treaty, which was signed at Pelindaba in 1966 and came into force on 15th July, 2009;

(d) the Convention on Early Notification of a Nuclear Accident adopted on 26th September, 1986 in Vienna, Austria and came into force on 27th October, 1986;

(e) the Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency which was adopted on 26th September, 1986 in Vienna, Austria, and came into force on 26th February, 1987; and

(f) the Agreement between Malawi and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as the “Safeguards Agreement”), and the Additional Protocol thereto.

“intervention” means any action intended to reduce or avert exposure or the likelihood of exposure to sources which are not part of a controlled practice or which are out of control as a consequence of an accident;

“ionizing radiation” means, for the purposes of radiation protection, radiation capable of producing ion pairs in biological materials;

“licence” means an authorization granted by the Authority to a person, natural or judicial, who has submitted an application to carry out an activity or practice, as provided for in section 25;

“licensee” means the holder of a current licence granted for an activity or practice, who has recognized rights and duties for the activity or practice, particularly in relation to protection and safety;

“notification” means a document submitted to the Authority by an operator to notify an intention to carry out an activity or practice as provided for in section 22;



“operator” means any organization or person that is authorized or responsible for nuclear, radiation or radioactive waste, or transport safety, when undertaking activities or sources of ionizing radiation. This includes, inter alia, private individuals, non-governmental organizations, governmental bodies, consignees or carriers, licensees or hospitals;

“practice” means any human activity that introduces additional sources of exposure or exposure pathways or extends exposure to additional people or modifies the network of exposure pathways from existing sources, so as to increase the exposure or the likelihood of exposure of people or the number of people exposed;

“premises” include—

(a) any facility;

(b) any land, whether developed or not;

(c) any place underground;

(d) any land covered by water;

(e) any building, structure, vehicle, vessel, aircraft or container;

“radiation source” or “source” means anything that may cause radiation exposure, such as by emitting ionizing radiation or releasing radioactive substances or materials;

“radioactive material” means any matter or substance containing one or more radionuclides but does not include any material the activity or concentration of which does not exceed the prescribed exemption levels;

“radioactive source” means radioactive material that is unsealed or permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control and includes any radioactive material released through the breakage or leaking of such a source. It does not include nuclear material or material encapsulated for disposal;

“radioactive waste” means material, in whatever physical form, remaining from activities, practices or interventions and for which no further use is foreseen, that contains, or is contaminated with, radioactive substances, and has an activity or activity concentration higher than the level set for clearance from requirements of this Act;

“Secretariat” means the Secretariat of the Authority referred to under section 16;

“security” means measures to prevent unauthorized access or damage, loss, theft or unauthorized transfer of radioactive sources or nuclear material.

## Scope

3.—(1) This Act shall apply to all activities and practices involving the peaceful uses of radiation sources, nuclear material and other radioactive material, conducted in the territory or under the jurisdiction or control of Malawi, including production, possession, use, import, export, transportation, transfer, handling and management or any other activities or practices identified by the Authority.

(2) This Act shall not apply to activities or practices involving exposures that have been excluded from regulatory control through regulations established by the Authority.

(3) This Act shall not apply to the regulation of sources of non-ionizing radiation.

## Objectives

4. The objectives of this Act are—

(a) to provide for the beneficial and peaceful uses of nuclear energy and its applications;

(b) to provide for the adequate protection of the public, workers and the environment, now and in the future, against the harmful effects of ionizing radiation and for the safety and security of radiation sources, radioactive material and any other radioactive material;

(c) to establish the Atomic Energy Regulatory Authority with the functions and responsibilities set forth in this Act for the purpose of exercising regulatory control over the peaceful uses of radiation sources, nuclear material and other radioactive material;

(d) to establish and maintain a regulatory system for the adoption of standards, licences, inspection and enforcement to govern all activities and practices falling within the scope of this Act; and

(e) to enable Malawi to meet its obligations under relevant international instruments entered into by Malawi.

## PART II—THE ATOMIC ENERGY REGULATORY AUTHORITY

Establishment  
of the Atomic  
Energy  
Regulatory  
Authority

5.—(1) There is hereby established the Atomic Energy Regulatory Authority which shall—

(a) be a body corporate with perpetual succession and a common seal;

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

(c) have power, subject to the provisions of this Act, to do all things a body corporate may by law do or perform.

(2) There shall be a board of the Authority (hereinafter referred to as the “Board”) which shall be responsible for the administration of the Authority, and a Secretariat which shall provide technical support to the Board.

6.—(1) The Board shall consist of the following members appointed by the President—

Composition  
of the Board

(a) a person working in the ministry responsible for mines and energy and nominated by the Minister responsible for mines and energy;

(b) a person working in the ministry responsible for health and nominated by the Minister responsible for health;

(c) a person working in the ministry responsible for labour and nominated by the Minister responsible for labour;

(d) a person working in the Department of Environmental Affairs and nominated by the Minister responsible for environmental affairs;

(e) a person working in the ministry responsible for foreign affairs and nominated by the Minister responsible for foreign affairs;

(f) a person working in the ministry responsible for justice and nominated by the Minister responsible for justice;

(g) a person working in the Ministry of Finance and nominated by the Minister responsible for finance;

(h) a person representing the trade unions nominated by the trade unions; and

(i) a person representing the non-governmental organization nominated by Council for Non-Governmental Organizations in Malawi.

(2) The persons to be appointed under subsection (1) shall be chosen for their ability, professional qualifications, experience and competency necessary for discharging their functions as members of the Board of the Authority.

(3) A person shall not be appointed as a member of the Board if the person—

(a) is not a Malawian citizen;

(b) has personal direct or indirect interest in the regulated activities;

(c) has been declared bankrupt;

(d) has been convicted of an offence involving fraud or dishonesty; or

(e) has been convicted of an offence under any written law and sentenced to a term of imprisonment without the option of a fine.

(4) The President shall designate one member of the Board, who has the highest level of competence in the field of peaceful uses of atomic energy and related activities, to be the Chairperson of the Authority.

Responsibilities and functions of the Authority

7. The responsibilities, power and functions, of the Authority shall be to—

(a) advise the Government on policies, measures and matters related to protection and prevention of harmful effects of ionizing radiation to the public, workers and the environment;

(b) recommend to the Minister the regulations upon which its regulatory actions are based and disseminate the regulations;

(c) ensure that its regulatory principles and criteria are adequate and valid, and take into consideration internationally recognized standards and recommendations;

(d) set out specific conditions for issuing, amending, suspending or revoking licences;

(e) issue, amend, suspend or revoke licences for the import, export, possession, use, transportation and decommissioning of radiation sources or facilities in which radioactive material or ore is mined, processed, used or stored, as well as for the safe management of radioactive waste;

(f) reject the application for a licence if it does not meet regulatory requirements and the criteria specified by the Authority;

(g) define the obligations of the licensee, including financial securities, to be met as conditions for conducting activities or practices;

(h) confirm the competence of personnel responsible for the safe operation of the facility, activity, or practice;

(i) define and grant exemptions from regulatory control;

(j) enter any premises or facility at any time to perform an inspection;

(k) ensure that corrective actions are taken in the event of non-compliance or violation of this Act, applicable regulations or the conditions of specific licences, if unsafe or potentially unsafe conditions are detected at any premises where authorized activities are conducted;

(l) take the necessary enforcement actions in the event of violations of safety requirements or investigate any alleged breach of the provisions of this Act;

(m) determine the necessary staffing and organizational structure for the implementation of the regulatory programme;

(n) enter into cooperative agreements with relevant national agencies on matters related to radiation safety, nuclear security and safeguards;

(o) cooperate with other relevant authorities, advise and provide them with information on safety and security matters in emergency planning and preparedness;

(p) maintain contacts for co-operation and information exchange with regulatory bodies of other countries and relevant international organizations on matters relating to the safety and security of radioactive sources, in particular for the implementation of international legal instruments to which Malawi is or considers becoming party to;

(q) define a domestic threat and the assessment of vulnerability with respect to any threat for the variety of sources used within Malawi, based on the potential for loss of control or malicious acts involving one or more radioactive sources;

(r) establish regulatory measures for the security of nuclear material, radioactive sources and other radioactive materials, related equipment and associated facilities, including measures for the detection, prevention and response to unauthorized or malicious acts involving such materials, equipment or facilities;

(s) establish, if necessary in cooperation with other authorities including the Malawi Revenue Authority, a system of control for the import and export of nuclear material, radioactive sources and other items required to be controlled taking into account international treaty obligations;

(t) establish and maintain a state system of accounting for and control of nuclear material;

(u) make available to other public institutions, national and international organizations, and the public, information on incidents and abnormal occurrences, and other information, as appropriate;

(v) determine and recommend to the Minister fees for notifications, authorizations, approvals and licensing;

(w) ensure that appropriate records relating to the safety of the facilities and activities are retained and retrievable;

(x) design awareness programmes and implement the same for the civic awareness of this law and all other related matters; and

(y) carry out such other activities as are necessary or conducive for the better performance of its functions under this Act.

**8.—(1)** The Board may, subject to such conditions as the Board may determine, delegate or assign in writing to—

- (a) the Chairperson;
- (b) a member of the Board;
- (c) an advisory committee of the Board; or
- (d) an officer of the Secretariat,

Delegation of powers and assignment of functions

any power conferred upon or function assigned to the Board by this Act, other than the functions referred to in paragraphs (a), (e), (j) and (o) of section 7.

(2) The terms and conditions regulating the exercise of the powers delegated under this section shall be contained in the instrument of delegation.

(3) A person shall, in the exercise of a delegated power or function assigned under this section, comply with such directions or guidelines as the Board may, from time to time, communicate in writing to that person.

(4) A delegation or assignment under subsection (1) shall not divest the Board of a power delegated or a function assigned.

Meetings  
of the Board

9.—(1) The Board shall meet to transact its business at least every three months at such places and times as the Chairperson may determine and may regulate its own procedure.

(2) The Chairperson—

(a) may at any time convene an extraordinary meeting of the Board;

(b) shall, at the request of one-third ( $\frac{1}{3}$ ) of members in writing, convene an extraordinary meeting of the Board,

to be held at a time and place determined by the Chairperson.

(3) The quorum of any meeting of the Board shall be a simple majority of the Board members.

(4) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of an advisory committee of the Board.

(5) The meetings of the Board shall be presided by the Chairperson.

(6) In the absence of the Chairperson the members present and forming quorum shall elect one of their number to preside at the meeting of the Board, who shall, with respect to that meeting and the business transacted thereto, have all the powers of the Chairperson.

(7) A decision of the Board on any matter shall be made by at least half of the members present and voting at the meeting.

(8) The Board may invite any person to assist it on any matter if the Board is satisfied that the person concerned has such qualifications, expertise or experience that he is likely to render useful assistance to the Board.

(9) A person invited under subsection (8) in relation to a particular matter may take part in the proceedings of the Board concerning that matter, but shall not vote on that matter or take part in any other proceedings of the Board.

**10.**—(1) Subject to this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be eligible for re-appointment but in any event, a member of the Board shall not be appointed for more than two terms of office.

Tenure of office and filling of vacancies

(2) The office of the member shall become vacant—

(a) upon the member's death;

(b) if the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;

(c) if the member ceases to work for the ministry which nominated the member to the Board;

(d) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;

(e) if the member is declared bankrupt;

(f) if the member is convicted of an offence involving fraud or dishonesty; or

(g) if the member is convicted of an offence under any written law and is sentenced to a term of imprisonment without the option of a fine.

(3) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 6 under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to recommend to the President to have the vacancy filled until the expiry of the period.

**11.**—(1) The Board may establish such advisory committees as may be deemed necessary and appropriate for the conduct of its regulatory responsibilities.

Advisory committees and consultants

(2) The Authority may engage experts from outside its permanent staff as advisers, consultants, reviewers or technical experts to assist in the conduct of its regulatory responsibilities.

(3) The use of advisory committees or outside experts shall not relieve the Authority from its responsibilities under this Act or other written laws or applicable regulations.

(4) The Authority shall ensure that technical support received from advisory committees or experts is provided in a manner that avoids any conflict of interest or improper influence on its regulatory decision making.

**12.** The members of the Board or any committee shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Allowances of members of the Board

Disclosure  
of interest

**13.—**(1) If a member is present at a meeting of the Board at which any matter is the subject of discussion and in which the member has sufficient interest, directly or indirectly, the member shall, as soon as is practicable, before the commencement or during the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any discussion of, or vote on, any question pertaining to the matter.

(2) A declaration of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

Prohibition of  
publication  
or disclosure

**14.—**(1) A person shall not, without a written consent given by, or on behalf of the Board, publish or disclose to any person other than in the course of duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) Any person who, without written consent given by, or on behalf of, the Board, publishes or discloses to any person any document, communication or information in contravention of subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for fifteen years.

Seal of the  
Authority

**15.** The Board shall determine the seal of the Authority, which shall be kept by the Executive Director at a registered office.

Composition  
of the  
Secretariat

**16.—**(1) The Secretariat of the Authority shall consist of the Executive Director and other employees of the Authority appointed under this Act.

(2) The President shall appoint an Executive Director of the Authority, subject to confirmation by the Public Appointments Committee of the National Assembly.

(3) A person shall not be appointed Executive Director unless such a person—

(a) is a Malawian citizen;

(b) holds at least a post graduate degree in the fields of sciences or law, and has relevant experience in the field of atomic energy;

(c) has not been declared bankrupt;

(d) has not been convicted of an offence involving fraud or dishonesty;

(e) has not been convicted of an offence under any written law and has not been sentenced to a term of imprisonment without the option of a fine; and

(f) has no personal interest, direct or indirect, in the regulated activities.



(4) The Executive Director shall serve for a renewable term of four years up to a maximum of two terms.

(5) Government shall ensure that the Secretariat of the Authority has adequate, suitable and competent staff to fulfill the Authority's responsibilities under this Act and applicable regulations.

(6) The Executive Director shall recruit the necessary staff of the Secretariat subject to approval of the Board.

(7) The Board shall, subject to the approval of the Minister, determine the terms and conditions of service for the Secretariat.

(8) The Executive Director shall exercise disciplinary control over the staff recruited by him under subsection (6).

(9) The Executive Director—

(a) shall be responsible for the day-to-day administration and management of the affairs of the Authority and in that regard shall be answerable to the Board;

(b) shall attend meetings of the Board and may attend meetings of any committee of the Board on request and may address the meetings, but shall not vote at any meeting;

(c) shall be the Secretary to the Board, and shall, on the instructions of the Chairperson, convene meetings of the Board;

(d) shall, where he is not available, delegate a senior officer of the Secretariat to serve as secretary to the Board and the officer shall be entitled to attend all meetings of the Board and of the committees; and

(e) shall subject to the special or general directions of the Board, perform actions which he considers to be expedient for the purposes of the Authority.

17. The Secretariat of the Authority shall have the following functions, to—

Functions  
of the  
Secretariat

(a) establish and maintain a national register of radiation sources and of licensed persons to carry out an activity or practice;

(b) define in the licence the detailed conditions, including financial obligations, to be placed on the licensee;

(c) review and assess submission on safety from an applicant both prior to granting the licence and periodically during operation, as required;

(d) conduct inspections and visits and facilitate the performance of verification activities by designated inspectors of the International Atomic Energy Agency in accordance with the Safeguards Agreement and the Additional Protocol thereto;

(e) establish appropriate mechanisms for informing the public, media, and other stakeholders about the regulatory process, and radiation safety and security aspects of regulated activities or practices and about incidents and accidents;

(f) collect and disseminate information on the work of the Authority; and

(g) perform such other functions from time to time as may be assigned by the Board.

### PART III—FINANCIAL PROVISIONS

Funding of  
the Authority

**18.**—(1) The Government shall provide the Authority with adequate financial resources, to enable the Authority to fulfill its responsibilities under this Act and applicable regulations.

(2) The funds of the Authority shall consist of such moneys as may—

(a) be appropriated by Parliament for the purposes of the Authority;

(b) be collected as fees, penalties and other charges; and

(c) otherwise vest or accrue to the Authority.

(3) The Authority may, subject to the approval of the Minister—

(a) accept grants or donations:

Provided that the grants or donations do not come from persons that are subject to regulatory control of the Authority and do not lead to any conflict of interest; or

(b) raise by way of loans, such moneys as it may require to discharge its functions.

(4) The Authority may invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

Financial year

**19.**—The financial year of the Authority shall be the period of twelve months commencing on 1st July in one year and ending on the 30th of June of the following year; or such other dates as the responsible Minister may specify by order published in the *Gazette*:

Provided that the first financial year of the Authority may be a period shorter or longer than twelve months but in any event not longer than eighteen months.

Accounts

**20.**—(1) The Authority shall—

(a) keep and maintain proper books of accounts and other records relating to its funds and other assets of the Authority; and

(b) in every aspect comply with the Public Finance Management Act, Public Audit Act and Public Procurement Act so far as these Acts are applicable to statutory bodies.

Cap. 37:02  
Cap. 37:01  
Cap. 37:03

(2) The accounts of the Authority shall be audited annually by the Auditor General.

(3) The auditor's fees shall be paid by the Authority.

**21.**—(1) The Authority shall prepare, as soon as practicable, but not later than three months after the end of the financial year, an annual report of the activities of the Authority. Annual Report

(2) The Board shall submit a report to the Minister, and the Minister shall lay the report before the National Assembly annually.

(3) The report referred to in subsection (1) shall include also information on the financial affairs of the Authority and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(4) The Authority shall publish the report and disseminate it to the general public.

#### PART IV—NOTIFICATION AND LICENSING

**22.** Any person who intends to engage in an activity or practice shall submit a notification to the Authority of his intention to carry out such activity or practice in the form and within the time limits required by the Authority, and specified in the regulations. Requirement for a notification

**23.** A person shall not engage in any activity or practice unless specifically licensed by the Authority. Requirement for a licence

**24.** The Authority shall make publicly available information on the licensing process, including, *inter alia*— Licence process

(a) criteria to be considered in licensing decisions and their legal basis, including a requirement that an explanation of the reasons for rejection of a submission shall be provided to the applicant;

(b) conditions and qualifications that shall be met by the applicant for a licence;

(c) procedures and requirements for suspension, modification, renewal, revocation or relinquishment of licences;

(d) procedures and requirements for public participation in the licensing process;

(e) procedures and requirements for the release of information concerning licensing proceedings, including measures for the protection of classified and proprietary information; and

(f) description of any fees required for licences.

Conditions  
for granting  
licences

**25.—(1)** Prior to being granted a licence, the applicant shall present sufficient evidence that he—

(a) possesses an adequate understanding of the fundamental principles of radiation protection, nuclear safety and security;

(b) shall take all steps necessary for the protection and safety of workers and the public, including by keeping doses below the relevant threshold and ensuring that all reasonable steps are taken to minimize adverse effects in the population, at present and in the future;

(c) shall plan and implement the technical and organizational measures necessary to ensure adequate safety, including effective defenses against radiological hazards;

(d) shall prepare and implement an appropriate emergency plan;

(e) shall ensure compliance with the dose limits established by the Authority and shall monitor the radiation exposure of workers;

(f) possesses adequate human and financial resources to conduct the proposed activity or practice in a manner that ensures nuclear safety and security;

(g) has made all necessary contractual arrangements for the return of the radioactive source, at the end of its useful life, to the supplier, its successor, and in any case to the exporting country or the place of origin;

(h) has made adequate financial arrangements for waste disposal, decommissioning and potential liability for radiological damage;

(i) shall provide access by inspectors of the Authority to premises necessary for the performance of their duties;

(j) shall not modify the conduct of any licensed activity or practice in a manner that could affect the protection of workers, the public and the environment as well as the nuclear security, without seeking the approval of the Authority; and

(k) shall provide, upon request or pursuant to the requirements in relevant regulations, all information considered to be necessary by the Authority.

(2) The Authority shall further, prior to granting a licence, take into consideration, the impact of the proposed activity or practice on the environment, and the social, economic, cultural and recreational conditions of any of the community concerned.

(3) Notwithstanding subsections (1) and (2), the Authority shall, in granting a licence or a renewal of a licence, take into consideration relevant Government policies and any written law and any other matter that the Board may consider likely to have a bearing on the activities of the licensee.

**26.**—(1) A licensee shall, before the expiry of a licence, and within the prescribed period, apply to the Authority for renewal of the licence.

Validity,  
renewal and  
transfer of  
licences

(2) A licence shall cease to be valid when any time limit established therein has expired or any condition of the licence has not been met, in accordance with the enforcement process established by the Authority.

(3) A licence shall not be transferable.

**27.**—(1) The Authority may modify the conditions of a licence on its own motion or on application by the licensee.

Modification  
of conditions  
of licence

(2) Where the Authority intends to modify the conditions of a licence, it shall inform the licensee in the prescribed manner of its intention to do so and give the licensee an opportunity to be heard.

**28.**—(1) The Authority may refuse to issue a licence if—

Refusal to  
issue licence

(a) the applicant fails to meet the conditions as specified under section 25, or in applicable regulations;

(b) any licence formerly issued to the applicant under this Act has been revoked by the Board;

(c) the applicant has been convicted of an offence involving fraud or dishonesty; or

(d) the applicant has been convicted of an offence under any written law and sentenced to a term of imprisonment without the option of a fine.

(2) Where the Authority refuses to issue a licence under subsection (1), it shall, within ninety days from the receipt of the application, notify the applicant in writing of the refusal to issue the licence to the applicant and shall state the reasons for the refusal.

**29.**—(1) The Authority may, where it is satisfied that a licensee is not operating in accordance with the terms and conditions of the licence, this Act or prescribed regulations, and after affording the licensee a reasonable opportunity to be heard, revoke or suspend a licence if the breach—

Revocation  
and  
suspension  
of licence

(a) would pose an unacceptable risk to the public or the environment;

(b) continues after two consecutive warnings; or

(c) causes the Board to believe that it is likely that the licensee is unable to fulfill his duties under the licence or under this Act.

(2) The Authority shall revoke a licence if the licence was obtained fraudulently or by deliberate or negligent submission of false information.

(3) Where the Authority suspends a licence, it may direct the storage of radiation sources under such conditions to prevent exposure of the public or workers to potential radiation hazards above prescribed limits.

(4) Where the Authority revokes or suspends a licence, it shall take such action as it deems necessary to ensure that all the activities authorized by the licence cease immediately.

Relinquish-  
ment of  
licence

**30.** A licence may be relinquished by the licensee upon notice to the Authority and upon a determination by the Authority that relinquishment will not jeopardize the protection of the public or the environment.

#### PART V—RESPONSIBILITIES OF A LICENSEE

Responsibilities  
of licensee

**31.—**(1) The primary responsibility for the safety and security of radiation sources and nuclear materials rests with the licensee who may seek further advice from the Authority.

(2) A licensee shall—

(a) carry out the activity or practice in accordance with the provisions of this Act, the regulations and the conditions of his licence;

(b) keep records and compile reports relating to radiation safety and security regulations required to be observed under this Act;

(c) prepare, in consultation with the Authority, radiation safety and security rules within an activity or practice; and

(d) provide the Authority with any requested assistance in the performance of its regulatory functions.

(3) During operation, and in case of intended modification of the conditions of the licence, the licensee shall provide all available information, as may be required by the Authority.

(4) A licensee undertaking more than one licensed activity or practice shall keep separate records and reports for each activity or practice.

Duty of  
licensee to  
appoint  
radiation  
safety officer

**32.—**(1) A licensee shall, after consultations with the Authority, appoint a qualified and technically competent person to oversee radiation protection.

(2) The functions of the person appointed to oversee radiation protection shall be prescribed in regulations.

(3) The Authority may, where necessary, direct a licensee to appoint more than one person to oversee radiation protection in respect of such portions of the operations of the licensee as the Authority may determine.

**33.** Where a licensee intends to terminate operations, he shall, at least six months prior to commencement of termination, notify the Authority in a prescribed manner, of his intended termination of operations and shall follow the prescribed termination procedure or where no procedure is prescribed, such procedure as the Authority may determine in order to ensure the nuclear safety and security of the public and the environment.

Notice of  
intended  
termination  
of operations

**34.—(1)** A licensee shall, immediately, and in any case, within twenty four hours, notify the Authority of any incident or accident which has occurred, as may be defined in the regulations.

Notice of  
incidents or  
accidents

(2) A licensee shall, within a period prescribed by the Authority, submit to the Authority a written report of the incident or accident referred to in subsection (1).

**35.—(1)** Every licensee shall be responsible for ensuring that no radiation emitted as a result of the carrying on of his undertaking on his premises, causes any harm or injury to any person or damage to any property which is on the premises or elsewhere subject to subsection (4).

Liability of  
licensee

(2) No person other than the licensee shall be under any liability in respect of any harm to any person or any damage to any property caused by any radiation to which subsection (1) applies.

(3) No licensee shall incur any liability by virtue of subsection (1) in respect of any radiation whose emission, or the causing of any harm to any person or any damage to any property by their emission, is attributable to hostile action in the course of civil strife, any armed conflict, including any armed conflict within Malawi.

(4) Whenever a physical or mental disability occurs in a person, and which an approved medical practitioner—

(a) ascribes to radiation exposure, the disability shall be presumed to have resulted from exposure to radiation from a source of strength sufficient to give rise to such disability;

(b) ascribes to radiation as well as to other causes, the following factors shall be considered for the purposes of establishing the cause of the disability, namely—

(i) if the disability is of a nature known to be capable of being caused by either radiation or any other cause that it appears that the person may have been exposed to a source of radiation of a strength sufficient to have caused the disability,

it shall be presumed that the disability arose from one or more of such exposures, if no record of personal exposures have been maintained to a standard approved by the Authority;

(ii) if the disability is of a nature known to be capable of arising from radiation and from any other possible cause, and there exists a person who indicates that there have occurred in relation to him exposures in excess of the recommended dose limits, it shall be presumed that the disability occurred as a result of that radiation exposure; or

(iii) if the disability is of a nature known to be capable of arising from radiation and from any other possible cause, and there exists a personal radiation exposure record in respect of that person which has been maintained to a standard approved by the Authority, it shall be presumed that the disability did not arise from radiation exposure if the record indicates that the exposures have been within the permissible limits on all possible occasions of exposure.

#### PART VI—INSPECTIONS AND ENFORCEMENT

Inspections  
programme

**36.**—(1) The Authority shall establish an inspection programme, including announced and unannounced inspections, to monitor compliance with the requirements of this Act or any applicable regulations or conditions of a licence.

(2) The Authority shall ensure that the inspection programme is supported by adequate financial, technical and human resources to meet its objectives.

(3) The Authority shall establish qualification requirements for a training programme for inspectors.

Conduct of  
inspections

**37.** The Authority may conduct any inspections and carry out such other examination, as may be necessary, to confirm and verify compliance with the provisions of this Act, applicable regulations and conditions of a licence.

Appointment  
of inspectors

**38.**—(1) The Authority shall, with the approval of the Board, appoint such number of suitably qualified inspectors to enforce compliance with the provisions of this Act, applicable regulations and conditions of a licence.

(2) The Authority shall issue to the inspectors appointed under subsection (1) identification cards signed by the Executive Director.

(3) An inspector shall, while exercising his powers or performing his duties in terms of this Act, on request by any interested person, produce the identification card.



**39.**—(1) Subject to the restrictions provided for in the regulations, an inspector shall, for the purposes of monitoring or enforcing compliance with this Act, have access at any time, to all parts of the premises or facilities where activities or practices are carried out, with a view to—

Powers and  
functions of  
inspectors

(a) obtaining information about the status of their radiation safety and security of activities and practices being conducted by a licensee;

(b) verifying compliance with the provisions of this Act and applicable regulations and conditions of licences;

(c) investigating any incident or accident involving nuclear material or radiation sources;

(d) questioning any person who has duties which, in the view of an inspector may be pertinent to the inspection being carried out or an enquiry being conducted;

(e) taking samples in a prescribed manner, of any material and make such examinations and enquiries as may be necessary to ascertain whether the provisions of this Act, any other applicable written law, standards and guidelines are being complied with;

(f) seizing any radioactive material or source which, on reasonable grounds, the inspector believes has not been authorized;

(g) conducting inspections to assess radiation safety, security conditions and compliance with this Act, applicable regulations and other requirements specified in the licence; and

(h) exercising such other powers as are necessary for carrying out the provisions of this Act into effect.

(2) A licensee, either by himself, his servants, agents or otherwise shall not hinder or obstruct an inspector, from entry, inspection, examination, inquiring, taking of samples or otherwise in the exercise of his powers under this Act.

(3) Except for an unannounced inspection, the Authority shall give reasonable notice to the licensee that an inspection is to be carried out.

**40.**—(1) An inspector shall document the inspection results in a report, which he shall submit to the Executive Director, within a prescribed time.

Duty of  
inspectors

(2) The Authority shall make the inspection results available to the licensee and any other entities as required.

(3) The report referred to in subsection (1) shall be recorded and kept by the Authority.

Compliance  
order

**41.**—(1) Where the Authority determines that a licensee is not in compliance with any condition of the licence, or is in contravention of any provision of this Act or applicable regulations, the Authority may, by notice in writing, direct the licensee to restore compliance.

(2) A notice under subsection (1) containing a direction to restore compliance shall be sent to the licensee, as may be required by the directly affected parties and shall—

(a) state the relevant condition or provision of this Act to which the contravention is related;

(b) contain clear reference to the findings, which constitute a contravention of the condition or provision;

(c) specify the period within which compliance shall be restored; and

(d) specify the period, not being less than fourteen days from the date of receiving the notice, within which representations or objections may be made by the licensee or directly affected parties.

(3) After the Executive Director has received representations as contemplated in subsection (2) (d), he may recommend to the Board to—

(a) uphold the order of compliance;

(b) vary the original order of compliance; or

(c) withdraw the order of compliance.

(4) Where the Board decides to uphold or vary the order, the Executive Director shall issue a notice to the licensee to whom the original order was directed—

(a) informing the licensee of the Board's decision; and

(b) indicating the period, not being less than fourteen days, within which the licensee shall comply with the order.

Compliance  
order in urgent  
matters

**42.**—(1) The Executive Director may, after hearing the parties concerned, direct a licensee to take immediate action to discontinue or refrain from an activity or practice, where he is satisfied that the licensee is not complying with any condition of the licence, or is contravening any provision of this Act, and that immediate action is necessary to—

(a) protect the health of any person;

(b) prevent irreversible damage to the environment; or

(c) prevent serious damage to property.

(2) Where the licensee does not comply with a direction issued under subsection (1), the Executive Director may take any necessary action, to prevent any significant damage, on behalf of the licensee at the cost of the licensee.

## PART VII—RADIATION SAFETY PRINCIPALS

43. The following principles of radiation protection shall apply to all activities and practices conducted in the Republic of Malawi— Fundamental principles

(a) Justification: No activity or practice shall be licensed unless it produces sufficient benefit to exposed persons or to society in a manner that offsets the radiation harm that it may cause, taking into account social, economic and other relevant factors;

(b) Optimization: In relation to radiation exposures from any particular activity or practice, radiation protection measures shall ensure that doses, the number of persons exposed and the likelihood of incurring exposure is at all times kept as low as reasonably achievable taking into account social and economic factors; and

(c) Dose Limitation: Activities and practices shall be conducted in a manner that ensures that the total dose that a person may experience does not exceed the dose limits established by the Authority, in accordance with international standards, so that no person is subject to an unacceptable risk attributable to radiation exposure.

44.—(1) Based on internationally recognized guidelines, the Authority shall adopt a categorization of sources based on the potential injury to the public, workers and the environment that may occur if such sources are not safely managed or securely protected. Regulatory control of radiation safety

(2) The regulatory programme of the Authority, including the licensing and inspection system as prescribed in Part IV and Part VI, shall be based on the categorization of sources.

(3) The Authority shall establish dose limits to persons, in accordance with international standards, and the limits shall not be exceeded in carrying out regulated activities.

(4) The Authority shall identify sources or practices to be exempt from regulatory control based on the following criteria—

(a) that the radiation risk for persons is sufficiently low to be of no regulatory concern;

(b) that the collective radiological impact is sufficiently low that regulatory control is not warranted; and

(c) that the activity sources or practice is considered to be inherently safe, with no likelihood of creating situations that could result in a failure to meet the criteria in paragraph (a) or (b).

(5) The Authority shall establish clearance levels or values, within licensed activities below which radioactive material or radioactive objects within authorized activities and practices can be released from regulatory control.

## PART VIII—MEDICAL PRACTICES

Medical practices involving the use of radiation sources

45. Where medical practices involving the use of radiation sources, are carried out, the Authority shall prescribe, the following—

- (a) the qualifications and training requirements for users;
- (b) measures to protect persons using radiation sources;
- (c) measures to protect patients, including the justification of practices and optimization of exposures;
- (d) design and performance criteria for radiation producing equipment and devices containing radionuclides; and
- (e) measures for the safety and security of radioactive sources.

Protection of patients

46. A person licensed to conduct medical practices shall ensure that no patient shall be administered with a dose due to a diagnostic or therapeutic procedure unless the exposure is prescribed by a medical practitioner who is assigned the primary task and obligations for ensuring overall patient protection and safety in the prescription of, and during the delivery of, medical exposures.

## PART IX—EMERGENCY PREPAREDNESS AND RESPONSE

Requirement for an emergency plan

47.—(1) The Authority shall not grant a licence to conduct an activity or practice, unless and until an applicant has developed, and the Authority has approved, an emergency preparedness and response plan.

(2) The Authority shall establish, by regulation or conditions prior to issuing a licence, where applicable, a requirement that the applicant prepares, and the Authority approves, on-site and off-site emergency plans for any facility, activity, practice or source that could give rise to a need for emergency intervention.

(3) In the preparation of emergency plan the following shall be taken into account, *inter alia*—

(a) an assessment of the nature, likelihood and potential magnitude of resulting damage, including the population and territory at risk from an accident, malicious act or incident; and

(b) the results of any accident analyses and any lessons learned from experience or incidents and accidents that have occurred in connection with similar activities or practices.

(4) The specific requirements of an emergency plan shall be prescribed by the Authority.

(5) Preparation of emergency plans for facilities, activities, practices or sources that could involve significant nuclear or radiological damage shall be coordinated with all relevant emergency intervention or response organizations, including—

- (a) the Office of the President and Cabinet;
- (b) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;
- (c) the ministry responsible for Defence;
- (d) the ministry responsible for Home Affairs;
- (e) the ministry responsible for Water Affairs;
- (f) the ministry responsible for Health;
- (g) applicable District Assemblies;
- (h) Malawi Meteorological Services; and
- (i) emergency services including fire brigades, hospitals and police services.

(6) The licensee shall periodically review and update the emergency plan as prescribed by the Authority.

**48.** In the event of a radiological emergency, a licensee shall implement the emergency plan as approved by the Authority.

Compliance with emergency plan

**49.—(1)** A national emergency plan for responding to potential radiological emergencies shall be developed and maintained by the Authority and approved by the Cabinet.

National plan for radiation emergencies

(2) Review and approval of the emergency plan mandated under subsection (1) shall be done in consultation with—

- (a) the Office of the President and Cabinet;
- (b) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;
- (c) the ministry responsible for Defence;
- (d) the ministry responsible for Home Affairs;
- (e) the ministry responsible for Water Affairs;
- (f) the ministry responsible for Health;
- (g) applicable District Assemblies;
- (h) Malawi Meteorological Services; and
- (i) emergency services including fire brigades hospitals and police services.

(3) The national radiological emergency plan may be coordinated with and take into account the provisions of—

- (a) the Disaster Preparedness and Relief Act;
- (b) the Disaster Risk Reduction Policy;
- (c) Operational Guidelines for Disaster Risk Management in Malawi; and

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(d) the Country Programme Action Plan, as revised from time to time.

(4) The national radiological emergency plan shall include an allocation of responsibilities and actions among relevant public institutions and non-governmental organizations, including arrangements for communications and public information.

Emergency with trans-boundary effects

**50.** In the event of a nuclear or radiological emergency occurring outside Malawi which may pose a risk of radioactive contamination spreading into Malawi, the Authority shall comply with relevant international instruments.

#### PART X—RADIOACTIVE WASTE MANAGEMENT

Prohibition of the import of radioactive waste

**51.** Radioactive waste generated outside the territory of Malawi shall not be imported into Malawi for any purpose.

General principles

**52.** At all stages of the management of radioactive waste the following principles shall be applied by all persons and entities, including public institutions so that—

(a) the public, workers and the environment are adequately protected against radiological and other hazards;

(b) the generation of radioactive waste is kept to the minimum practicable;

(c) the relationships among different steps in radioactive waste management are taken into account;

(d) the protective measures for radioactive waste management are implemented in a manner that reflects internationally recognized criteria, standards and guidance specifically those adopted by the International Atomic Energy Agency;

(e) the biological, chemical and other hazards that may be associated with radioactive waste management are adequately addressed;

(f) the criticalness of removing residual heat generated during radioactive waste management is adequately addressed;

(g) the actions imposing reasonably predictable impacts on future generations greater than those permitted for the current generation are avoided; and

(h) the undue burdens on current and future generations are avoided.

**53.**—(1) The Minister, on the recommendation of the Authority, may make regulations prescribing the manner of safe management and storage and discarding of radioactive waste.

Regulations  
on radioactive  
waste  
management

(2) To ensure the safe and secure management of radioactive waste in Malawi, the Authority shall establish—

(a) applicable safety and security requirements and regulations for the protection of the public, workers and the environment from adverse impacts of radioactive waste and spent fuel management activities;

(b) a system of licensing of radioactive waste management activities;

(c) a system of institutional control, regulatory inspection and documentation and reporting for radioactive waste management activities; and

(d) a system of enforcement to ensure compliance with applicable regulations and the terms and conditions of licences for radioactive waste management activities.

**54.** A person or entity shall not operate a radioactive waste management facility without a licence issued by the Authority.

Licence  
requirement  
for radioactive

**55.**—(1) The primary responsibility for ensuring the safety and physical protection of a radioactive waste inside or outside a radioactive waste management facility throughout its life shall rest with the relevant licensee.

Responsibility  
for safety and  
security of  
radioactive  
waste

(2) The responsibility for ensuring the safety and physical protection of radioactive waste for which no licensee nor an entity can be determined shall rest within the Authority.

**56.**—(1) A licensee of a radioactive waste management facility shall prepare a plan for the closure of the facility that includes both active and passive institutional controls.

Disposal plan

(2) The licensee shall submit to the Authority the plan referred to in subsection (1) for approval prior to the commencement of the operation of the facility.

**57.** Radioactive waste generated within the country may be exported only upon the issuance of a licence by the Authority.

Export of  
radioactive  
waste

#### PART XI—TRANSPORTATION OF RADIOACTIVE MATERIAL

**58.**—(1) A person nor an entity shall not engage in the transportation of radioactive material without a licence.

Requirement  
for a licence  
to transport  
radioactive  
material

(2) Any transportation of radioactive material shall be carried out in compliance with national standards and applicable written law, and the technical requirements of the Regulations for the Safe Transport of Radioactive Material of the International Atomic Energy Agency, as amended from time to time.

(3) The licensee shall have the primary responsibility for ensuring the safety and security of the radioactive material during transportation.

Regulations on transportation of radioactive material

**59.**—(1) The Authority shall establish requirements for the transportation of radioactive materials to, from and within the country.

(2) The requirements adopted pursuant to this section shall take into account the technical requirements of the latest edition of the Regulations for the Safe Transportation of Radioactive materials issued by the International Atomic Energy Agency.

(3) The requirements adopted pursuant to this section shall include measures for the physical protection of radioactive material consistent with guidance documents issued by the International Atomic Energy Agency.

#### PART XII—MINING AND PROCESSING

Licence for mining and processing radioactive minerals

**60.**—(1) A person nor an entity shall not engage in mining and processing of radioactive minerals without a licence issued by the Authority.

(2) The Authority shall establish requirements for granting a licence to conduct mining and processing activities involving materials that could pose risks from exposure to ionizing radiation, including the following—

(a) any exploration activity involving possible exposure to radiation;

(b) removal of radioactive minerals from the site for testing or evaluation, unless exempt;

(c) excavation activities at a site, including a test mine, for evaluation or delineation of the ore body;

(d) siting, construction or operation of a mine or processing facility;

(e) temporary storage, transportation and export of the product of mining or milling activities;

(f) radioactive waste management;

(g) rehabilitation of the mining site; and

(h) decommissioning or closure of a mine or processing facility.

(3) The Authority shall establish a system of monitoring and inspection to verify compliance with this Act, applicable regulations and any licences issued pursuant to this section.



**61.** An applicant for a licence to conduct mining or processing activities involving radioactive minerals from a site shall provide information, inter alia and as applicable, on the following—

Application  
for a licence

- (a) mining rights;
- (b) site characteristics, including geology and hydrology;
- (c) siting or construction plans;
- (d) conceptual design of the mining or processing facility;
- (e) proposed work activities, extraction techniques and types of equipment involved;
- (f) quantities of the uranium or thorium to be removed from the ore;
- (g) transportation of the ore and final protection;
- (h) estimates of exposures and doses for workers;
- (i) measures to be taken for radiation protection;
- (j) procedures for prevention of accidents;
- (k) plans for effluent management systems and related procedures;
- (l) procedures for dealing with accidental releases of radioactive or non-radioactive contaminants to the environment, including mitigation of hazards;
- (m) impact on public health and safety and the environment;
- (n) siting of tailings and storage facilities or stockpiles of ore and waste rock;
- (o) proposed rehabilitation and decommissioning plans, including financial arrangements for decommissioning; and
- (p) physical protection and security measures.

**62.—**(1) A licensee shall bear the primary responsibility for ensuring the safety and security of any mining and processing activities conducted pursuant to the licence.

Responsibilities  
of a  
licensee for  
safety and  
security of  
activities

(2) The licensee shall ensure compliance with this Act and all applicable regulations and requirements of the licence issued by the Authority.

(3)—(a) The licensee shall notify the Authority of his intention to introduce modifications to any activity or practice it is licensed to conduct; and

(b) where these modifications may have implications for the safety or security, the licensee shall not implement those modifications unless authorized by the Authority.

(4) The licensee shall maintain records as required by the Authority and shall make them available for inspection.

## PART XIII—SECURITY, PHYSICAL PROTECTION AND SAFEGUARDS

National register of radioactive sources

**63.**—(1) The national register of radiation sources referred to in section 17 shall include the categories of radioactive sources.

(2) The Authority shall adopt measures to protect the information contained in the national register to ensure the safety and security of these sources.

Import and export of radioactive sources

**64.**—(1) Based on internationally recognized guidance, the Authority shall develop regulatory requirements and procedures for the licensing of the import, export and transit of radioactive sources from, to or through the country.

(2) The procedures established under subsection (1) shall provide for an evaluation of information to ensure that a recipient is licensed to receive the requested source and has the capacity to ensure its safety and security.

Recovery of orphan sources

**65.**—(1) The Authority shall coordinate the development of a national strategy for promptly gaining or regaining control over orphan sources.

(2) The national strategy shall be developed in consultation with—

(a) the Office of the President and Cabinet;

(b) the Office of Commissioner for Disaster Preparedness, Relief and Rehabilitation;

(c) the National Disaster Preparedness and Relief Committee;

(d) the Ministry responsible for Defence;

(e) the Ministry responsible for Home Affairs;

(f) the Ministry responsible for Health;

(g) Malawi Meteorological Services;

(h) the Ministry responsible for Water Affairs; and

(i) emergency services including fire brigades and hospitals and police services, and approved by Cabinet.

(3) The Authority shall require licensees to promptly report any loss of control over radioactive sources or any other situation or incident that could pose a significant risk to the safety or security of the public and the environment.

(4) For the purposes of this section, “orphan sources” refers to a sealed source of radioactive material contained in a small volume in one or more of the following conditions—

(a) in an uncontrolled condition that requires removal to protect public health and safety from a radiological threat;

(b) controlled or uncontrolled, but for which a responsible party cannot be readily identified;

(c) controlled, but the material's continued security cannot be secured;

(d) if held by a licensee, the licensee has few or no options for, or is incapable of providing for, the safe disposition of the material;

(e) in the possession of a person, not licensed to possess the material, who did not seek to possess the material; or

(f) in the possession of the Government radiological protection for the sole purpose of mitigating a radiological threat because the orphan source is in any one of the conditions described in paragraphs (a) to (e), and for which Government does not have a means to provide appropriate disposition of the materials.

**66.**—(1) Nuclear material in Malawi shall be used exclusively for peaceful nuclear activities and in accordance with relevant international obligations undertaken by Malawi. Peaceful use commitments

(2) A person shall not engage in any activity involving nuclear material unless previously and specifically licensed by the Authority.

(3) A person shall not engage in the import or export of nuclear material or of other specified equipment and non-nuclear material, without a licence issued by the Authority.

(4) A person shall not carry out research and development activities which are related to the nuclear fuel cycle regardless of whether the activities involve nuclear material, unless such person has informed the Authority in writing and has obtained a licence prior to the commencement of the activities.

(5) Any person performing activities subject to the Safeguards Agreement shall submit to the Authority the information and data necessary for compliance with the undertakings arising from such instruments.

**67.**—(1) The uses of nuclear energy and ionizing radiation in Malawi shall be for peaceful purposes only. Prohibited activities

(2) Any activities or practices related to the acquisition or development of nuclear explosives, radiological dispersal devices, or other non-peaceful uses of nuclear or other radioactive materials and related technology or assisting others in such activities are strictly prohibited.

(3) Any person who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to life imprisonment.

Application  
of safeguards

**68.**—(1) To ensure compliance with the commitments of Malawi pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty of Pelindaba, the International Atomic Energy Agency shall have the right to apply safeguards as provided for in the Safeguards Agreement and Additional Protocol thereto between Malawi and the International Atomic Energy Agency.

(2) The Authority shall be the organizer and coordinator for implementing the obligations of Malawi arising from the Safeguards Agreement.

(3) The Authority shall—

(a) verify the implementation of the obligations of Malawi arising from the Treaty, to prevent diversion of nuclear material to the manufacturer of nuclear weapons;

(b) collect and provide to the International Atomic Energy Agency the information required to fully implement the Safeguards Agreement, including information resulting from the conduct of verification of activities provided for in the Safeguards Agreement and the Additional Protocol thereto;

(c) provide for inspections within the territory of Malawi by inspectors of the International Atomic Energy Agency, including provision of access; and

(d) coordinate with the ministry responsible for foreign affairs in connection with the provision of information regarding the Safeguards Agreement.

Cooperation  
in the  
implementa-  
tion of  
safeguards

**69.**—(1) The Government, all public institutions and licensees shall cooperate fully with the International Atomic Energy Agency in the implementation of safeguards, including by—

(a) promptly providing any information required pursuant to the Safeguards Agreement and the Additional Protocol thereto;

(b) providing access to facilities and other locations as required by the Safeguards Agreement and the Additional Protocol thereto;

(c) cooperating with and facilitating the performance of International Atomic Energy Agency inspectors in their tasks; and

(d) rendering the necessary services as requested by International Atomic Energy Agency inspectors.

(2) The duly authorized representatives and designated inspectors of the Atomic Energy Regulatory Authority shall have access to any facilities or other locations provided for under the Safeguards Agreement and the Additional Protocol thereto, with a view to conducting the verification activities authorized by the Safeguards Agreement and the Additional Protocol thereto.

(3) Any person performing activities subject to the Safeguards Agreement and the Additional Protocol thereto shall be obliged to allow the duly authorized representatives and designated inspectors of the International Atomic Energy Agency to carry out any measures the International Atomic Energy Agency considers necessary or appropriate to ascertain compliance by Malawi with its undertakings, arising from the Safeguards Agreement and the Additional Protocol thereto.

#### PART XIV—OFFENCES AND PENALTIES

**70.**—(1) Any person who carries out an activity or practice without a licence issued by the Authority under this Act, commits an offence and shall, upon conviction, be liable to fifteen years imprisonment. Offences relating to licences

(2) In addition to the penalties provided in subsection (1), the radioactive material or source shall be liable, pursuant to a court order, to seizure, impoundment, sealing, seizure of operation, destruction or disposal in such a manner as the court may consider necessary to protect the public and the environment and may only be returned to the original owner on the order of the court and under such conditions set out in the licence issued under this Act.

**71.** Any person who—

Hindering and obstructing of inspectors

(a) hinders or obstructs an inspector in the execution of his duties under this Act;

(b) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;

(c) prevents the Executive Director or an inspector or any person duly authorized by the Executive Director from gaining entry upon or into any premises which he is empowered under this Act to enter;

(d) impersonates the Executive Director or an inspector or any person duly authorized by the Board;

(e) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;

(f) misleads or intentionally gives false information to the Executive Director or an inspector or any person duly authorized by the Board under this Act; or

(g) fails to comply with measures directed by the Authority, the Executive Director or any inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

commits an offence and shall, upon conviction be liable, to a fine of two million Kwacha (K2,000,000) and to fifteen years imprisonment; and in addition shall, for each day the offences continue shall be liable to a fine of ten thousand Kwacha (K10, 000).

Offences relating to records

72. Any person who—

(a) fails to keep or furnish the Authority with records required under this Act or under any regulations made under this Act; or

(b) fraudulently or knowingly alters any such records,

commits an offence and shall, upon conviction be liable, to a fine of five hundred thousand Kwacha (K500,000) and to two years imprisonment.

Prohibition of disclosure of information by employee of Authority

73.—(1) Every person employed by the Authority shall not disclose any information obtained by him in the course of his duties and in the exercise of any of the powers conferred by this Act;

(2) Any person who violates this provision, regardless of whether such person has ceased to be employed by the Authority, commits an offence and shall, upon conviction, be liable to fifteen years imprisonment.

Handling of radioactive or nuclear material and devices

74.—(1) Any person who, without lawful authority, receives, possesses, transfers, alters, or disposes of, radioactive or nuclear material or a device—

(a) with the intent to cause—

(i) death or serious bodily injury; or

(ii) substantial damage to property or to the environment; or

(b) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment,

commits an offence and shall, upon conviction be liable, to thirty years imprisonment.

(2) Any person who is involved in—

(a) theft or robbery of radioactive or nuclear material;

(b) embezzlement or fraudulently obtaining radioactive or nuclear material; or

(c) an act which constitutes the carrying, sending, or moving of radioactive material into, within or out of Malawi without lawful authority,

commits an offence and shall, upon conviction be liable, to thirty years imprisonment.

(3) Any person who threatens to commit an offence set forth in subsection (2) (a) in order to compels a natural or legal person, international organization or state to do or to refrain from doing any act, commits an offence and shall, upon conviction, be liable to life imprisonment.

(4) Any person who demands radioactive or nuclear material or a device by threat, or by use of force, or by any other form of intimidation, under circumstances which indicate the credibility of the threat, commits an offence and shall, upon conviction be liable to thirty (30) years imprisonment.

**75.**—(1) Any person who, without lawful authority, uses or disperses in any way radioactive or nuclear material or uses or makes a device— Use of radioactive or nuclear materials

(a) with the intent to cause—

(i) death or serious bodily injury; or

(ii) substantial damage to property or to the environment;

(b) to compel a natural or legal person, an international organization, or a state to do or refrain from doing an act; or

(c) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment,

commits an offence and shall, upon conviction, be liable to life imprisonment.

(2) Any person who threatens to commit the offence set forth in subsection (1), commits an offence and shall, upon conviction, be liable to life imprisonment.

**76.** Any person who carries out an activity or practice in contravention of the provisions of this Act commits an offence, and if no other penalty is provided for, shall, upon conviction, be liable to fifteen years imprisonment. General offence and penalty

**77.** The offences set forth in this Part shall be considered as extraditable offences, subject to the written laws and procedures of Malawi. Extraditable offences

#### PART XV—APPEALS

**78.**—(1) Any person aggrieved by a decision made pursuant to this Act, including a decision to issue a licence, may appeal to the Board not later than thirty days after the notification of such refusal. Appeal procedure

(2) Where an appeal is made under subsection (1), the Executive Director shall give all relevant information to the Board as the Executive Director considers necessary to enable the Board to determine the appeal.

(3) Any person aggrieved by the decision of the Board may appeal to the Minister within thirty days after the Board makes its decision.

(4) The Board or the Minister, as the case may be, in determining the appeal may recommend to the Executive Director or the Board, as the case may be, to review his or its decision.

(5) Any person who is aggrieved by the decision of the Minister to uphold the decision of the Board under subsection (3) may apply to the High Court for judicial review within thirty days of the receipt of the notification of the Minister's decision.

#### PART XVI—MISCELLANEOUS PROVISIONS

Indemnification

**79.** No legal proceedings shall be brought against the Executive Director, an inspector, or any other person duly authorized by the Authority, the Executive Director, or inspector to do anything authorized under this Act, in respect of anything done in good faith under the provisions of this Act.

Confidentiality of sources of information

**80.** The Authority shall establish a policy on confidentiality of information provided to it.

Offences by corporate bodies

**81.** Any act or omission, which if done by an individual is an offence under this Act or any regulations made under it, shall, if done by a body corporate, be deemed an offence committed by every director, secretary or manager, unless the director, secretary or manager proves that the offence was committed without their consent, knowledge or connivance and that the director, secretary or manager exercised all due diligence to prevent the commission of the offence as the director, secretary or manager ought to have exercised, having regard to the nature of their functions and all circumstances of the case.

Regulations

**82.—**(1) The Minister may, on recommendation of the Authority, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section may—

(a) prescribe the application and licence forms to be used under this Act;

(b) limit the use of radioactive material or equipment producing harmful ionizing radiation for any specific purpose, including use of medical or dental purposes;

(c) prescribe fees for services rendered by the Authority; and

(d) prescribe anything required to be prescribed under this Act.



(3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, prescribe a fine of up to five million Kwacha (K5,000,000) and imprisonment for up to five years for contravention of any provision of such regulation. Cap. 1:01

**83.**—(1) Any person conducting an activity or practice within the scope of this Act at the time this Act enters into force, shall inform the Authority, submit a notification to, or where applicable, apply for a licence as required under this Act, within two months of the entry into force. Transitional provisions

(2) Upon entry into force of this Act, the Authority shall review, within three months, the results of past activities or practices in order to determine whether any intervention is needed to ensure that remedial or protective action is taken to protect the public, workers and the environment.

(3) Any person conducting any activity or practice governed by this Act, pursuant to an authorization granted under any relevant written law, at the time this Act enters into force, shall, subject to subsection (2), be considered as having been granted a temporary authorization.

(4) Any person considered as having been granted such a temporary authorization shall take all necessary measures to bring such activities or practices in line with provisions of this Act, within three months after its entry into force.

(5) Any person to whom subsection (1) applies shall pay the applicable prescribed fees to the Authority.

Passed in Parliament this thirty first day of May, two thousand and eleven.

M. M. KATOPOLA  
*Clerk of Parliament*