

(Published 2nd September, 2016)

ACT

No. 16 of 2016

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

1st September, 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ADMINISTRATION

3. Commissioner for Lands
4. Duties of the Commissioner
5. Delegation of powers by the Minister
6. Protection of the Commissioner or authorized officers

PART III—GENERAL

7. Categories and classes of land
8. Vesting of land
9. Prohibition to grant freehold land
10. Power of corporations to hold land
11. Land designated for investment purposes
12. The Minister may dispose of public land
13. Prohibition against disposal of state and official residences
14. Interest for delay in payment of rent

PART IV—PUBLIC LAND

15. No implied right of entry

SECTION

16. Use and occupation of Government land
17. Acquisition of customary land for public utility
18. Compensation to individuals for loss, damage or disturbance
19. Conversion of customary land to registered land
20. Unlawful use of public land an offence, etc.

PART V—PRIVATE LAND

21. Interest in land which the Minister may grant
22. Minister or local government authority may accept surrenders
23. Minister or local government authority may relieve from liability to perform covenants, etc.
24. Implied covenants in leases
25. Power of re-entry by Minister or local government authority
26. Exceptions and reservations
27. Revision of rent
28. Matters to be taken into account
29. Procedure on alteration of rent
30. Surrender in lieu of revision of rent
31. Compensation for improvements on surrender
32. Acceptance of rent not to waive breach of covenant
33. Authorized officer may distrain
34. Service of notices
35. Fees
36. Prior written consent of the Minister or local government authority before sale, lease, etc., of private land
37. Grants of private land to persons who are not citizens of Malawi
38. Restriction of sale of private land to persons who are not citizens of Malawi
39. Non-development of freehold land
40. Gifts of private land between non-citizens.

PART VI—USER OF LAND

41. Minister's power to regulate, manage or control the user of land
42. Power of entry on land

SECTION

43. Obstruction and penalties
 44. Vesting of land after termination of right to occupy

PART VII—TRESPASS OR ENCROACHMENT UPON, OR UNLAWFUL
OCCUPATION OF, LAND

45. Summons for trespass, encroachment or unlawful occupation
 46. Procedure

PART VIII—MISCELLANEOUS

47. Regulations
 48. Certificate of Minister to be *prima facie* proof
 49. Proof of citizenship in relation to land transactions
 50. Delegation
 51. Repeal and savings
 52. Savings with respect to mining and oil exploration and production

An Act to make provision for land in Malawi and for all matters incidental or connected thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Land Act, 2016, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*. Short title and commencement

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

“authorized officer” means an officer duly authorized by the Minister for the purposes of this Act or any part thereof;

“Commissioner” means Commissioner for Lands;

“customary estate” means any customary land which is owned, held or occupied as private land within a traditional land management area and which is registered as private land under the Registered Land Act; Cap. 58:01

“customary land” means all land used for the benefit of the community as a whole and includes unallocated customary land within the boundaries of a traditional land management area;

“customary law” means the customary law applicable in the area concerned;

“freehold” means an estate in land which is held in perpetuity;

“Government land” means land acquired and privately owned

by the Government and dedicated to a specified national or public use or made available for private uses at the discretion of Government;

“land” means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes the surface covered with water, all things growing on that surface, buildings, other things permanently affixed to land and free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the airspace imposed, and rights in the use of airspace granted by international law;

“lease” includes an agreement for a lease, and any reference to a lease shall be construed as a reference to a lease granted under this Act or any other written law;

Cap 22:01 “local government authority” bears the meaning ascribed to it in the Local Government Act;

“magistrate” means a Resident Magistrate or other grade magistrate exercising jurisdiction of the area concerned;

Cap. 3:02 “magistrate’s court” means any subordinate court constituted under section 54 of the Courts Act;

“person who is not a citizen of Malawi” includes a company or other corporate or unincorporated body with majority ownership or control in the persons who are not citizens of Malawi;

Cap. 58:01 “private land” means all land which is owned, held or occupied under a freehold title, leasehold title or as a customary estate or which is registered as private land under the Registered Land Act;

“public land” means land held in trust for the people of Malawi and managed by Government, a local government authority or a Traditional Authority and includes—

(a) any land held by the Government or a local government authority consequent upon a reversion thereof to the Government or local government authority, as the case may be, on the termination, surrender or falling in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law;

(b) land acquired and privately owned by Government or a local government authority used for dedicated purposes such as Government buildings, schools, hospitals and public infrastructure;

(c) land *gazetted* for national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites;

(d) land vested in Government as a result of uncertain ownership; abandonment or land that cannot be used for any purposes; and

(e) unallocated and communal land within the boundaries of a Traditional Land Management Area;

“public road” bears the same meaning as assigned thereto in the Public Roads Act;

Cap. 69:02

“rules of good husbandry” means, due regard being given to the character and situation of the land in question-

(a) the maintenance of the land (whether arable, woodland or pasture) free from harmful weeds, clean and in a good state of cultivation and fertility and in good condition;

(b) the maintenance and clearing of drains, earthworks and access roads;

(c) the maintenance and proper repair of fences, hedges and field boundaries;

(d) the execution of repairs to any building upon the land; and

(e) such rules of good husbandry as may be prescribed or required under this Act or under any other written law; and

“traditional land management area” means an area demarcated and registered as falling within the jurisdiction of a Traditional Authority.

PART II—ADMINISTRATION

3. There shall be a Commissioner for Lands (in this Act otherwise referred to as the “Commissioner”) who shall be a public officer.

Commissioner
for Lands

4.—(1) Subject to the special and general written direction of the Minister, the Commissioner shall—

Duties of the
Commissioner

(a) administer all land;

(b) make grants, leases or other dispositions;

(c) sign, seal, execute, perfect, deliver and accept—

(i) grants, leases or other dispositions of public land and surrenders;

(ii) agreements or licences in respect of the control of or use of running or stagnant water or affecting the dispositions of interests or rights therein;

(d) sign and issue documents including documents of consent;

(e) grant relief from liability to perform and extend the time for performance or observance of any covenant, condition, agreement or stipulation;

(f) except from any lease any implied covenant or covenants; and

(g) serve notices of determination of any lease.

(2) The Commissioner may delegate in writing any of his functions under this Act to any officer subordinate to him or to any authorized officer.

Delegation
of powers by
the Minister

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

Protection of
the
Commissioner
or authorized
officers

6. A suit, prosecution or other legal proceeding shall not lie against the Commissioner or any authorized officer in respect of exercise or performance or purported exercise or performance in good faith, of any power or function under this Act.

PART III—GENERAL

Categories and
classes of land

7.—(1) Land shall be categorized as either public land or private land.

(2) Public land shall be classified either as Government land or unallocated customary land.

(3) Private land shall be classified as freehold, leasehold or customary estate.

Vesting of land

8. All land is vested in perpetuity in the Republic.

Prohibition to
grant freehold
land

9. Freehold land shall not be allocated or granted to any person.

Powers of
corporations to
hold land

10.—(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of a body corporate, unless the body corporate is authorized by a licence issued by the Minister in consultation with the President to hold land in Malawi, but this section shall not apply to a body corporate incorporated in Malawi in accordance with the Companies Act or a body corporate established by or under a written law which empowers it to hold land in Malawi.

(2) A disposition of any estate or interest in land in Malawi to or for the benefit of a body corporate shall, unless such body corporate is authorized in accordance with subsection (1) to hold land in Malawi, be of no effect and unenforceable in any court, and any documents of title relating to such unenforceable disposition shall not be registerable in Malawi.

(3) The Minister may make rules prescribing the particulars to be furnished, the forms to be used and the fees to be paid in relation to applications for, and grants of licences for the purposes of subsection (1).

(4) The Minister may, in consultation with the President, issue a licence pursuant to subsection (1) and where the President declines to issue a licence, he shall give reasons, in writing, for that refusal and the decision of the President shall be subject to judicial review.

11.—(1) Land designated for investment purposes shall be identified, published in the *Gazette* and allocated to the Malawi Investment and Trade Centre Limited which shall create derivative rights to investors in accordance with the Investment and Export Promotion Act.

Land
designated for
investment
purposes
Cap. 39:05

(2) The size of land to be allocated to investors under this section shall be in accordance with land ceilings which the Minister may, in consultation with the Minister responsible for investment, set by notice published in the *Gazette*, based on the type of activity and location of the land.

12.—(1) The Minister may make and execute grants, leases or other dispositions of public land classified as Government land for any such estates, interests or terms, and for such purposes and on such terms and conditions, as he may think fit.

The Minister
may dispose
of public land

(2) The Minister shall reserve a rack rent in respect of every grant of a lease of Government land.

(3) Without prejudice to the generality of subsection (2), the Minister may reserve a rent which is less than a rack rent in leases granted under this section—

(a) to public utility bodies, statutory corporations, missions or religious bodies, scientific and philanthropic bodies, or any other organizations, associations, bodies or undertaking; and

(b) where, having regard to all the circumstances of the case, the Minister is satisfied that it is expedient, equitable or necessary to do so.

(4) For the purposes of this section, "rack rent" means rent that is calculated in relation to the annual and current value of the land.

Prohibition
against
disposal of state
and official
residences

13.—(1) Notwithstanding section 12 and any other written law, the Minister shall not make or execute grants, leases or other disposition of public land comprising a state residence or an official residence.

(2) A person shall not acquire the land referred to in this section as a personal possession.

Interest for
delay in
payment
of rent

14.—(1) If any moneys due to the Government in respect of any rent payable under any lease, right to occupancy of land, or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be paid with simple interest at ten percent and the interest payable under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

(2) The imposition of interest under this section shall not affect the powers conferred upon the Minister by section 25 of this Act to enforce a forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.

(3) The exercise by the Minister of the powers conferred by section 25 of this Act, to enforce a forfeiture of a lease and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).

(4) The Minister may, in any case or class of cases, where the circumstances so warrant, exempt the lessee from payment of any penalty due by the lessee under subsection (1).

PART IV—PUBLIC LAND

No implied
right of entry

15. A right of entry into any Government land shall not be implied in favour of any person.

Use and
occupation of
Government
land

16. The use and occupation of all Government land, other than Government land reserved for the use and occupation of the President, shall be controlled by the Minister.

17.—(1) Where it appears to the Minister that any unallocated customary land is needed for public utility, the Minister shall serve notice upon the traditional authority within whose traditional land management area the customary land is situated but this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, for such land shall be acquired for that purpose in accordance with the Public Roads Act.

Acquisition
of unallocated
customary
land for
public utility

Cap. 69:02

(2) Whenever any unallocated customary land is required for temporary use for a public utility, such use not being in the opinion of the Minister likely to necessitate occupation for a period in excess of seven years, the Minister may authorize the temporary use and occupation of the land for such public utility, and such land shall remain customary land throughout the period of temporary use and occupation.

(3) On the expiry of the period mentioned in subsection (2), the Minister may authorize such temporary use and occupation for a further period of three years.

(4) Every notice under this section shall—

(a) with all reasonable dispatch be published in the *Gazette*; and

(b) invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the *Gazette*.

(5) For the purposes of this section “public utility” means a utility which is for the direct or indirect benefit of the community as a whole, or a part of the community within a traditional land management area.

18. A person who, by reason of—

(a) any acquisition made under section 17(1); or

(b) the temporary use and occupation of customary land under section 17 (2) or (3),

Compensation
to
individuals
for loss,
damage or
disturbance

suffers any disturbance of, or loss or damage to any interest which he may have or, immediately prior to the occurrence of any of the events referred to in this section, may have had in such land, shall be paid such compensation for such disturbance, loss or damage as is reasonable.

Conversion of
customary land
to registered
land
Cap. 58:01

19. Nothing in this Act shall be construed as preventing the registration of customary land under the Registered Land Act as private land.

Unlawful use
of public land
an offence, etc.

20. A person who uses or occupies any public land and is not entitled to such use or occupation by virtue of a valid grant, lease or other disposition made by the Minister under any law for the time being in force at the date of such grant, lease or disposition, commits an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for three years, and, in the case of a continuing offence, to a further fine of K5,000 in respect of every day during which the offence continues.

PART V—PRIVATE LAND

Interest in
land which
the Minister
may grant

21.—(1) The Minister may, upon application by any person in a prescribed manner, grant or allocate leasehold or customary estate to such person on such terms and conditions as the Minister considers appropriate.

(2) For avoidance of doubt, the Minister shall not grant freehold title:

Cap. 22:01

Provided that the exemption under section 85 of the Local Government Act, on rates payable or levied in respect of assessable property owned by diplomatic missions, shall apply to land granted to diplomatic missions.

Minister or
local
government
authority
may accept
surrenders

22. The Minister or a local government authority may accept the surrender of any lease made under this Act or any other written law on such terms and conditions as the Minister or the local government authority may consider appropriate.

Minister
or local
government
authority may
relieve from
liability to
perform
covenants, etc.

23. The Minister or a local government authority, may, in his or its discretion, wholly or partially relieve any person from the liability to perform or observe any covenant, condition, agreement or stipulation binding on such person by virtue of any grant, lease or other disposition made under this Act or the existing laws, and may extend the time for the performance or observance of any such covenant, condition, agreement or stipulation.

Implied
covenants in
leases

24.—(1) In every lease granted under this Act, there shall be implied such covenants with the Minister or a local government authority by or on behalf of the lessee as may be prescribed to the extent that such covenants shall continue in full force and effect, save where earlier satisfied, throughout the term granted, but any

such implied covenant may, in the Minister's or the local government authority's discretion, be expressly exempted from any such lease by the terms thereof, or may be expressly modified or varied thereby to such extent as the Minister or the local government authority may direct.

(2) In every lease granted under this Act, there shall be implied such covenant with the Minister or the local government authority by or on behalf of the lessee that the lessee shall not undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Physical Planning where such grant is required under the Physical Planning Act, 2016.

Act No. 17 of 2016

25. Where—

Power of re-entry by Minister or local government authority

(a) a lessee is in breach or does not observe any of the covenants or conditions contained or implied in his lease, and on behalf of the lessee to be performed or observed;

(b) the lessee fails or neglects to comply with any orders, directions or instructions made or given under this Act; or

(c) the lessee, becomes bankrupt or makes any assignment for the benefit of his creditors or enters into an agreement or makes any arrangement with his creditors or enters into an agreement or makes any arrangement with his creditors for the liquidation of his debts by composition or otherwise, or shall suffer any execution to be levied on his effects, or, in the case of a lessee being a company, goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory, and in any of the said cases, the Minister or a local government authority may, without prejudice to any other right which he or it may have in law or in equity, determine the lease by notice in writing to the lessee or by re-entry on any part of the demised premises in the name of the whole:

Provided that the Minister shall serve a on every creditor of the lessee to enable the creditor to make representations.

26.—(1) Unless otherwise expressly stated in the lease, there shall be implied in every lease, exceptions and reservations of the following in favour of the Minister—

Exceptions and reservations

(a) all mines, royal and base minerals, mineral substances of every description, mineral oil deposits, quarries, gravel, stone, flints, chalk, sand, clay and other valuable earth upon, in or under any part of the demised premises with, liberty to the Minister and any duly authorized officer to enter, search for, dig, win, take,

Cap. 61:01

dress, make merchantable and carry away the same at his pleasure and to sink necessary pits and shafts, erect buildings and fix machinery and works, but doing no wilful damage and making to the lessee reasonable compensation for any actual damage which he may sustain and a *pro rata* abatement of rent being allowed in respect of the extent of the surface so occupied or interfered with, but the lessee may, in accordance with the Mines and Minerals Act, take from the demised premises for his own use any limestone and other materials suitable for building, road metalling or agricultural purposes so long as such limestone and other materials or any products manufactured therefrom are not sold for profit;

(b) the right, subject to any prior grant, lease or other disposition by the Minister thereof, to control, use or make dispositions of interest or rights in any running or stagnant water, the whole extent of which is not included within the boundaries of the demised premises;

(c) right of way with or without vehicle or animals across the demised premises to and from any public land or land in the occupation of any lessee, tenant or licensee of the Minister; and

(d) right for any authorized officer, with or without others, to enter upon the demised premises and every part thereof including buildings thereon at all reasonable times for all reasonable purposes.

Cap. 61:01

(2) Nothing in this section shall prejudice, or be deemed ever to have prejudiced, the vesting of the minerals in the President or a Minister under any law relating to minerals for the time being in force, whether before or after the commencement of the Mines and Minerals Act.

Revision of
rent

27.—(1) There shall be implied in every lease granted by the Minister or a local government authority a right on the part of the Minister or the local government authority to revise the rent thereby reserved.

(2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this Act, in respect of all leases, whether made before, on or after the commencement of this section, the Minister or a local government authority may, at any time, by order or by-laws published in the *Gazette*, revise the rents thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents, however where an authority, other than the Minister or a local government authority grants a lease, there shall be no need to publish such revision of rent in the *Gazette*.

(3) In the case of leases for agricultural estates, the rent payable may, in respect of such crops as the Minister may specify by order published in the *Gazette*, be deducted from the proceeds of the sales of such crops at the auction floors or at other source of payment in accordance with such arrangements as the Minister may agree with the authorities of the auction floors or other source of payment.

(4) Any rent payable for the purposes of any lease pursuant to this section shall be calculated in accordance with the formula to be prescribed by the Minister, by notice published in the *Gazette*.

28. The Minister or a local government authority shall, in revising any rent, take into consideration any enhanced value of the demised premises attributable to improvements effected thereon by the lessee during the term of the lease.

Matters to be taken into account

29.—(1) If the Minister or a local government authority decides to alter a rental on revision, he or it, as the case may be, shall cause the lessee to be notified in writing of the amount of the revised rental and the date from which it shall become payable, which date shall not be less than three months from the date of such notice.

Procedure on alteration of rent

(2) If the rental shall be increased on such revision and, if within six months of the date of the notice, the lessee does not notify the Minister or the local government authority in writing that he objects to the revised rental and intends to terminate his lease in accordance with section 30, the revised rental shall become payable as from the date specified.

30.—(1) If a lessee notifies the Minister or the local government authority of his intention to terminate his lease under section 29, he may surrender his lease to the Minister or the local government authority at any time before the date specified as the date on which the revised rental shall become payable.

Surrender in lieu of revision of rent

(2) If the lessee fails to surrender his lease before such date, the lease shall continue in full force and effect and the revised rental shall become payable as from the date specified.

31. If a lessee surrenders his lease in accordance with section 30, he shall upon registration of the surrender in the Land Registry be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term, and such compensation shall be based on the unexhausted value of the improvements thereon.

Compensation for improvements on surrender

32. The acceptance by the Minister or a local government authority of any rent reserved by a lease, or any part thereof, shall not constitute or be construed as a waiver of any previous breach by

Acceptance of rent not to waive breach of covenant

the lessee of any of the covenants or conditions contained or implied in the lease and on his part to be performed and observed.

Authorized
officer may
distrain

33. An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or any written law.

Service of
notices

34.—(1) Subject to subsection (2), any notice required to be given under this Act or under any grant, lease or other disposition of land made thereunder, shall be deemed to be sufficiently served on a grantee, lessee or other person in favour of whom such other disposition is made, if addressed to him by prepaid registered post at his last known address, or, if such grantee, lessee or person is a company, at its registered office, or principal office or place of business in Malawi, and on the Minister if addressed to him by prepaid registered post.

(2) A notice served under subsection (1) shall be deemed to have been effected on the recipient seven days from the date of posting the notice to the recipient's address.

Fees

35.—(1) The Minister or local government authority may prescribe fees payable in respect of any matters provided under this Act.

(2) The Minister or the local government authority may, in any special case, by notice published in the *Gazette*, revise any such fee.

Prior written
consent of the
Minister or
local
government
authority
before sale,
lease, etc., of
private land

36.—(1) A person shall not sell or otherwise to convey, lease, transfer or assign any private land shall, without prior written consent of the Minister or a local government authority to sell, convey, lease, transfer or assign the land.

(2) The Minister of the local government authority shall grant or withhold consent within thirty days of receipt of the written request from the person who intends to intended sell the land.

(3) A person who acts, or attempts to act, in contravention of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for twelve months.

(4) Nothing in this section shall apply to—

(a) any offer of sale, conveyance, lease, transfer or assignment by or direct to the Government;

(b) any agreement to lease, or any lease, for a non-renewable term of not more than three years;

(c) any sale pursuant to any order of court or by any officer in

the public service acting in his official capacity and pursuant to any written law; or

(d) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good faith, except that this paragraph shall not apply to any mortgage or hypothecation given for the purpose of the evasion or avoidance of the provisions of this section.

(5) The Minister or any local government authority may, by regulations or by-laws, as the case may be, published in the *Gazette*, prescribe forms for the purposes of this section.

37.—(1) Any grant of private land to any person who is not a citizen of Malawi, whether by way of sale, conveyance, assignment, lease, transfer or other transaction, shall not be for an estate greater than a lease of fifty years unless, for reasons fully explained in writing accompanying the application for the registration of the grant, a greater estate is required for the realization of investment.

Grants of private land to persons who are not citizens of Malawi

(2) Without prejudice to subsection (1), where, at the time of transaction, the existing interest in the private land concerned is for an estate greater than fifty years, a grant of private land may be made extending up to the entire remaining estate.

38.—(1) Without prejudice to the requirements of section 37 or any other provision of this Act, a person shall not sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless—

Restriction of sale of private land to persons who are not citizens of Malawi

(a) the intention to sell the private land has been published in a newspaper in daily circulation in Malawi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land:

Provided that the government valuer appointed by the Minister shall be at liberty to verify the advertised purchase price prior to the sale;

(b) following the publication referred to in paragraph (a), no person who is a citizen of Malawi has made an offer, or has been able, to purchase the private land at a price that is not lower than the published price; and

(c) the purchaser, if not a citizen of Malawi, has purchased the private land at a price that is not lower than the published price.

(2) Where there is a difference between the value of the private land reached by the seller, on one hand, and the valuer appointed by

the Minister under subsection (1)(a), on the other hand, either party may refer the difference for final resolution by the Land Economy Board.

(3) Notwithstanding any provision to the contrary in any other written law, no title to private land shall pass under any sale made or purportedly made in contravention of subsection (1), but registration of title upon such sale shall be *prima facie* evidence of validity of title to the land.

(4) Where there is evidence to show that the registration referred to under subsection (3) has been made in contravention of subsection (1), the Minister shall cancel the registration and avoid the transfer of title in the private land, by giving notice of such cancellation to the parties involved.

Non-develop-
ment of
freehold land

39. Prior to the expiry of the three year period referred to in section 9(2), where a holder of private land under freehold title has not developed the land or has not shown or effected his intention to develop the land or dispose of it, within two years from the date the holder has been registered, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law-

(a) by written notice sent by prepaid registered mail to the person concerned addressed to his registered or his last known address, demand voluntary surrender of the land by that person to the Government within a period of ninety days from the date of the notice;

(b) in the event that there is no voluntary surrender as demanded under paragraph (a)—

Cap. 58:04

(i) acquire the land under the Lands Acquisition Act; or

(ii) consult with the Minister responsible for the physical planning for the exercise of the powers under section 64 of the Physical Planning Act, 2016.

Act No. 17 of
2016

Gifts of private
land between
non-citizens.

40. No title to private land shall pass by way of gift *inter vivos* as between persons who are not citizens of Malawi.

PART VI—USER OF LAND

Minister's
power to
regulate,
manage or
control the
use of land

41.—(1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, or by regulations made under section 47, or by directions or instructions made or given by him in writing in any individual case, make provision for regulating, managing and controlling the use of all land other than public land or private land situate within a city, municipality or township.

(2) The Minister shall, before exercising any powers granted under subsection(1), consult with and have regard to the views of the Minister for the time being responsible for the administration of the Physical Planning Act, 2016.

Act No. 17 of
2016

(3) Without derogation from the generality of subsection (1), any such order, regulation, direction or instruction, may make provision regulating and controlling the use to which land may be put, the method of cultivation and growing of crops and keeping livestock, the maintenance of proper drainage of such land and the fencing, hedging and modes of access to such land, the preservation and protection of the source, course and banks of streams and generally for the good management and conservation of the soil, water, woodland, pasture and other natural resources thereof.

(4) The Minister may make or give different orders, regulations, directions or instructions in respect of different categories of land.

(5) A person who contravenes this section, or any order, regulation, direction or instruction made or given under this section commits an offence and upon conviction shall be liable—

(a) in the case of a natural person, to a fine of K500,000 and imprisonment for six months and for any continuing offence a fine of K5,000 per day; and

(b) in the case of a legal person, to a fine of K1,000,000 and a reasonable estimate of the cost of restoring the land to be assessed by experts in a relevant discipline, and, for any continuing offence, the directors, manager or any person concerned in the management of its affairs shall be liable to imprisonment for twelve months.

(6) If a person is convicted of an offence under this section, the Minister may, by notice terminate that person's right, however arising, to occupy land in respect of which such offence was committed, and the person shall, within thirty days after being given such notice, vacate the land, where the person fails, omits or refuses so to vacate the land, his use and occupation of it shall be unlawful.

42. Any authorized officer may at any reasonable time enter upon any land to which section 41 (1) applies for the purpose of ensuring that this Part is being complied with.

Powers of
entry on land

43. A person who obstructs or impedes another person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him or under this Part, shall, upon conviction, be liable—

Obstruction
and
penalties

(a) in the case of a natural person, to a fine of K500,000 and imprisonment for six months; and

(b) in the case of a legal person, to a fine of K500,000.

Vesting of
land after
termination
of right to
occupy

44. Where, by virtue of section 42, the right of a person to occupy land is terminated by the Minister by order, then, from the date of such order, the land shall-

(a) if it is held by such person directly under a grant, lease or other disposition of public or customary land made under this Act or any written law, revert in the Republic as public land;

(b) if it is held by such person under a lease, license or other disposition of private land, revert in the person entitled to the land on the termination of the lease, license or interest created by such other disposition; or

(c) in any other case, become vested in the Republic as public land.

PART VII—TRESPASS OR ENCROACHMENT UPON, OR UNLAWFUL OCCUPATION OF, LAND

Summons for
trespass,
encroachment
or unlawful
occupation

45.—(1) Where a person—

(a) trespasses or encroaches upon any public land or any private land other than a customary estate; or

(b) is deemed under this Act to be in unlawful use or occupation of any such land,

a magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who claims to have lawful title to the land, issue a summons to the alleged trespasser, encroacher, or unlawful user or occupier, (hereinafter referred to as the “defendant”) requiring him to attend at the court of that magistrate to answer such complaint.

(2) Upon hearing of the summons, the magistrate court, if satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be in an unlawful use or occupation thereof, shall make an order requiring the defendant, his family or other dependents, if any, to vacate the land within seven days, or such other longer period as the magistrate shall determine.

(3) If the defendant fails to comply with the order made by the magistrate court, he may be removed from the land by any authorized officer, police officer or officer of the court authorized in that behalf and for that purpose by the magistrate court.

(4) When determining in accordance with subsection (2), the period of time which shall be allowed to the defendant within which to vacate the land, the magistrate court shall take into consideration the period of time which may reasonably be required to enable the defendant, if he be so minded, for his own use and benefit—

(a) to take down, disassemble and remove from the land, or any part thereof, any buildings, structure, fence or improvement of any kind whatsoever which he may have erected upon or made to the land;

(b) to harvest, collect, take-in and remove from the land or any part thereof, any crops, plants, trees, shrubs or other matter which he may have sown, planted or cultivated on the land during his occupation thereof; and

(c) to remove from the land any chattels belonging to him.

(5) The provisions of this section shall be in addition to, and not in substitution for, the provisions of any other written law relating to ejection from land.

46. The practice and procedure to be observed in any proceedings in the magistrate's court under this Part shall be the practice and procedure prescribed by, in or under the Courts Act with such variation as to forms or otherwise as this Part, and the circumstances of the case, may require.

Procedure

Cap. 3:02

PART VIII—MISCELLANEOUS

47. The Minister may make regulations for the better carrying into effect of the provisions of the Act.

Regulations

48. In any proceedings before a court in which the question arises as to whether or not any land is public land or private land, a certificate purporting to be signed by the Minister shall be *prima facie* proof that the land is public land or private land, as the case may be.

Certificate of
Minister to be
prima facie
proof

49. Where, in relation to any land transaction, a person who is party to such transaction is required, whether as a matter of law, procedure or practice, to disclose his citizenship to the Minister and claims to be a citizen of Malawi, he shall furnish to the Minister evidence of proof of his Malawi citizenship in accordance with the Malawi Citizenship Act or other applicable law in Malawi.

Proof of
citizenship in
relation to
land
transactions

Cap. 15:01

50.—(1) The Minister may, by notice published in the *Gazette*, delegate any authorized officer to exercise and perform such of the Minister's powers or duties under this Act as he may specify in the notice.

Delegation

(2) Any authorized officer delegated with powers and duties under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 12 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Physical Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

Repeal and
savings
Cap. 57:01

51.—(1) The Land Act is hereby repealed.

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

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

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

(3) Any grant, right of occupancy, disposition, permit or licence made, issued or given under the law repealed under subsection (1) shall be as valid, and shall have effect, as if they were made, issued or given under this Act.

Savings with
respect to
mining and
oil exploration
and production
Cap. 61:01
Cap. 61:02

52. Nothing in this Act shall prejudice the grant or issue, under the Mines and Minerals Act or the Petroleum (Exploration and Production) Act, of any licence or permit, as the case may be, or the exercise of rights conferred on the holder of any such licence or permit or any claim by the Acts.

Passed in Parliament this twelfth day of July, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament