

MALAWI GOVERNMENT

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No. 10 of 2019

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

19th February, 2019

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An Act to provide for the regulation, promotion and development of the tobacco industry in Malawi; to provide for the establishment of the Tobacco Commission; and to provide for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Tobacco Industry Act, 2019. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - “buyer” means a person or a group of persons licensed to buy tobacco from growers at licensed tobacco floors;
 - “buyer’s licence” means a licence granted under section 67;
 - “commercial grader” means a person who carries on the business of grading tobacco for profit but includes a grower or buyer of tobacco who grades his own tobacco and includes an employee or independent contractor of such a grower or buyer;
 - “commercial grading premises” means premises where commercial grading of tobacco is carried out in accordance with section 73;
 - “Commission” means the Tobacco Commission established under section 3;
 - “crop throw” means the percentage of each grade within the total crop volume and is used to calculate the volume per each produced;

“contract farming” means growing of tobacco under a contract for tobacco production and marketing, entered into between a grower and a buyer, whether funded or not;

“cost of production” means all the costs incurred in the production of tobacco from the nursery to the tobacco floor including all materials, inputs, labour, transportation, levies and other services expended in the production of tobacco and bringing it to the tobacco floor;

“delivery quota” means the volume allocated to a buyer, grower or growers’ association for delivery at any licensed tobacco floor for a given period;

“excess tobacco” means—

(a) in the case of non-contracted tobacco, any volume delivered to tobacco floors exceeding allocated production quota as set by the Commission; and

(b) in the case of contracted tobacco, any volume delivered to tobacco floors exceeding contracted volume by more than ten per cent;

“good agricultural practices” means the minimum guidelines on agricultural production practices for tobacco as determined by a recognised tobacco research institution;

“grader’s licence” means a licence granted to a commercial grader under section 72;

“grower” means a person or group of persons registered by the Commission under section 36 for purposes of growing tobacco as a commercial crop, on his or its own behalf, by his or its own labour or by the labour of his or its servants respectively;

“growers’ association” means an association referred to in section 52 for purposes of representing growers when entering into contracts and other matters;

“inspector” means a seed inspector licensed as such by the Minister under the Seed Act, a pesticide inspector designated by the Pesticides Control Board under the Pesticides Act or inspectors appointed pursuant to section 75;

“manufactured tobacco” means processed tobacco made into cigarettes, snuff, pipe mixture, roll, twist, cigars, cigarillos, cake, plug or stick;

“minimum margin” means a percentage return on the cost of production for a particular type of tobacco in a season that takes into account factors of that season and input from stakeholders in

Cap. 67:06

Cap. 35:03

the tobacco industry including registered licensed buyers and growers and which, together with the cost of production, constitutes a minimum price, forms the starting point for buyers' own contractual tobacco price negotiations with the growers and starting price for tobacco on auction marketing arrangement;

"minimum price" means a minimum price set by the Minister under section 70;

"non-tobacco related material" means material or an object that is not related to tobacco but is present in tobacco bales;

"owner" includes an agent, manager, overseer, or any other person in charge of any land which is being used for growing tobacco;

"processed tobacco" means leaf tobacco either mechanically or hand processed by separation of its midrib or stem, dried and packed at a processing factory or similar facility that is licensed to carry out such operations;

"return" means a record of estimated production of tobacco by a registered grower and his undertakings on issues of child labour, afforestation, nesting and non-tobacco related materials;

"season" means a growing and marketing season of tobacco;

"tobacco floor licence" means a licence granted under section 78;

"tobacco" means unmanufactured tobacco, whether cured or uncured, and includes any tobacco which has been grown in and imported into Malawi;

"tobacco nesting" means—

(a) the hiding of substandard tobacco within a bale in order to deceive buyers; or

(b) the hiding of tobacco stems, scraps, or loose leaf within a bale of graded tobacco bundles; and

"tobacco research institution" means a public institution established for, among other functions, to carry out research, training and extension services in the tobacco industry.

PART II—THE TOBACCO COMMISSION

3.—(1) There is hereby established a Commission to be known as the Tobacco Commission.

Establishment
of the
Tobacco
Commission

(2) The Commission shall be a body corporate having perpetual succession and a common seal and capable of—

- (a) suing and being sued in its corporate name;
- (b) acquiring and disposing of any moveable or immovable property; and
- (c) in the exercise of its duties and functions, of doing acts and performing things as bodies corporate may, by law, perform.

(3) The Commission shall in the exercise of its powers and the performance of its duties, under this Act or any other written law, be subject to the general or special directions of the Minister.

Functions
of the
Commission

4. The Commission shall regulate and promote the development of the tobacco industry generally, and in particular shall—

- (a) regulate the production, grading, processing, importation, exportation and marketing of tobacco;
- (b) promote crop diversification and good agricultural practices in tobacco production;
- (c) collate statistics and distribute market studies and information relating to the production, marketing, manufacturing and consumption of tobacco;
- (d) promote a conducive environment in the tobacco industry so as to allow effective and fair competition for all stakeholders;
- (e) regulate and enforce quality standards of tobacco;
- (f) advise Government on policies and strategies to promote and develop the tobacco industry;
- (g) administer any fund established pursuant to this Act; and
- (h) perform such functions as required under the Act or any other written law.

Powers of the
Commission

5. The Commission shall, for the better exercise of its functions, have power to—

- (a) approve plans and annual budgets of the Commission;
- (b) facilitate the appointment of external auditors to audit the accounts of the Commission;
- (c) recruit and appoint staff of the Commission;
- (d) propose to the Minister, any fees, charges and levies provided under the Act;
- (e) establish terms of reference and guidelines for the operations of the Commission and its committees; and

(f) provide general direction on the operations of the Commission as may be necessary for the implementation of the Act.

6. The Commission shall consist of eight members appointed by the Minister, as follows—

Composition
of the
Commission

(a) one person nominated by and representing the tobacco Buyers' Associations;

(b) one person nominated by tobacco growers' associations and representing smallholder farmers;

(c) one person nominated by tobacco growers' associations and representing medium to large scale farmers;

(d) one person who, in the opinion of the Minister, possesses sufficient knowledge and experience necessary for the development of the tobacco industry, as the Minister shall determine;

(e) one representative from service providers in the tobacco industry;

(f) the following *ex-officio* members—

(i) the Secretary responsible for Agriculture or his designated representative;

(ii) the Secretary to the Treasury or his designated representative; and

(iii) the Secretary responsible for trade or his designated representative.

7.— (1) Members, other than *ex-officio* members, shall be appointed—

Appointment
of members

(a) for their ability and experience in the fields of agriculture, tobacco, trade, accounting, auditing, law, economics or administration; and

(b) from amongst persons, who, possess sufficient knowledge and experience necessary for the development of the tobacco industry.

(2) The Minister shall appoint one member of the Commission as chairperson of the Commission.

(3) The members of the Commission shall elect among their number, a vice-chairperson who shall exercise the functions of the chairperson during any period that the chairperson is unable to do so.

(4) An *ex-officio* member shall not be eligible to be appointed chairperson or elected vice-chairperson of the Commission.

(5) A member shall not, by virtue only of his appointment to the Commission, be deemed to be an officer in the public service.

(6) Every member of the Commission shall attend meetings of the Commission in person and where a member is unable to attend any meeting of the Commission, he may request that his apologies for failure to attend be registered.

(7) The Minister shall publish in the *Gazette*, the names of all members of the Commission as first constituted, and every change in the membership of the Commission thereafter.

(8) A person shall not be qualified to hold office as a member of the Commission, if that person has—

(a) been adjudged or otherwise declared bankrupt by a competent court of law;

(b) been declared mentally or physically incapacitated by a registered medical practitioner; or

(c) within the period of seven years immediately preceding the date of his proposed appointment, been sentenced to any term of imprisonment without the option of a fine and has not received a pardon.

Tenure and
vacancies

8.— (1) A member of the Commission shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment for one further term.

(2) A vacancy in the Commission shall exist if a member—

(a) resigns;

(b) is sentenced to any term of imprisonment without the option of a fine and has not received a pardon in any country;

(c) becomes disqualified in terms of section 7 to hold office as a member;

(d) is absent, without reasonable excuse, from three consecutive meetings of the Commission of which he has had due and adequate notice; or

(f) dies.

(3) A member of the Commission may resign by giving notice to the Minister.

(4) The Minister may require a member of the Commission to vacate his office if the Minister is satisfied that the member—

(a) has been found guilty of misconduct as a member; or

(b) a qualified medical practitioner has certified that the member is mentally or physically incapable of efficiently performing his duties as a member.

(5) The Minister may suspend from office, a member against whom criminal proceedings are instituted for an offence involving dishonesty or moral turpitude or in respect of which a sentence of imprisonment without the option of a fine may be imposed and, whilst that member is so suspended, that member shall not carry out any duties or be entitled to any remuneration or allowances as a member.

(6) Where a vacancy occurs in the membership of the Commission, in consultation with the nominating body, the Minister shall, within three months, appoint a person as may be necessary to ensure that the composition of the Commission remains in accordance with section 6.

9.— (1) The Commission shall meet at least every three months at a place and a time as the chairperson shall determine.

Meetings
of the
Commission

(2) Notwithstanding subsection (1), the chairperson—

(a) may convene a meeting at any time, by giving a written notice of fourteen days to the members; and

(b) shall convene an extraordinary meeting within fourteen days of receipt by him, of a request in writing signed by not less than four members specifying the purpose for which the meeting is to be convened.

(3) The chairperson shall take all reasonable steps to ensure that every member is given due and adequate notice of every meeting of the Commission.

(4) Five members shall form a quorum at any meeting of the Commission.

(5) The chairperson or, in his absence, the vice chairperson shall preside at all meetings of the Commission, and in the absence of both the chairperson and the vice chairperson, the members present and forming a quorum shall elect one of their number, to be a chairperson for that meeting only.

(6) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members present and voting, and at all such meetings, the person presiding shall, in the event of an equality of votes, have a casting vote in addition to his deliberative vote.

(7) The Commission shall have power to regulate its own procedures at meetings and the procedures of any of its committees and may vary, suspend or revoke such procedures.

Committees
of the
Commission

10.— (1) The Commission may, for the better exercise of its functions and powers, establish committees to perform any of its functions and carry out such other responsibilities as the Commission may specify.

(2) A committee of the Commission shall consist of not more than five members who may either be members of the Commission only or include other suitably qualified persons as the Commission may consider appropriate but the chairperson of the Commission shall not be a member of a committee of the Commission.

(3) The chairperson of a committee of the Commission shall be a member of the Commission except an *ex-officio* member.

(4) If a chairperson of a committee of the Commission is unable, for any reason, to attend a meeting of the committee which he chairs, he may, in writing, nominate another member of the committee to chair the meeting of the committee in his place.

(5) The provisions of the Act relating to meetings of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

Allowances

11. The Minister shall determine the allowances payable to a member of the Commission or a member of a committee, from the funds of the Commission, to cover expenses incurred for attendance of meetings.

Co-opted
persons

12. The Commission may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings or a meeting of any of its committees, and address it on a matter, but the person so invited shall not vote at the meeting on any decision.

Oath of
secrecy

13. Members of the Commission, employees, consultants, advisers and subcontractors of the Commission, shall sign an oath of secrecy in a prescribed form upon joining or being engaged by the Commission.

Validity of
decisions and
acts of the
Commission

14.— (1) A decision of the Commission that affects a stakeholder in the tobacco industry shall be communicated to the relevant stakeholder, in writing, and shall state the reasons for the decision.

(2) A decision or act of the Commission or act done under the authority of the Commission shall not be invalid only by reason that—

(a) the Commission did not consist of the full number of members under section 6; or

(b) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized.

15.— (1) A member of the Commission or a member of a committee of the Commission shall declare to the Commission where he personally, or the organization in which he holds a material personal stake, has a substantial interest in a matter to be discussed by the Commission or committee of the Commission, to the extent that the interest would hinder his ability to act in the best interests of the Commission or the committee as the case may be. Conflict of interest

(2) Where a member of the Commission or a committee declares substantial interest under subsection (1), he shall recuse himself from the process of making a decision in respect of the matter, if the Commission or the committee deems necessary.

16.— (1) The Commission shall appoint a chief executive officer of the Commission who shall be responsible for the administrative control of, and supervision over the work of staff of the Commission. Appointment of the chief executive officer

(2) The chief executive officer shall serve as the Secretary to the Commission.

(3) The chief executive officer shall be a person with knowledge and experience as the Commission may prescribe, in any of the following areas—

- (a) tobacco industry;
- (b) agriculture;
- (c) trade;
- (d) finance;
- (e) economics;
- (f) law; or
- (g) administration.

17.— (1) The chief executive officer shall hold office for a term of three years and shall be eligible to be appointed for one further term. Tenure of the chief executive officer

(2) The chief executive officer shall be removed from office on any of the following grounds—

- (a) incompetence;
- (b) misconduct that brings the Commission into disrepute; or
- (c) mental or physical incapacitation to carry out the function of his office.

Appointment
of other
staff of the
Commission

18.— (1) The Commission shall appoint other staff, subordinate to the chief executive officer, as the Commission may consider appropriate.

(2) The Commission may delegate to the chief executive officer, the appointment of junior staff of such ranks below the level of director, as the Commission may specify.

(3) The Commission shall, in consultation with the Minister responsible for Finance, determine the remuneration and employment benefits payable to the chief executive officer and other staff of the Commission which the Commission considers competitive in the employment market in Malawi.

Delegation
of powers
or functions
of the
Commission

19.— (1) The Commission may delegate any power or function assigned to it under this Act to the chief executive officer or any employee of the Commission to facilitate the day to day operation of the Commission.

(2) The chief executive officer may, with the approval of the Commission, delegate any power or function assigned to him under this Act or delegated to him under subsection (1), to any staff of the Commission.

Protection
from liability

20. A member of the Commission, a member of a committee of the Commission, or an employee of the Commission shall not be liable to any suit, claim or demand by reason of any act done in good faith or for any decision made in the rightful exercise of his duties or powers in his capacity as a member of the Commission or committee of the Commission or employee of the Commission.

Reports of the
Commission

21. The Commission shall submit to the Minister such reports—

(a) on the operations, undertakings and property of the Commission or in relation to any functions of the Commission within six months after the end of a financial year; and

(b) as the Commission considers relevant or the Minister may require.

PART III—FINANCIAL PROVISIONS

Funds of the
Commission

22. The funds of the Commission shall consist of—

(a) all fees, charges, penalties, tobacco levies, dues or rates imposed under this Act;

(b) interest on money invested by the Commission;

(c) funds accruing to the Commission from the Government or other body or person, whether as a grant-in-aid or otherwise;

(d) all money as is, from time to time, appropriated by Parliament; and

(e) any other income authorized under this Act or income recognized

as such by accounting standards and practices collected by the Commission.

(2) All money of the Commission which at the end of each financial year, is in excess of the Commission's budgetary requirements for that year, shall be paid to the Consolidated Fund, but the Commission shall be entitled to retain such sums as it may reasonably require for its operations with approval of the Minister responsible for finance.

23.— (1) The Commission shall maintain proper books of accounts and other records relating to its accounts. Bank Accounts

(2) Unless the Minister responsible for finance permits otherwise, all moneys received by the Commission shall be paid into a bank registered and licensed under the Banking Act and shall be credited to such of the Commission's accounts as may be appropriate. Cap. 44:01

(3) The Commission shall maintain separate bank accounts for each levy and charge under this Act.

(4) All money received from penalties imposed shall be deposited into one bank account to be used for the promotion of the tobacco industry through good agricultural practices, crop diversification, research, field days and representation at international tobacco fora.

(5) The Commission shall in all its financial transactions, comply with the provisions of the Public Audit Act, Public Finance Management Act, and Public Procurement and Disposal of Assets Act. Cap. 37:01
Cap. 37:02
Act No. 27 of 2017

24. The Commission may, with the permission of the Minister responsible for finance, invest any money not required for immediate use in the performance of its functions in— Investment

(a) the purchase of any security issued by Government;

(b) deposits in any bank registered and licensed under the Banking Act; or Cap. 44:01

(c) other manner as may be approved by the Minister and the Minister responsible for Finance.

25.— (1) Subject to the Public Finance Management Act, the Commission may borrow sums of money as it may require for the performance of its functions under this Act. Borrowing
Cap. 37:02

(2) The Commission, may raise loans, whether by way of bank overdraft or otherwise.

Reserves

26.— (1) The Commission may create general or other reserves and may credit to the reserves, the appropriations that may be authorised in the annual estimates of the Commission.

(2) Any reserves accumulated from subsection (1) shall be used firstly for the promotion of the tobacco industry through promotion of good agricultural practices, research, field days, representation at international tobacco fora and other activities as the Commission may determine as appropriate.

Keeping of
books and
records of
accounts

27.— (1) The Commission shall cause to be prepared and kept, proper books and records of accounts of all its financial transactions during each financial year.

(2) The Commission shall, within four months, after the end of each financial year, cause to be prepared, a statement of the cash flow and income of the Commission for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) All accounts of the Commission shall be open to inspection by any member of the Commission.

Audit of
accounts
of the
Commission

28.— (1) The Commission shall appoint independent auditors approved by the Auditor General, who shall audit the accounts of the Commission.

(2) The auditors shall submit a report to the Commission and the report shall state whether or not in their opinion, the statement of accounts gives a true and fair view of the state of the financial affairs of the Commission:

Provided that auditors shall present the report for examination by the Auditor General, before presentation to the Commission.

(3) In addition to the report referred to in subsection (2), the Commission may obtain from the auditors, other reports, statements or explanations in connection with the operations, undertakings and property of the Commission as the Commission may consider appropriate.

(4) If, in the opinion of the auditors,—

(a) the auditors have not obtained the information and explanations they require;

(b) the accounts and records relating thereto have not been properly kept; or

(c) the Commission has not complied with this Part, the auditors shall include in the reports made in terms of subsections (2) or (3), as the case may be, statements to that effect.

29.— (1) Auditors appointed pursuant to section 29, shall be entitled, at all reasonable times, to require to be produced to them, all accounts and other records relating thereto, kept by the Commission or its agents, and to require from any member or person employed by the Commission or its agents, such information and explanations as in their opinion are necessary for the purposes of their audit.

Powers of
auditors

(2) Any member, employee or agent of the Commission who fails, without just cause, to comply with a requirement of an auditor in terms of subsection (1), commits an offence and shall on conviction, be liable to a fine of K1,000,000.00 and to imprisonment for six months.

30. The financial year of the Commission shall be the financial year of the Government.

Financial
year of the
Commission

PART IV—SEED VARIETIES AND PESTICIDES

31.—(1) A person shall not use, sell, import into Malawi, or issue to any person, any seed to be used for growing tobacco unless the seed has been approved in accordance with the Seed Act.

Tobacco seed

Cap. 67:06

(2) A person shall not grow tobacco for seed production except with the permission, in writing, of the Commission and subject to inspection by seed inspectors before and after the grant of the permission.

(3) Subsections (1) and (2) shall not apply in relation to tobacco seed used for purposes of research and in all such circumstances, authorization from the Commission shall be sought before such use.

32.— (1) All powers and responsibilities conferred on seed inspectors under the Seed Act shall apply *mutatis mutandis* for purposes of implementing the provisions of this Part.

Powers of
inspectors
Cap. 67:06

(2) Any person who—

(a) obstructs a seed inspector in the due exercise of his powers under this Act;

(b) refuses to furnish to a seed inspector, when so requested, any particulars or information required under the Seed Act or this Act; or

Cap. 67:06

(c) knowingly or recklessly gives to a seed inspector any false or misleading information,
commits an offence.

Limitations
on use of
pesticides
Cap. 35:03
Cap. 60:02

33.—(1) A person shall not use, sell, import into Malawi or issue to any person, any pesticide to be used for treating any tobacco seedling, plant or leaf in contravention of the provisions of the Pesticides Act and the Environment Management Act.

(2) Subsection (1) shall not apply in relation to pesticide intended to be used for purposes of research:

Provided that in all any circumstance to which subsection (2) applies, prior authorization shall be obtained from the Pesticides Control Board.

Powers of
pesticide
inspectors
Cap. 35:03

34.—(1) All powers and responsibilities conferred on pesticide inspectors under the Pesticides Act shall apply *mutatis mutandis* for purposes of implementing the provisions of this Part.

(2) Any person who —

(a) obstructs or impedes a pesticide inspector in the due exercise of his powers under the Act;

(b) refuses to furnish to a pesticide inspector, when so requested, any particulars or information to which the pesticide inspector is entitled under the Act; or

(c) wilfully or recklessly gives to a pesticide inspector, any false or misleading particulars or information with respect to any fact or matter required under the Seed Act, shall be guilty of an offence.

Offences
related to
usage of
seeds and
pesticides

35.—(1) Any person who deals with seeds or pesticides in contravention of the provisions of this Part commits an offence and shall on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

(2) In addition to the punishment in subsection (1), a court may order that any plants grown or any tobacco plant treated with a pesticide in contravention of this Part, be destroyed at the expense of the person who is convicted under subsection (1).

(3) Any person who obstructs or impedes, refuses to furnish information, or wilfully or recklessly gives false or misleading information to a seed or pesticide inspector commits an offence and shall on conviction be liable to a fine of K2,000,000.00 and to imprisonment for one year.

PART V — REGISTRATION AND DUTIES OF GROWERS

Registration
of growers

36.—(1) Any person intending to grow tobacco for sale, shall apply for registration with the Commission in a prescribed form as a grower no later than 30th September of each year prior to commencement of the season.

(2) The Commission shall, on satisfaction with an application made pursuant to subsection (1) register a grower and issue a certificate in that regard.

(3) A grower may register to grow tobacco either on contract or non-contract marketing arrangement.

(4) A tobacco buyer, tobacco floor operator, commercial grader, tobacco transporter, its subsidiary, its parent company or a subsidiary of its parent company shall not be allowed to register as a grower.

(5) A grower shall pay a registration fee determined by the Commission according to the production quota allocated to the grower for that season.

(6) Where an application for registration is received by the Commission after the specified date, the applicant shall pay a late registration fee to the Commission.

(7) Any person who is not registered as a grower and who, by himself or through an agent, grows tobacco for sale, commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for one year.

37.— (1) The Commission shall keep and maintain an annual register of all growers and may keep separate registers for different classes of growers based on tobacco types, marketing system and land holding sizes. Register of growers

(2) The register may be made available, upon request by a registered buyer or association, at the Commission's office during working hours.

(3) The register shall not disclose any details of the contracts into which each grower enters, other than the existence of the contract itself.

38.— (1) The Commission shall allot to each registered grower, one registration number for each type of tobacco grown. Allotment of registration numbers

(2) A grower who registers more than one estate for growing tobacco shall be allocated a unique registration number in respect of each estate.

(3) The Commission may allot to itself, one registration number for each type of tobacco.

(4) A person shall not transfer to another person, the registration number which has been allotted to him and any purported transfer of the registration number shall be invalid.

(5) A registered grower who allows another person to use his registration number for selling any tobacco commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for one year.

Certificate of
registration not
transferable

39.— (1) A certificate of registration issued under this Part shall not be transferable.

(2) A person shall not have in his possession, for any purpose, a certificate of registration which is not his own except when he is selling tobacco as an agent of a registered grower and, for the purpose of the agency, has in his possession the certificate of registration of that registered tobacco grower and proof of agency.

(3) The agent referred to in subsection (2) shall be a registered worker of the registered grower, spouse, child or sibling.

(4) A person growing tobacco in Malawi shall not refuse to produce for the Commission's inspection, his certificate of registration or, when a person is acting as an agent for a registered grower, the written authority and certificate of registration of his principal.

(5) Notwithstanding subsection (1), a certificate of registration may be transferable, with prior authorization of the Commission, upon—

(a) death of the registered grower;

(b) physical or mental incapacity to manage a tobacco farming business;

(c) sale of an estate; or

(d) sublease of an estate:

Provided that the Commission shall be provided with written evidence of the death, sale or sublease and change of land ownership transactions.

Marking of
registered
numbers on
bales

40.— (1) A registered grower shall mark his registration number or cause his registration number to be marked on each bale of tobacco which is delivered by him or on his behalf to a licensed tobacco floor for sale.

(2) A registered grower shall not deliver for sale to a licensed tobacco floor, a bale or other container of tobacco which—

(a) was grown by him and is not marked with his registration number; or

(b) was not grown by him and is marked with his registration number,

unless he obtains permission, in writing, of the Commission.

41.— (1) Every registered grower shall, within a prescribed period, furnish a return to the Commission, completed to the satisfaction of the Commission.

Returns and failure to furnish returns

(2) The return referred to in subsection (1) shall include a grower's undertakings on issues of child labour, afforestation, tobacco nesting non-tobacco related materials, an alternative crop production, good husbandry practices, safe environment for his workers, freedom of association of the workers, forced labour, fair treatment of workers and workers working hours.

(3) If a registered grower fails to furnish the Commission, within the prescribed period, a return completed to the satisfaction of the Commission, the Commission may order the cancellation of the registration of the grower.

(4) A grower who furnishes a return after the expiry of the prescribed period, subject to subsection (5), shall pay a prescribed penalty.

(5) The Commission may waive the payment of the penalty referred to in subsection (4), if it considers that there is a reasonable explanation for the failure of the grower to furnish the return on time.

(6) As soon as the Commission is satisfied that a grower whose registration has been cancelled in terms of subsection (3)—

(a) has furnished a return, completed to the satisfaction of the Commission; and

(b) if payment of the fee is not waived in terms of subsection (5), has paid the fee referred to in subsection (4), the Commission shall revoke the order cancelling the registration of the grower.

(7) The Commission shall appoint inspectors to monitor compliance of the growers undertaking in subsections (2)

42.— (1) Where a registered grower delivers or causes to be delivered to a licensed tobacco floor, tobacco in excess of his delivery quota as fixed by the Commission, the Commission shall collect one half of the proceeds of the excess tobacco and remit the other half to the grower.

Delivery by registered growers of tobacco in excess of delivery quota

(2) The proceeds collected by the Commission pursuant to subsection (1) shall be put together with other fines collected by the Commission for the development of the tobacco industry.

Offences and
penalties

43.—(1) Any person who contravenes any provision of this Part commits an offence and shall be liable to a fine of K2,000,000 and to imprisonment for one year.

(2) In addition to the penalty in subsection (1), a court may order that any tobacco connected with the offence be forfeited to the Commission.

PART VI—CONTRACT FARMING AND MARKETING

Contract
farming

44.—(1) A grower and a buyer may enter into funded or non-funded contract farming.

(2) A grower may enter into contract farming whether on his own behalf or as a member of a growers' association, with no more than a single buyer in each season.

(3) A grower who enters into contract farming shall commit the whole of his crop for that season to the single buyer.

(4) Where a grower has registered more than one estate for growing tobacco, he may enter into contract farming in respect of each registered estate.

(5) Only the single buyer with whom the grower concerned entered into a contract shall purchase tobacco from the grower he entered into a contract with.

(6) A buyer shall not purchase tobacco under contract farming except—

(a) at licensed tobacco floors for the sale of tobacco designated by the Commission; and

(b) in the presence of officials of the Commission.

(7) A buyer who enters into contract farming, shall buy the whole of the grown tobacco of the growers tobacco agreed to be produced under the contract unless the contract was fundamentally breached by the grower.

Minimum
terms under
contracts

45.—(1) The Commission shall in consultation with growers and buyers prescribe the minimum terms and conditions to be included in a contract for tobacco farming and marketing.

(2) The terms and conditions relating to pricing of inputs by a buyer to a grower and to deductions from the proceeds of tobacco shall be set out clearly in the contract.

(3) In case of funded contract farming, production of alternative crops maybe the term of the contract but the buyer shall not provide the inputs for the alternative crops.

46.—(1) A buyer shall register all contracts entered into pursuant to section 44, with the Commission before any husbandry practice to grow the contracted tobacco has taken place. Register of contracts

(2) The Commission shall maintain a register of contracts which shall contain the following information—

(a) full name and registration number of each grower who has entered into a contract;

(b) information about the growers' association which the grower belongs to;

(c) the type of tobacco grown and the location of place where the tobacco is being grown; and

(d) the name of the buyer he has entered into a contract with.

(3) The register of contracts shall be made available for inspection upon request during the office hours of the Commission.

47.—(1) Any buyer or person who—

(a) buys or sells tobacco under contract farming at any place without a contract agreement registered with the commission; Selling tobacco without a contract

(b) buys tobacco produce under contract farming from a grower with whom there are no contractual arrangements registered with the commission;

(c) sales tobacco produced under contract farming to a buyer with whom there are no contractual arrangements registered with the commission;

(d) or in any other way contravenes section 45, commits an offence and shall be liable to—

(i) in the case of a buyer, a fine of K10,000,000; and

(ii) in case of a grower, a fine equivalent to twenty percent (20%) of the value of the tobacco sold or purchased.

(2) Notwithstanding subsection (1), the Commission may confiscate the tobacco sold or purchased in contravention of this section.

PART VII—NON-CONTRACT FARMING AND MARKETING

48.—(1) A grower may produce tobacco independently without being contracted by a buyer. Non-contract farming and marketing

(2) Tobacco produced pursuant to subsection (1) shall be marketed under auction marketing arrangement.

(3) A buyer shall not purchase tobacco under auction marketing except—

(a) at licensed tobacco floors designated by the Commission for the sale of tobacco; and

(b) in the presence of officials of the Commission.

Minimum
terms and
conditions
for auction
marketing

49. The Commission shall prescribe the minimum terms and conditions to be included in a registration certificate issued under section 36 to tobacco growers.

Register of
tobacco
growers on
auction
marketing

50.— (1) The Commission shall maintain a register of tobacco growers on auction marketing arrangement which shall contain the following information—

(a) full name and registration number of each tobacco grower;

(b) information about the tobacco growers' association to which the tobacco grower belongs to; and

(c) the type of tobacco grown by the tobacco grower and the location of the tobacco estate.

(2) The register of tobacco growers shall be made available for inspection upon request by buyers, registered tobacco growers and tobacco growers' associations during the office hours of the Commission.

Buying and
selling tobacco
on a non-
contractual
basis

51.— (1) Any buyer or person who buys or sells tobacco grown independently at any place under non-contractual arrangements or in any other way in contravention of section 48, commits an offence and shall be liable to—

(a) in the case of the buyer, a fine of K10,000,000; or

(b) in case of the grower, a fine equivalent to twenty percent of the value of the tobacco sold or purchased.

(2) Notwithstanding subsection (1), the Commission may confiscate the tobacco sold or purchased in contravention of this section.

PART VIII — TOBACCO GROWERS' ASSOCIATIONS

Tobacco
growers'
associations
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Cap. 47:02

52.— (1) An association of tobacco growers shall have a membership of not less than five thousand growers and shall be incorporated under the Trustees Incorporation Act or the Co-operative Societies Act.

(2) The Minister, in consultation with the Commission and tobacco growers' associations registered under this Act, shall facilitate the establishment of an apex tobacco growers' association

which shall be the representative organization of all associations of tobacco growers and tobacco growers in Malawi.

53.— (1) A person shall not belong to more than one tobacco growers' association.

Registration
and
membership
of tobacco
growers'
associations

(2) Tobacco growers shall be free to join an association of their choice and pay subscription or affiliation fees on their own and the Commission shall not cause to be deducted anything from the growers' proceeds in respect of their membership or activities performed by the growers' associations on behalf of the growers.

(3) Notwithstanding any provision of the Co-operatives Societies Act, a member of a tobacco growers' association may not join another tobacco growers' association or form another tobacco growers' association whilst the tobacco growers' association of which he is a member has outstanding loans or other obligations under this Act or any other written law.

Cap. 47:02

(4) Notwithstanding any provision of the Co-operatives Societies Act, where a tobacco growers' association has become bankrupt or has otherwise been dissolved, due to failure to perform or other malpractices, no person who held a position in such a tobacco growers' association shall be allowed to hold another position in any other tobacco growers' association for a period of seven years from the date of the collapse of the tobacco growers' association that is now bankrupt.

Cap. 47:02

54.— (1) A tobacco growers' association may represent its members in the production and marketing of tobacco but shall not enter into contracts on behalf of its members, unless authorized by the Commission.

Representa-
tion

(2) The Commission's authorisation to an association under subsection (1) may be subject to any conditions as the Commission may impose.

55. The Commission may issue an annual licence to an association, if the Commission is satisfied with the provision and existence of the following—

Licensing of
associations

(a) the name, address and traceable location of permanent offices of the association;

(b) documents of incorporation and existence of a governance structure of the association;

(c) documents showing the profile and grower registration numbers of the directors and executive members of the association;

(d) proof of membership of not less than five thousand for an association; and

(e) capacity for prudent financial management and dissemination through annual audited accounts endorsed at an annual general meeting.

Register of
associations

56.— (1) The Commission shall keep and maintain a register of all growers' associations.

(2) The register shall identify, for each growing season, the number of associations registered, the number of growers represented and their registration numbers.

(3) The register may be made available for inspection, upon request, by buyers, tobacco floor operators, registered growers and growers' associations during the office hours of the Commission.

False
representation
of tobacco
growers

57. If any unregistered association purports to represent tobacco growers, a director, office bearer and any representative of the unlicensed association commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

PART IX—PRODUCTION, DELIVERY QUOTA AND EXCESS TOBACCO

Allocation of
production
quota

58.— (1) The Commission shall determine a total annual production volume for a season based on the trade requirements submitted by tobacco buyers.

(2) The Commission shall allocate a production quota to a grower upon the registration of the grower.

(3) For growers under contract farming, the Commission shall liaise with the tobacco buyer to determine the production quota to be allocated to the grower.

(4) For growers under non contract farming, the Commission shall determine the production quota to be allocated to the grower.

(5) A registered tobacco grower shall not produce tobacco in excess of the allocated production quota by a ten percent variance.

Allocation of
delivery quota

59.— (1) For the purpose of coordinating the delivery of tobacco in a buying season, the Commission shall allocate a delivery quota to—

(a) each buyer for tobacco under contract farming over the course of a buying season; and

(b) a grower for tobacco on an auction market arrangement over the course of the buying season.

(2) A delivery quota shall allow for the delivery of ten per cent variance on the agreed quota.

60.— (1) Where excess tobacco is yielded as a result of natural factors that are beyond the control of a grower, the Commission shall uplift the grower's quota but collect one quarter of the proceeds of the excess tobacco and remit the remainder to the grower.

Regulation of
excess
tobacco

(2) The one quarter collected by the Commission shall be put together with other fines collected by the Commission for the development of the tobacco industry.

(3) Where a grower wilfully produces excess tobacco in contravention of his production quota or the contractual agreement with his buyer, as the case may be, the Commission shall uplift the grower's production quota and collect three quarters of the proceeds of the excess tobacco and remit the remaining one quarter to the grower.

(4) The three quarters of the proceeds collected by the Commission shall be put together with other fines collected by the Commission for the development of the tobacco industry.

61. Any person who contravenes the provisions of this Part shall be liable to a fine of K2,000,000 and to imprisonment for one year.

General
penalty

PART X —TOBACCO TRANSPORTERS

62. A person shall not transport tobacco unless incorporated as a legal person and registered with the Commission.

Transporta-
tion of
tobacco

63.— (1) An application for registration as a transporter shall contain the following information—

Registration
and licensing
of tobacco
transporters

(a) name, address and location of offices of the transporter;

(b) documents evidencing legal status and existence of a governance structure for transport associations or business registration certificate for individual transporters;

(c) vehicles owned and registered in the name of the applicant or members of the applicant;

(d) capacity for financial capability to transport tobacco;

(e) documents evidencing existence of insurance and a valid goods in transit cover for the maximum load capacity of a vehicle;

(f) availability of tarpaulins to cover tobacco bales in the course of transportation;

(g) capacity for financial management through annual audited accounts; and

(h) any other information that the Commission may require.

(2) The Commission shall issue an annual licence to a transporter, if it is satisfied with the application submitted under subsection (1).

(3) Under non-contract farming, a farmer either as an individual or through an association, shall have the responsibility to hire and register a transporter with the Commission.

(4) The Commission shall by the 15th day of March of each season, publish a list of registered transporters together with a code of conduct for transporters in print and electronic media, and the Commission's website.

Transport
charges

64.— (1) The Commission shall, after consultations with relevant stakeholders, publish in newspapers of general nationwide circulation and by circulating to all relevant stakeholders, maximum transport rates per unit weight per kilometre applicable for transportation of tobacco for a particular season.

(2) Under contract farming, a buyer shall have the responsibility of hiring and making payment for the transportation of tobacco from an estate to tobacco floors.

(3) A person shall not deduct any fee or any other sum from a farmer other than the maximum transport rate published by the Commission and payable to the licensed transporter.

(4) Any person who contravenes subsection (3) commits an offence and shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

Licence not
transferable

65.— (1) An annual license issued under this Part shall not be transferable.

(2) A transporter shall not use for any purpose, a license of registration which is not his own.

(3) The Commission may revoke the licence where a transporter contravenes any provision under this Part or any regulations, order or directive under this Part.

Transportation
without
registration

66. Any transporter who is not registered by the Commission and who, by himself or through his agents, transports or causes to be transported, tobacco commits an offence and shall be liable to penalty of K10,000,000 and to imprisonment for five years.

PART XI — LICENSING OF BUYERS

67.— (1) A person shall not buy tobacco unless he is licensed as a buyer by the Minister. Buyers to be licensed

(2) For purposes of this Part, only bodies corporate that demonstrate good financial standing and capacity to purchase tobacco under seasonal requirements may be licensed as buyers.

(3) A licensed buyer shall purchase tobacco in accordance with its business strategy and shall be obligated to participate in both contract farming and auction marketing.

(4) Subject to subsection (1), the Commission may authorize a tobacco buyer to start buying tobacco if the application for a buying licence was accepted but delayed in issuing the same to the buyer.

68.— (1) The Commission shall keep and maintain a register of all licensed buyers. Register of buyers

(2) The register shall identify for each growing season, the tobacco buyers' requirements including number of contracts and production quota for a buyer for that season, according to the information provided to the Commission under this Part.

(3) The register shall not disclose any details of the trade requirements and the contracts into which the buyer has entered, other than the existence of the contracts themselves.

(4) The Commission shall avail the register for inspection, upon request, by registered growers and growers' associations during the office hours of the Commission.

69.— (1) Any buyer or person who buys tobacco without a licence or in contravention of any of the provisions of this Part, commits an offence and shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for five years. Buying tobacco without a licence

(2) In addition to the penalty in subsection (1), a court may order that any tobacco connected with the offence be forfeited to the Commission.

PART XII—TOBACCO PRICES

70.— (1) Before the beginning of each tobacco growing season, the Minister shall set minimum prices per grade of tobacco, resulting in a price grade matrix for the tobacco selling season which shall provide prices below which a buyer shall not purchase tobacco. Minimum tobacco prices

(2) The setting of the minimum prices shall be done in consultation with the Minister responsible for industry and trade, the Commission, a recognised tobacco research institution, tobacco buyers, tobacco floor operators and growers through tobacco growers' associations.

(3) In setting up the minimum prices, the Minister shall take into account all relevant factors, including —

- (a) current year's cost of production;
- (b) previous year's prices;
- (c) crop throw;
- (d) global demand for tobacco;
- (e) good agricultural practices;
- (f) need to protect the interests of both growers and buyers; and
- (g) any other matter the Minister considers relevant.

(4) Tobacco shall not be bought at a price below set grade minimum prices.

Penalty for
buying below
set minimum
prices

71.— (1) Any buyer who buys tobacco below the set minimum prices shall, at the direction of the Commission, pay to the grower, the difference between the set minimum price and the price at which the buyer bought the tobacco and the Commission shall notify the buyer within twenty four hours of the sale.

(2) If a buyer buys up to five bales of tobacco below the set minimum prices, the buyer commits an offence and shall be liable to penalty of up to twenty percent of the value of tobacco so purchased and, in addition, the Minister may revoke the buyer's licence.

PART XIII—TOBACCO GRADERS

Tobacco
graders to be
licensed

72.— (1) A person shall not carry on business as a tobacco grader unless he is licensed as a tobacco grader, by the Minister.

(2) Any person who carries on the business of a tobacco grader without a licence commits an offence.

(3) The Minister shall not license as a tobacco grader, any transporter, holder of a tobacco buyer's licence, tobacco floor operator, grower, and a growers' association.

Commercial
tobacco
grading
premises to
be licensed

73.— (1) All premises where commercial grading of tobacco is carried out shall be licensed by the Minister.

(2) Any person who runs commercial tobacco grading premises without a license commits an offence.

74.— (1) The Commission shall, after consultations with relevant stakeholders publish in at least two newspapers of general nationwide circulation in Malawi, and circulate to all relevant stakeholders, commercial grading charges applicable for a particular season.

Commercial
grading
charges

(2) A person shall not deduct any fee or any other sum from a farmer other than the grading charges published by the Commission and payable to the licensed commercial grader.

(3) Any person who contravenes subsection (2) commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for one year.

75.— (1) The Commission shall appoint grading inspectors who will have the power of entry to all licensed commercial grading premises for the purpose of inspecting the premises themselves and the grading of tobacco on the premises.

Grading
inspectors

(2) A grading inspector shall have power to open any bale of tobacco at any licensed tobacco floor or at any commercial grading premises.

(3) Any person who obstructs or impedes a grading inspector in the exercise of his powers under the Act commits an offence.

76.— (1) Every grader shall label distinctively, each bale of tobacco graded by him with his licensed name and number for identification purposes.

Labelling of
graded
tobacco

(2) Any grader who fails to label his graded tobacco commits an offence.

77. Any person who commits an offence under this Part shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

Offences and
penalties

PART XIIV—TOBACCO FLOORS

78.— (1) All tobacco shall be sold at licensed tobacco floors.

Tobacco
floors to be
licensed

(2) The Minister shall license premises that it considers sufficient and suitable for the sale of tobacco, in accordance with the criteria under subsection (3).

(3) The Minister may issue a tobacco floor licence referred to in subsection (2) to an applicant, if he is satisfied that the applicant has—

(a) a place of operation with sufficient storage facilities and off-loading bays;

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(b) met the health and safety requirements in accordance with the Occupational Safety, Health and Welfare Act;

(c) an information and communication technology system with the ability to synchronize with the Commission's central database;

(d) adequate security;

(e) utilities;

(f) experienced staff;

(g) capacity to handle a minimum of five thousand bales per day; and

(h) financial standing or capacity to be able to pay farmers within twenty four hours from date of sale.

(4) An application for a tobacco floor licence shall include—

(a) the name and address of the legal personality of the prospective operator of the tobacco floor; and

(b) the name and address of each director and the shareholding of each shareholder.

(5) When the particulars referred to in subsection (3) have been approved by the Minister, the Minister may issue a licence authorizing the operation of a tobacco floor by the applicant.

(6) A person shall not use any premises for the sale of tobacco unless he holds a tobacco floor licence.

(7) Any person who buys or sells tobacco at any place other than a licensed tobacco floor or uses any premises for the sale of tobacco without holding a tobacco floor licence commits an offence.

Operation of
licensed
tobacco floors

79.— (1) A tobacco floor operator may be allowed to operate more than one licensed tobacco floor.

(2) A tobacco buyer, its subsidiary or its parent company shall not be allowed to operate a tobacco floor.

Opening of
tobacco floors

80.— (1) The Commission shall fix for each last tobacco floor days on which or hours during which tobacco of different types may be offered for sale and shall be a condition of every tobacco floor licence that tobacco may only be offered for sale on such days or during such hours.

(2) Any fixture of the date and hours made by the Commission under subsection (1) shall be—

(a) published by posting a copy in a prominent position at the licensed tobacco floor to which it applies and shall come into force on the date of such publication; and

(b) broadcasted as a public announcement by the media.

81. The Commission may inspect tobacco floors premises at any time. Inspection of tobacco floors

82. Any person who commits an offence under this Part shall be liable to a fine of K10,000,000 and to imprisonment for five years. Sale of tobacco

PART XV—SALE OF TOBACCO

83. A person shall not be permitted to sell tobacco on tobacco floors unless he is a registered grower. Sale of tobacco

84. Prior to a sale, the Commission shall classify tobacco on a tobacco floor into grades determined by the Commission. Classification of tobacco

85.— (1) The prices of tobacco on all licensed tobacco floors shall be determined according to— Pricing

(a) the grade of the tobacco as classified by the Commission;

(b) the effect of the market forces on the tobacco industry; and

(c) the price for each grade as agreed in a contract between a grower and buyer.

(2) A buyer shall not purchase tobacco at a price below the set minimum grade price for tobacco, whether under contract farming or auction market arrangement.

86.— (1) In the event of disagreement between a grower and a buyer regarding the grade of the tobacco, the Commission shall be the arbitrator. Dispute resolution

(2) In the event of a dispute between a grower and the buyer under contract farming and marketing as regards the ambiguity of a grade due to mixtures of tobacco within a bale, the grower and the buyer shall negotiate in good faith to find an amicable solution.

(3) In the event that the negotiation in subsection (2) fails, the Commission shall be the arbitrator.

(4) If the tobacco displays some demonstrable defect or damage, the buyer may refuse to purchase that tobacco from the grower.

87.— (1) A person shall not accept for sale, buy, sell or offer to sell, or permit the sale on licensed tobacco floors, tobacco which was grown outside Malawi unless the sale of the tobacco has been authorized by the Minister. Sale of tobacco grown outside Malawi

(2) Subject to subsection (1), before the tobacco grown outside Malawi is sold on a licensed tobacco floor, the holder of the

tobacco floor licence shall make known to all buyers on the tobacco floor, the presence of and the country within which the tobacco in question was grown.

(3) Tobacco grown outside Malawi which is offered for sale on a licensed tobacco floor shall—

(a) be sold separately from tobacco which was grown within Malawi; and

(b) not be purchased for the purposes of manufacture in Malawi without the written authority of the Minister.

(4) The Minister shall not authorize the purchase of tobacco for the purposes of subsection (3)(b) except under a customs or trade agreement between Government and the country within which the tobacco was grown.

Delivery to
tobacco floors
of tobacco
which was
grown in
previous
growing
season

88.— (1) A person shall not deliver to a licensed tobacco floor, tobacco which was grown in a previous growing season unless he is a holder of a fumigation certificate issued not more than thirty days before the tobacco is delivered to the floor by a person authorized by the Commission to the effect that—

(a) the tobacco has been fumigated in a manner prescribed by the Commission; and

(b) the tobacco or a representative sample of the tobacco has been inspected and no evidence of the presence of a living pest of tobacco has been found.

(2) Before tobacco referred to in subsection (1) is offered for sale on a licensed tobacco floor, the sales supervisor on the floor shall make known to all the buyers on the floor the year in which the tobacco was grown and the state of the tobacco.

(3) A buyer shall not be compelled to buy any tobacco brought to the tobacco floor in contravention of this section.

Tobacco to be
sold only on
sale days

89. The holder of a tobacco floor licence shall not allow tobacco to be sold or offered for sale on his floor—

(a) on any day or time in the selling season other than a day or time fixed by the Commission; or

(b) at any time in any period in a selling season during which the Commission or a sales supervisor has prohibited sales on his tobacco floor.

Deductions
and payments
from
purchase
price of
tobacco

90.— (1) A buyer shall pay the purchase price of tobacco to the holder of a tobacco floor licence on whose floor the tobacco is sold.

(2) The holder of a tobacco floor licence, after deducting—

(a) the charges which he is authorized to make in terms of this Act;

(b) the amount of the levy, if any, which he may be required to collect in terms of this Act; and

(c) any amounts deductible as per issued garnish orders or charging orders,

shall, subject to the Personal Property Security Act, pay the balance of the purchase price to the seller or a person authorized by the seller, in writing.

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91. The Commission may, after prior consultation with the holders of tobacco floor licences, and with the approval of the Minister, fix a tariff for weighing, storage, handling, selling and commission charges, which shall be published in the *Gazette*, and it shall be a condition of every tobacco floor licence that the licensee's charges shall not exceed such tariff.

Charges for holders of tobacco floor licences

92.— (1) The Commission shall give notice to the owner of tobacco which remains unsold on a licensed tobacco floor after the last day of the selling season to remove the tobacco from the floor within a period fixed by the Commission and where the owner fails to remove the tobacco, the tobacco shall be sold as carry over stock in the next season under special permit of the Commission.

Disposal of unsold tobacco

(2) The Commission shall arrange for the collection of the surplus tobacco into a central warehouse and shall arrange for the sale of the tobacco no later than the opening day of sales in the following marketing season.

(3) The cost associated with the storage of tobacco under subsection (2) shall be deducted from the proceeds of the sale of the tobacco.

93.— (1) A sales supervisor may attend a sale of tobacco and regulate the sale and if, in his opinion, the sale is not in compliance with the provisions of this Act relating to the sale of tobacco, suspend or prohibit the sale for any period as he may determine and for that purpose, give any directions to the holder of the tobacco floor licence or the tobacco floor manager as considered appropriate.

Supervision, suspension and prohibition of sales on licensed tobacco floors

(2) For purposes of subsection (1), the Commission shall supply—

(a) a sales supervisor with instructions, in writing, governing his powers to—

(i) control, regulate, suspend or prohibit sales of tobacco on licensed tobacco floors;

(ii) give directions as are referred to in subsection (1); and

(b) holders of tobacco floor licences with copies of all instructions referred to in paragraph (a).

(3) It shall be an offence to obstruct a sale supervisor on duty on the tobacco floor.

Offences
related to sale
of tobacco

94.— (1) Any holder of a tobacco floor licence who accepts for sale on his tobacco floor, tobacco grown by an unregistered grower, or any unregistered grower who presents tobacco for sale at a licensed tobacco floor, commits an offence and shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.

(2) Any person who accepts for sale, buys or sells or offers to sell, or permits the sale on licensed tobacco floors of tobacco under contract farming to a buyer other than the buyer to whom the grower is contracted, commits an offence and shall on conviction be liable to a fine of K10,000,000 and to imprisonment for five years.

(3) Any person who accepts for sale, buys or sells or offers to sell or permits the sale, on licensed tobacco floors of tobacco which was not grown within Malawi without authorization by the Commission, commits an offence and shall on conviction be liable to a fine of K10,000,000 and to imprisonment for five years.

(4) Any person who allows tobacco to be sold or offered for sale on his tobacco floor at times prohibited by the Commission or a sales supervisor, commits an offence and shall on conviction be liable to a fine of K10,000,000 and to imprisonment for five years.

(5) Any person who obstructs a sale supervisor in the course of his work on the tobacco floors, commits an offence and shall on conviction be liable to a fine of K5,000,000 and imprisonment for two years.

(4) In addition to the punishment under subsections (1) to (5), a court may order that all tobacco connected with the offence be forfeited to the Commission.

PART XVI—TOBACCO PROCESSING AND EXPORT

Licensing and
registration of
processing
factories

95.— (1) A person shall not process tobacco unless registered with the Commission.

(2) An application for registration shall contain the following—

(a) certificate of incorporation of the processor under the Companies Act;

Act No. 15 of
2013

(b) the name and address of each director and the shareholding of each shareholder of the processor;

(c) processing capacity of the processor;

(d) planned production of the processor;

(e) capacity, number and area of warehouses of the processor;

(f) existing transport facilities;

(g) number and quality of skilled, semi-skilled and non-skilled personnel employed or to be employed; and

(h) precautions taken with respect to the preservation of the environment.

(3) When the particulars referred to in subsection (1) have been approved by the Commission, the Commission shall issue a licence authorizing the processing of tobacco by the applicant.

(4) Upon receipt of a licence authorizing the processing of tobacco, the applicant shall start the operation of the processing factory within one year.

(5) The licence shall not be transferrable.

96.— (1) A person shall not export processed tobacco without a licence by the Commission and unless he is in possession of an export permit issued under the Control of Goods Act.

Tobacco
exports
Cap. 18:08

(2) Subject to the authorization of the Commission, export of unprocessed tobacco is prohibited.

97.— (1) The Commission may refuse to issue, cancel or suspend a licence under this Part, for a period as it considers appropriate.

Issuance and
review of
licences

(2) A licence issued under this Part shall be reviewed by the Commission every three years.

98.— (1) A person who processes tobacco without a licence issued by the Commission commits an offence and shall, on conviction, be liable to a fine of K10,000,000 and to imprisonment for five years and in addition, the tobacco shall, if recovered, be forfeited to the Commission.

Processing
and exporting
of tobacco
without
licences

(2) Any person who exports tobacco without a licence issued by the Commission or who exports unprocessed tobacco without the authorization of the Minister commits an offence and shall be liable to a fine of K10,000,000 and to imprisonment for five years.

PART XVII—UPROOTING OF TOBACCO PLANTS AND STALKS

Tobacco
plants and
stalks to be
uprooted

99.— (1) The Minister shall, by notice published in the *Gazette*, fix dates prior to which all tobacco plants and stalks of the preceding planting season shall be uprooted.

(2) The dates fixed under subsection (1) may vary in respect of—

- (a) tobacco grown in different parts of Malawi;
- (b) tobacco grown in nurseries, fields or gardens for seed;
- (c) tobacco of different types;
- (d) tobacco grown under irrigation; or
- (e) tobacco grown for research purposes.

Persons to
uproot
tobacco
plants and
stalks

100. The following persons shall be responsible for uprooting tobacco plants and stalks—

- (a) a registered grower,;
- (b) in the case of tobacco planted on land which is leased or subleased, the lessee or sub-lessee;
- (c) in the case of tobacco planted on land which is not leased or subleased, the owner of the land; and
- (d) in any other case, the person who planted the tobacco or caused it to be planted or both persons.

Failure to
uproot
tobacco

101. Any person who wilfully fails to uproot tobacco plants and stalks under this Part commits an offence and shall on conviction be liable to a fine of K2,000,000.00 and to imprisonment for one year.

PART XVIII—RESEARCH, TRAINING AND EXTENSION IN TOBACCO

Designation
of Tobacco
Research
Institution

102.— (1) The Minister shall designate such institution as he deems fit to be a Tobacco Research Institution provided that where in the opinion of the Minister there is no public institution with capacity to conduct the research and training in tobacco, the Minister may designate such institution not being a public institution as a tobacco research institution

(2) The Tobacco Extension service shall be done by a person possessing relevant qualification as set by the Commission.

(3) A person providing extension service shall be registered with the Commission before the beginning of each growing season.

PART XIX—MISCELLANEOUS

103.—(1) The Commission or any person authorized in writing by the Commission, may enter upon or into any land, building, vehicle, aircraft or vessel where tobacco is grown, purchased, stored or transported for the purpose of ascertaining that the provisions of the Act or the conditions of any licence or authority issued under the Act are being complied with.

Power of entry and production of documents

(2) For purposes of subsection (1), the Commission or any authorized person may call upon the owner, occupier or manager of the land, building vehicle, aircraft or vessel to—

(a) produce books or records that relate to such land, building, vehicle, aircraft or vessel as are used in connection with the subject matter of the Act;

(b) produce books or records that will enable the Commission to check the accuracy of any return or application made or required under the Act;

(c) permit samples of tobacco to be taken to ascertain that the Act and the conditions of any licence or authority are being complied with; or

(d) generally provide any information required by the Commission in pursuance of the Commission's powers and functions under this Act.

(3) Any person who obstructs or refuses entry to the persons referred to in subsection (1) or fails, neglects or refuses to produce books or records or to permit samples to be taken or to provide information under subsection (2), commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for one year.

104.—(1) A return or information in a return furnished to the Commission by a holder of a licence under the Act shall not be delivered or disclosed to any person other than the Commission, without the permission of the licensee.

Confidentiality of returns

(2) Any person who contravenes subsection (1) commits an offence and shall be liable to a fine of K3,000,000 and to imprisonment for two years.

(3) A return referred to in subsection (1) may, if required by the Director of Public Prosecutions for the purposes of investigating or prosecuting an alleged offence, be delivered to the Director of Public Prosecutions or any persons as the Director of Public Prosecutions may direct.

Licence
requirements

105.— (1) All licences granted under the Act shall be—

(a) in the prescribed form;

(b) valid for a specified period;

(c) issued subject to payment of a prescribed fee and any other terms and conditions as the Commission may prescribe; and

(e) published in the *Gazette*, provided that the publication shall ensure respect for confidential information and business secrets.

Refusal to
issue licences

106.— (1) The Commission may refuse to issue licences under this Act where it would not be in the interest of the tobacco industry to do so and including on the following grounds—

(a) non-adherence to minimum licensing requirements;

(b) conflict of interest; or

(c) poor previous performance of the applicant.

(2) A refusal under subsection (1) shall be notified to the applicant, in writing, giving reasons for the refusal.

Powers to
suspend, vary
or cancel
licences

107.— (1) The Minister or the Commission, as appropriate, may suspend, vary or cancel licences issued under the Act.

(2) A decision under subsection (1) shall be notified to the licence holder in writing, giving reasons for its suspension, variation or cancellation.

(3) The licence holder may apply for a review of the decision of the Commission to the Minister.

Right of
aggrieved
party to
review or
appeal

108.— (1) Any applicant aggrieved by a decision of the Commission, under section 106 may, within seven days from the date on which the decision was communicated to him, apply to the Minister for review of the decision.

(2) The Minister shall respond to the application for review under subsection (1) in writing within fourteen days from the date of receipt of the application.

(3) A decision of the Commission, including a decision to refuse to issue, suspend, vary or cancel a licence, shall not become effective until—

(a) where no appeal is filed with the Minister, the end of the period of seven days from the date the decision was communicated to the applicant; or

(b) where an appeal is filed with the Minister, the end of the period of fourteen days from the date of receipt of the application for review by the Minister.

(4) An applicant aggrieved by a determination of the Minister on review may apply for a review of the decision of the Minister to the High Court.

109.— (1) Any person to whom a licence has been issued under this Act shall display such licence at a conspicuous place or produce it when so required by the Commission, as the case may be. Display of licence

(2) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine of K1,000,000.

110.— (1) Any person who— False statements

(a) in connection with an application for registration or any licence or permit under the Act; or

(b) in connection with any return or information required by this Act or any record or book kept in pursuance of the Act,

knowingly makes any statement or gives any information which is false in any material particular, commits an offence and shall be liable to a fine of K2,000,000 and to imprisonment for one year.

111. Any person who obstructs or hinders any person in the performance of his duties under the Act, commits an offence and shall on conviction be liable to a fine of K2,000,000 and to imprisonment for one year. Hindrance of person performing duty

112. The Minister may by order published in the *Gazette* prescribe cess, levies and charges at an expressed rate per stated unit of net weight to be paid, levied and collected in respect of— Cess, levies and charges

(a) tobacco sold at licensed tobacco floors in Malawi;

(b) tobacco exported from Malawi; and

(c) tobacco imported into Malawi.

113.— (1) The Minister may make regulations for implementing the provisions of the Act and prescribing all matters which are necessary or contingent to be prescribed for the better carrying out or giving effect to the provisions of the Act. Regulations

114.— (1) The Tobacco Act and the Control of Tobacco Auction Floors Act are hereby repealed. Repeals and Savings
Cap. 65:02
Cap. 65:03

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) and 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 under this Act; and

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

(3) Anything done in accordance with the Acts repealed by subsection (1) prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(4) Any person who immediately before the commencement of this Act is a person registered under the Acts repealed by subsection (1) shall on the commencement of this Act, be deemed to be registered under this Act.

Transfer of
assets and
liabilities

115.— (1) Property, assets, funds liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Tobacco Control Commission shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or against the Commission to the same extent as they were enforceable by or against the Tobacco Control Commission.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within a period that the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

(a) make entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make the certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsement on the deeds or other documents as may be presented on the registering authority relating to the title, right or obligation concerned.

Transitional
provisions

116.— (1) Any licence issued or permission granted in accordance with the repealed Acts shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Commission or the Minister, as the case may be, under this Act.

(2) Any approval for equipment given under the repealed Acts shall continue to be in force and be deemed to have been made under this Act.

(3) Members of the Tobacco Control Commission, as constituted immediately before the coming into force of this Act, shall continue to hold office as members until the appointment of new members of the Commission in accordance with this Act.

(4) The Commission shall, within twenty-four months from the commencement of this Act, transfer all licences and certificates issued or granted under the repealed Acts, as if the licenses had been granted under this Act and the Commission may extend the twenty-four months period by a period not exceeding six months after the expiry of the twenty-four months period.

117. Any legal proceedings commenced immediately before the coming into force of this Act by or against the Tobacco Control Commission, shall be deemed to have been commenced by or against the Commission established under this Act. Legal proceedings

118. Unless the Commission otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Tobacco Control Commission established under the repealed Act, shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Commission established under this Act, on terms and conditions of service not less favourable than their previous terms and conditions of service and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were employed, by the Tobacco Control Commission established under the repealed Act. Transfer of employees

Passed in Parliament this third day of December, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament