

Malawi

## Customs and Excise Act Chapter 42:01

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# Malawi

## Customs and Excise Act

### Chapter 42:01

Commenced on 1 June 1969

*[This is the version of this document as it was at 31 December 2014 to 30 June 2018.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act providing for the administration, management and control of customs and excise, the imposition and collection of customs, excise and other duties and for matters connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Customs and Excise Act.

#### 2. Interpretation

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

“**Advisory Committee**” means the Committee appointed by the Commissioner General under [section 128A \(1\)](#);

*[28 of 2010]*

“**aircraft**” includes balloons, kites, gliders, and every description of airship and flying machine, whether designed to be lighter or heavier than air and the equipment and furnishings thereof;

“**air freight licensee**” means any person licensed as such under [section 10](#);

“**allowable deficiency**” means any deficiency of which the Controller is satisfied in accordance with [section 103](#);

“**Appeals Committee**” means the Committee appointed by the Minister under [section 128A \(2\)](#);

*[28 of 2010]*

“**approved wharf**” means any place appointed as such under [section 9](#);

“**associated**”, in relation to a manufacturer, means—

- (a) being owned, wholly or partially, by the manufacturer; or
- (b) having common directors or shareholding with the manufacturer; or
- (c) purchasing more than 30 per cent of the manufacturer’s total output in any three consecutive months;

“**authorized agent**” means any agent authorized as such in accordance with [section 127](#);

*[25 of 1988]*

“**boarding station**” means any place appointed as such under [section 9](#);

“**bonded warehouse**” means any place licensed as such under [section 41](#);

“**business**” means any trade, commerce or manufacture;

[25 of 1988]

“**by authority**” means by the authority of the Controller or of any person lawfully performing his duty in the matter in relation to which the expression is used;

“**cargo**” includes all goods imported or exported in any conveyance, other than such goods as are required as stores for consumption or used by or for that conveyance, its crew and passengers, and the *bona fide* personal baggage of such crew and passengers;

“**carriage coastwise**” means all transportation of goods subject to customs control, other than goods in transit, by air or by water, from any place within Malawi to any other place within Malawi;

“**coastwise aircraft or vessel**” means any aircraft or vessel while engaged in carriage coastwise;

“**consumption**” means consumption or use in Malawi;

“**Controller**” means the person appointed to be or to act as Controller of Customs and Excise under [section 6](#);

“**conveyance**” means any aircraft, vessel or vehicle;

“**crew**” means every person employed in any capacity on any conveyance;

“**customs agent**” means any person licensed as such by the Controller under [section 128](#);

“**customs airport**” means any port appointed as a customs airport under [section 8](#);

“**customs area**” means any place licensed, appointed or approved for the inspection, deposit, storage or manufacture of goods subject to customs control;

“**customs laws**” means this Act and any other written law relating to the Department or to the import, exportation, carriage coastwise or carriage in transit of any goods;

“**customs warehouse**” means any place appointed as such under [section 9](#);

“**declaration**” means a statement, written, including by means of computer data transfer or oral, to an officer of information required to be supplied under any of the customs laws together with any other document or statement as may be prescribed, or required by the proper officer, under the customs laws;

[11 of 2003]

“**Department**” means the Department of Customs and Excise of Malawi;

“**distiller**” means any person who either by himself or through his agent or servant in any way manages, supervises or carries on any distillery;

“**distillery**” means any place where any process of distillation of spirits is carried on, or where any process of rectification of spirits is carried on, or where any spirits are manufactured or produced from any substance by any process other than fermentation;

“**drawback**” means a refund of all or part of any customs or excise duties paid in respect of goods where such goods are exported or used in a manner or for a purpose prescribed as a condition for granting drawback;

“**dutiable goods**” means any goods in respect of which the full duties have not been paid;

“**duty**” includes any duty, cess, excise, value added tax, or withholding tax imposed by or under the customs laws;

[3 of 1993]

[18 of 2013]

“**enter**” in relation to goods means to enter such goods for—

- (a) consumption;
- (b) temporary importation;
- (c) warehousing in a bonded warehouse;
- (d) rewarehousing;
- (e) carriage coastwise;
- (f) transit; or
- (g) exportation,

as appropriate, in accordance with the provisions of [section 5](#);

“**entry**” means a declaration accepted and, where appropriate, signed in accordance with [section 5](#), and in the case of a declaration made by computer data transfer, upon registration of such declaration;

*[11 of 2003]*

“**entry of premises**” for the purpose of Part XI means an entry of premises approved by the Controller in accordance with [section 66](#), and includes any approved amendments thereto;

“**entered premises**” means premises described in an entry of premises;

“**excisable goods**” means any goods in respect of which the full excise duties have not been paid;

“**excise licence**” means a licence granted under [section 64](#);

“**excise warehouse**” means any entered premises approved as an excise warehouse under [section 73](#);

“**export**” means to take or cause to be taken out of Malawi by any means or to load for use as stores on an aircraft or vessel proceeding to a foreign port either directly or indirectly;

“**foreign port**” means any place beyond the territorial limits of Malawi;

“**goods**” includes all wares, articles, merchandise, currency, baggage, stores, conveyances, animals, matter or things of any description;

“**goods in transit**” means goods imported for the sole purpose of being exported after transportation through or transshipment in Malawi;

“**goods grown or produced**” does not include goods which have been subjected to any process of manufacture;

“**import**” means to bring or cause to be brought into Malawi by any means;

“**imported by**” means importations by or on behalf of a person and clearances of imported goods out of a bonded warehouse by or on behalf of a person;

“**licensed private siding**” means any place licensed as such under [section 10](#);

“**manufacturer**” means any person who manufactures goods and includes any person selling or otherwise dealing in goods manufactured by a manufacturer and who is associated with the manufacturer;

“**master**” in respect of—

- (a) a vessel means the person, other than a pilot or harbour-master, for the time being having or taking control, charge or command of such vessel;

(b) an aircraft means the person for the time being having or taking control, charge or command of such aircraft;

“**merchandise**” means goods for sale, resale, barter, exchange or for any other commercial or industrial transaction or use, or being the subject of any mercantile transaction;

“**officer**” means any person upon whom the powers and duties of an officer are conferred or imposed under [section 7](#);

“**owner**” in relation to—

(a) a conveyance, includes any authorized agent of the owner, or any person who receives freight or other charges payable in respect of such conveyance and includes the master or person in charge of such conveyance;

(b) goods, includes any person (other than an officer acting in his official capacity) being or holding himself out to be the owner, importer, exporter, consignee, authorized agent, or in possession of, or beneficially interested in or having control of or power of disposition over, the goods;

“**package**” means any container, wrapping or outer cover and its contents, or any bundle or single piece where the goods are not packed;

“**person**” includes a partnership of two or more persons properly constituted under any written law;

*[25 of 1988]*

“**person in charge**” in respect of a vehicle means the driver or person having control of such vehicle;

“**place**” includes any building, premises, structure or area of land or water;

“**port**” other than a foreign port, means any place appointed as such under [section 8](#), and includes any customs airport;

“**port of exportation**” in relation to goods or a person means the port from which such goods are exported or such person departs to a foreign port;

“**port of importation**” in relation to goods or a person means the port where such goods are imported or such person arrives from a foreign port;

“**postal article**” means any letter, post card, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel, package or other article in course of transmission by post;

“**post office**” means the Department of Posts and Telecommunications;

“**prohibited goods**” means any goods the importation or exportation of which is prohibited by or under the customs laws, and includes any restricted goods imported or exported otherwise than in accordance with any conditions imposed under the customs laws;

*[30 of 1969]*

“**proper officer**” in relation to any power or duty under the customs laws, means any officer who by instruction, or with the concurrence, of the Controller exercises or performs that power of duty;

“**quantity**” includes capacity and measures;

“**rate of duty**” includes free of duty;

“**restricted goods**” means any goods the importation or exportation of which is prohibited save in accordance with any conditions imposed under the customs laws;

“**revenue**” means any amounts collectable by the Department in accordance with customs laws;

“**rewarehousing**” means the removal of goods from one bonded warehouse to another;

“**smuggling**” means the importation or exportation, or the loading onto or unloading from any conveyance, or the diversion for consumption, of any goods subject to customs control with intent either to defraud the Government of any duty payable thereon or to evade any of the provisions of the customs laws;

[5 of 1972]

“**specified country**” means a country specified by the Minister for the purposes of [section 89](#);

“**still**” includes any distilling apparatus and any part thereof;

“**stores**” means stores of or for an aircraft or vessel;

“**surety**” means any person who accepts legal responsibility for the financial consequences of the non-fulfilment of another’s obligations under the customs laws;

“**tariff**” means one of the tariffs prescribed by the Minister under [section 83](#);

“**temporary store**” means any place appointed as such under [section 9](#);

“**train**” includes every rail unit whether alone or not and whether self-propelled or otherwise;

“**uncustomed goods**” means dutiable goods and any goods, whether dutiable or not, which are in any way dealt with contrary to the provisions of the customs laws;

“**vehicle**” means any train, motor car, van, lorry, trailer, cart, car, bicycle, animal or other similar means of conveyance drawn or propelled along or under the ground whether by direct or transmitted mechanical, electrical or animal power, and any such means of conveyance drawn or propelled through the air by means of, or along, an overhead cable or rail or other such system, whether by direct or transmitted mechanical, electrical or animal power, and includes the equipment, furnishings, harness, tackle and fittings thereof, but does not include an aircraft or vessel, except any such aircraft or vessel adapted for use on land while it is being so used;

[10 of 1995]

“**vessel**” means any ship, boat or craft of any description used in water navigation whether self-propelled or otherwise and includes the equipment, furnishings, tackle and fittings thereof;

“**warehoused**” means deposited in a bonded warehouse with the authority of the owner of the warehouse or the person in charge thereof.

[25 of 1988]

[14 of 2001]

[11 of 2003]

[28 of 2010]

[18 of 2013]

### 3. Goods subject to customs control

Goods subject to customs control include the following—

- (a) all imported goods (whether imported temporarily or otherwise) from the time of importation, and all excisable goods, until they are accounted for to the satisfaction of the proper officer;
- (b) all conveyances within Malawi—
  - (i) from the time of importation, until released from customs control by the proper officer;
  - (ii) proceeding to a foreign port from anywhere within Malawi, until exportation; or

- (iii) carrying goods subject to customs control;
- (c) all goods under drawback from the time of their entry for exportation until exportation;
- (d) all goods entered under rebate of duty, until the conditions under which such rebate was granted are fulfilled;
- (e) all goods being exported, and all goods intended for exportation from the time they are accepted for carriage for exportation, until duly exported;
- (f) all uncustomed goods;
- (g) all goods which are under embargo, which are seized, forfeited or abandoned, or which are in a state warehouse.

#### **4. Time of importation and exportation**

- (1) The time of importation of any goods shall be the time at which such goods cross the border into Malawi.
- (2) The time of exportation of any goods shall be the time at which such goods cross the border out of Malawi.

#### **5. Entered goods**

For the purposes of the customs laws, goods shall be deemed to be entered when the appropriate declaration is presented in accordance and in compliance with the customs laws and is accepted and, if appropriate, signed by the proper officer, and when any duty due in respect of such goods has been paid or security has been accepted for the compliance with the provisions of the customs laws by the proper officer, or where such security has been waived by the proper officer in such case as he thinks fit.

*[5 of 1972]*

## **Part II – Administration**

#### **6. Appointment and Controller**

There shall be appointed a Controller of Customs and Excise who shall, subject to any written law relating to the public service, and to the special and general directions of the Minister, be in charge of the Department and shall be responsible for—

- (a) the administration of the customs laws;
- (b) the collection of and accounting for revenue; and
- (c) the administration of the Department and the persons employed therein.

#### **7. Delegation**

- (1) Except where otherwise specifically provided, where under the customs laws any power or duty is conferred or imposed on the Controller then, subject to such conditions as he may specify, the Controller may delegate to any person on whom the powers and duties of an officer are conferred or imposed under subsection (2) the exercise of such power or the performance of such duty and thereupon from the date specified by the Controller the person to whom the delegation is made shall have and may exercise such powers and shall perform such duties subject to any such conditions.

- (2) The Controller may, subject to the consent of the Minister and to such conditions as the Minister may decide, confer or impose any power or duty of an officer under the customs laws upon—
  - (a) any public officer or class of public officers, whether or not an officer or class of officers of the Department;
  - (b) any police officer;
  - (c) any person, not being a public officer, who has consented thereto.

## **8. Prescriptions and appointments by Minister**

- (1) The Minister may prescribe—
  - (a) ports at or through which goods shall be imported or exported;
  - (b) ports known as customs airports at which aircraft from foreign ports shall land, from which aircraft leaving for foreign ports shall depart, and through which goods shall be imported or exported by air;
  - (c) roads or routes over which goods subject to customs control shall be conveyed to or from a particular port;
  - (d) customs offices for the collection of the revenue and the general administration of the customs laws;
  - (e) the hours during which goods shall not be imported or exported without the special permission in writing of a proper officer;
  - (f) generally or in particular the places at which goods shall be entered.
- (2) The Minister may, in writing, appoint—
  - (a) ports;
  - (b) customs offices;
  - (c) roads or routes,for particular or limited purposes and for such periods as may be specified in the appointment.
- (3) Any prescription or appointment made under this section shall be subject to such conditions as the Minister may specify.

## **9. Appointments by Controller**

The Controller may appoint—

- (a) boarding stations for conveyances arriving at or departing from any port or place for the purpose of boarding by or disembarkation of officers;
- (b) temporary stores for the deposit of goods subject to customs control;
- (c) customs warehouses for the deposit of unentered, unexamined, detained, abandoned, seized or forfeited goods for the security thereof or of the duties due thereon;
- (d) approved wharves for the loading and unloading of goods subject to customs control;
- (e) places at any port for the landing or embarkation of persons or for the loading or unloading of goods subject to customs control;
- (f) places for the examination of goods subject to customs control generally or any kind of such goods;

- (g) entrances and exits, whether general or special, to and from any customs area.

*[30 of 1969]*

*[20 of 1975]*

## 10. Licensed private sidings and air freight licensees

- (1) The Controller may, on application—
- (a) license places as licensed private sidings where imported goods subject to customs control may be delivered to the licensee:
- Provided that no goods so delivered shall be unpacked, taken into stock, sold or otherwise disposed of except as permitted by the proper officer;
- (b) license any person as an air freight licensee for the purpose of removal and handling of goods imported by air freight and the collection of duties due thereon.
- [5 of 1972]*
- (2) A licence issued under this section shall be subject to such conditions as the Controller may impose.
- (3) The Controller may, without assigning any reason, refuse to issue any licence under this section, impose such further conditions to or authorize such exceptions from any such licence as he considers necessary, and may revoke or refuse to renew any such licence which has been issued.
- (4) An applicant or licensee shall furnish such security as the Controller thinks appropriate for the protection of the revenue and compliance with the customs laws in respect of goods delivered or removed in accordance with any licence issued under this section.
- (5) An applicant or licensee shall pay such fee, not exceeding fifty pounds, as may be prescribed, and every licence shall expire on the 31st day of December next following the date of issue.

## 11. Conditions in respect of customs areas

- (1) The owner or occupier of any customs area licensed, appointed or approved under the customs laws shall provide such facilities for the examination and taking account of goods as the Controller may require.
- (2) Any customs area licensed, appointed or approved under the customs laws shall be subject to the following general conditions and such other conditions including the provision of suitable office, sanitary and lavatory accommodation and services therefor as the Controller may impose—
- (a) no person or conveyance shall enter or leave, and no goods shall be brought into or taken out of, a customs area otherwise than through an entrance or exit so appointed under [section 9](#) (g) or in accordance with the written permission of the proper officer;
- (b) any person or conveyance entering or leaving, and all goods which are being brought into or taken out of, a customs area may be detained by an officer for the purpose of search or examination;
- (c) no person shall enter into any part of a customs area contrary to any sign or notice clearly displayed or the direction of an officer, nor shall any person remain in a customs area or any part thereof, when requested by an officer to leave;
- (d) the master or person in charge of any conveyance which is within or is entering or leaving a customs area shall, when so requested by any sign or notice clearly displayed or by an officer by word or signal, cause such conveyance to stop for the purpose of search and examination, and no person shall cause the vehicle to be set in motion again until so permitted by the proper officer.



## 12. Hours of service

- (1) The working days and hours for service of the public shall be such as may be prescribed.
- (2) Where any person requests the attendance of an officer outside the hours for service of the public such request shall be dealt with in accordance with such conditions and upon the payment of such fees as may be prescribed.

## Part III – General powers of officers

### 13. Powers in respect of persons

- (1) An officer may in the course of his duty put such questions to any person entering or leaving Malawi or to any person whom the officer has reasonable grounds to suspect of being in possession of or harbouring or knowing the whereabouts of any goods subject to customs control or being in possession of information on any subject into which it is such officer's duty to enquire, as may be necessary for obtaining all information required under the customs laws, and such person shall then and there, or at a time and place specified by such officer, fully and truthfully answer all questions put to him by such officer, to the best of his knowledge and belief.
- (2) An officer may in the course of his duty stop and search or cause to be searched any person, including any person within or upon any conveyance, whom the officer has reasonable grounds to suspect of having in his possession or secreted about him any goods subject to customs control:

Provided that—

- (a) before being searched, such person may demand to be taken before the senior officer at that place who may, at his discretion, discharge such person or direct that he be searched;
  - (b) a female shall be searched only by a female;
  - (c) any such search shall be carried out in private.
- (3) An officer may in the course of his duty require from any person the production then and there, or at a time and place specified by such officer, of any book, document or thing which is required under the customs laws to be kept or exhibited and which is in the possession or custody or under the control of such person, and may require such person to explain any entry therein.

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### 14. Powers in respect of packages

- (1) An officer may in the course of his duty require the owner of any package containing or reasonably suspected of containing any goods subject to customs control to open such package and such officer may examine, weigh, measure, mark or seal the package or any of the goods contained therein and such owner shall not in any manner dispose of or remove any such package or goods until they have been released by the proper officer.
- (2) An officer may, in the absence of the owner of any such package mentioned in subsection (1), open and examine, weigh, measure, mark or seal such package or any of the goods contained therein:

Provided that, except in the case of a postal article or any package imported or to be exported by air freight, the officer shall not exercise the power conferred by this subsection until all reasonable efforts have been made to ascertain the whereabouts of the owner and to afford him, unless he is reasonably believed by the officer to have absconded, an opportunity to appear before the officer and to open the package concerned.

## 15. Powers of entry, etc., of proper officers

- (1) The proper officer may in the course of his duty—
  - (a) enter any customs area or any place used for the reception or storage of goods in use for or intended for trade or of documents or computer records and other electronic data relating to such goods, or any place in respect of which a search warrant has been issued, supervise any operations therein and carry out such examination and inquiry as he considers necessary and lock, seal or otherwise secure any part of such area or place or any goods there found for so long as he deems fit;
  - (b) take with him into such area or place any number of assistants or police officers as he may reasonably consider necessary;
  - (c) examine and make extracts from and copies of any book, document or computer records and other electronic data or thing which is required under the customs laws to be kept or exhibited in such area or place or which in his opinion may afford evidence of an offence under the customs laws;
  - (d) seize such books, documents or computer records and other electronic data or things as in his opinion may afford evidence of an offence under the customs laws;
  - (e) station immediately outside or close to any place where uncustomed goods or books, documents or computer records and other electronic data or things relating to uncustomed goods are suspected to be stored or kept, any officer or police officer as the officer may consider necessary for ensuring that no such goods or documents are removed therefrom until such time as the officer returns with a search warrant to enter the place.
- (2) Any person who is in occupation, ownership, or control of any customs area or any such place as is referred to in subsection (1) (a) and every person employed by him shall at all reasonable times furnish such facilities as are required by an officer for entering such place in the course of his duty and for the exercise of the powers conferred by subsection (1).
- (3) If an officer, having identified himself, and declared his official capacity and purpose, and having demanded admission into any place and having produced a search warrant when the circumstances so require, is not immediately admitted thereto, he and any person assisting him may at any time open or break open any door or window or break through any wall on such place for the purpose of entry and search:

Provided that no such entry and search may be made during the hours of darkness except in the presence of a police officer.
- (4) For the purpose of any search under this section, if any part of the place or any safe, chest, box or package is locked or otherwise secured and the keys thereof or other means of opening it are not produced upon demand, an officer and any person assisting him may open or break open such part, safe, chest, box or package in such manner as he may think appropriate.

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## 16. Powers in respect of conveyances, etc.

- (1) An officer may in the course of his duty—
  - (a) stop, enter and search any aircraft or vehicle arriving from or being about to depart to a foreign port, or any aircraft or vehicle within Malawi which he reasonably suspects may be carrying imported goods or goods to be exported;
  - (b) stop, board and search any vessel within Malawi.
- (2) The master or the person in charge of a conveyance shall cause his conveyance to stop and remain stationary for such period as an officer may require for the purposes of subsection (1).

- (3) The proper officer may station an officer on or in the vicinity of any conveyance while such conveyance is within Malawi and the master of any aircraft or vessel and the person in charge of any train upon or in the vicinity of which an officer is so stationed shall provide for such officer such accommodation and board as the Controller may reasonably require.
- (4) The proper officer shall, in the course of his duty on a vessel or vehicle, be entitled to travel free of charge as a passenger of such class as the Controller may direct.
- (5) The proper officer may stay on board any conveyance for so long as he deems necessary for the proper performance of his duties, and such officer—
  - (a) shall have free access to and the right to search every part of the conveyance and to examine all goods on board;
  - (b) shall have power to fasten down hatchways, doors and other openings, to lock up, seal, mark or otherwise secure any radio communications equipment, rooms, compartments, doors, windows or other openings and any packages or goods, including personal property on board; and
  - (c) for the purposes of the examination or security of any goods, may require such goods to be unloaded, or removed, at the expense of the owner of such conveyance.
- (6) An officer, in the course of his duty, who is unable to obtain free access to any part or place of a conveyance or to any package therein, may enter such part or place or open or break open such package in such manner as he thinks appropriate if the keys thereto or other means of opening such part, place or package are not produced on demand:

Provided that in the case of a part or place in an aircraft or vessel, force may be used only in the presence of a qualified pilot or engineer of an aircraft or the master or qualified officer or engineer of a vessel.
- (7) The Controller may establish customs barriers on any road or route for the control of imports and exports.

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## **17. Power to patrol freely**

- (1) An officer in the course of his duty, and any person assisting him, may enter upon, patrol and pass freely within any place other than a building.
- (2) An officer in charge of any conveyance employed in the prevention of smuggling, may take such conveyance to such place as he considers most convenient for that purpose and may there keep such conveyance for such time as he considers necessary for that purpose.

## **18. Power to take samples**

An officer may at any time take and retain, without payment, samples of any goods for examination or for ascertaining the duties payable thereon or for such other purposes as the Controller may consider necessary and any such samples shall be dealt with and accounted for in such manner as the Controller may direct:

Provided that any sample so taken shall be of the minimum quantity considered by the officer to be adequate for the purpose and shall, whenever possible, be returned to the owner.

## **19. Power of arrest**

- (1) An officer or a police officer may, if he has reasonable grounds to believe that any person is committing, or has committed, or is connected with the commission of any offence under the customs laws, arrest such person, and may, for such purpose, use all reasonable force.

- (2) An officer or police officer making any arrest in accordance with the customs laws may, where necessary, call upon any other person to assist him.
- (3) A person arrested under this section shall forthwith be taken before a magistrate, or to a police station, to be dealt with according to law.
- (4) Nothing in this section shall prejudice the power of a police officer to arrest any person for an offence against the customs laws which is cognizable to the police under any other written law.

## **20. Damage to premises etc. resulting from exercising of powers**

- (1) If the exercise of powers under this Part reveals no breach of the customs laws, any physical damage done by an officer, police officer or other person properly assisting him, in respect of persons, goods or premises, resulting from the exercise of such powers shall be made good at the expense of the Department, unless such damage was caused by or attributed to the obstruction of or the failure on the part of the person concerned to comply with the directions given by the proper officer, police officer or other person.
- (2) An action shall lie against the Controller for any damages allowable under subsection (1).

## **Part IV – Importation**

### **21. Prohibited and restricted imports**

- (1) Subject to subsection (2) no goods shall be imported contrary to the provisions of any written law prohibiting or restricting the importation of such goods.
- (2) The Minister may authorize the importation of any prohibited or restricted goods for the purpose of scientific investigation or study or for use as evidence in any judicial proceedings or for any other similar purpose.
- (3) Save as may be otherwise provided in the customs laws the provisions of this Act relating to prohibited goods and restricted goods shall not apply to goods in transit provided that such goods are duly exported.

### **22. Arrival of aircraft and vessels**

Except as provided in [section 170](#) the master of every aircraft or vessel arriving from a foreign port—

- (a) shall not, except with the prior permission of the Controller, cause or permit such aircraft or vessel to land or touch at any place within Malawi other than a port approved for such purpose;
- (b) shall, on arrival at any port, as quickly as conditions of such port permit, and without landing or touching at any other place, cause his aircraft or vessel to stop at the boarding station appointed for such port or, if no boarding station has been appointed, at an approved wharf;
- (c) shall, if required by the proper officer, disembark from such aircraft or vessel all passengers and their baggage for examination;
- (d) shall not, after arriving at such boarding station, or approved wharf, cause or permit such aircraft or vessel to depart therefrom except with the approval of the proper officer.

### 23. Boarding of aircraft or vessels

Except with the permission of the proper officer no person other than a pilot, harbour master, health officer or other public officer in the exercise of his duties—

- (a) shall board any aircraft which has arrived in Malawi from a foreign port until a declaration has been made in accordance with [section 24](#) and the proper officer has carried out such examination of the aircraft and any goods contained therein as he considers necessary;
- (b) shall board any aircraft which is carrying goods or passengers in transit through Malawi while such aircraft remains in Malawi; or
- (c) shall board any vessel before the proper officer.

### 24. Declaration of master

Within three hours after the arrival in Malawi of any aircraft from any foreign port or within twenty-four hours after the arrival in Malawi of any vessel from any foreign port (or within such further period or periods after such arrival as the Controller may allow) and before the unloading of any goods from such aircraft or vessel, the master or agent of such aircraft or vessel shall, except as provided in [section 25](#) or [section 170](#)—

- (a) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such aircraft or vessel and of the cargo and stores aboard; and
- (b) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

### 25. Controller may dispense with declaration

When an aircraft or vessel arrives at a port and proceeds directly to another port without calling at a foreign port the Controller may, subject to such conditions as he may impose, dispense with the declaration or any part thereof at any port or approved wharf other than the first port of arrival.

### 26. Retention and unloading of cargo

The master of any aircraft or vessel at a port may not, without the prior permission of the proper officer and in accordance with such conditions as he may impose, retain on board any cargo consigned to that port or unload at that port any cargo not consigned thereto.

### 27. Arrival of trains

The person in charge of any train shall, upon arrival in a port and before unloading or in any way disposing of any goods subject to customs control, report his arrival to the proper officer at such port, and shall produce to the proper officer such books and documents or computer records or other electronic data as may be prescribed.

*[11 of 2003]*

### 28. Arrival of vehicles other than trains

The person in charge of any vehicle, other than a train, arriving from a foreign port, whether or not such vehicle is conveying goods—

- (a) shall, before unloading or in any way disposing of such vehicle or any goods therein or disembarking any passenger—
  - (i) proceed immediately to the nearest port prescribed for the declaration of goods on importation;

- (ii) report his arrival to the proper officer at such port;
  - (iii) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such vehicle and of the goods carried by such vehicle;
  - (iv) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;
- (b) shall not, after arriving at such port, cause or permit such vehicle to depart therefrom except with the approval of the proper officer.

## 29. Arrival of persons

- (1) Any person arriving from a foreign port, whether or not he has goods in his possession and before disposing of any goods which may be in his possession shall—
- (a) proceed immediately to the nearest port prescribed for the declaration of goods on importation;
  - (b) report his arrival to the proper officer at such port;
  - (c) make a declaration to the proper officer, in such manner and form as may be prescribed, in respect of any goods in his possession;
  - (d) produce any relevant book or document or computer records and other electronic data and answer fully and truthfully any relevant question as may be required or put to him by an officer.
- (2) No person arriving from a foreign port shall dispose of any goods in his possession until they have been released from customs control by the proper officer.
- (3) The Controller may, subject to such conditions as he may impose, exempt any person or class of persons from any of the provisions of this section.

*[11 of 2003]*

## 30. Imported goods

- (1) All goods declared under this Part or shown in any document or computer records and other electronic data as having been consigned to Malawi from a foreign port shall be deemed to have been imported unless it is proved to the satisfaction of the proper officer that they were not imported.
- (2) If the proper officer is satisfied that any imported dutiable goods are wrongly consigned or addressed to Malawi or have been imported through error or oversight of the owner of a conveyance, he may allow such goods to be exported without the payment of duty under such conditions as he may impose.

*[11 of 2003]*

## 31. Unloading and removal of goods

Save as otherwise provided in the customs laws, all goods imported, other than those removed into a licensed private siding, shall, upon being unloaded, be removed directly into—

- (a) a temporary store;
- (b) a customs warehouse; or

- (c) such other place as the proper officer may direct, and no goods shall be removed therefrom except with the authority of the proper officer.

*[20 of 1975]*

### **32. Entry of goods**

- (1) Save as otherwise provided in the customs laws, the importer of any goods into Malawi shall, unless the Controller otherwise directs, cause entry of such goods to be effected at the place prescribed for such purpose or at such other place as the Controller may direct, within such period as may be prescribed.
- (2) Save as otherwise provided in the customs laws, goods subject to the provisions of subsection (1) shall be entered for—
  - (a) consumption;
  - (b) temporary importation;
  - (c) warehousing in a bonded warehouse;
  - (d) carriage coastwise; or
  - (e) transit.
- (3) Declarations in respect of goods subject to the provisions of subsection (1) may be delivered to the proper officer prior to the arrival of the conveyance in which such goods are to be imported and in any such case the Controller may permit such goods to be entered before the arrival of such conveyance.
- (4) Where any goods subject to the provisions of subsection (1) remain unentered at the expiration of the prescribed period, such goods shall, if the proper officer so requires, be removed to a customs warehouse or such other place as may be designated by him.

*[5 of 1972]*

*[20 of 1975]*

### **33. Exceptions to removal and entry requirements**

Notwithstanding the provisions of sections 31 and 32—

- (a) mail bags and postal articles in the course of transmission through the post may be unloaded and delivered to an officer of the post office without entry;
- (b) the proper officer may permit the unloading and delivery to the owner of any bullion, currency, coin, perishable goods and such other goods as the Controller may authorize, without entry, subject to an undertaking being given by such owner to furnish the necessary declaration within forty-eight hours, or such other period as the Controller may authorize, of the time of delivery.

### **34. Entry in absence of documents**

- (1) If, for lack of sufficient documents or information, the owner of any goods is unable to furnish full particulars of such goods, the proper officer may permit the owner to examine such goods.
- (2) Upon such examination being made the proper officer may, upon the production of any import authorization, permit or other document by which the importation of such goods is authorized, allow the owner to declare and enter such goods if the proper officer is satisfied—
  - (a) that the description and origin of the goods is correctly set out in the declaration;

- (b) in the case of goods liable to any duty *ad valorem*, that the value stated in the declaration is approximately correct;
  - (c) in the case of goods liable to any other duty, that the weight, quantity, number, measurement, strength or other relevant specification stated in the declaration is approximately correct.
- (3) Where any goods are entered in accordance with subsection (2), such entry may be effected under [section 32](#), or provisional entry may be effected in such manner and form as may be prescribed.
  - (4) As a condition to any provisional entry the proper officer may require the owner to pay, in addition to the amount estimated as the duty for the purpose of making such provisional entry such further sum as the proper officer thinks fit; and such estimated duty and further sum shall be forfeited unless the owner within three months (or such further period not exceeding an additional three months as may be allowed by the proper officer) of the date of the provisional entry makes a supplementary declaration of all the goods included in such provisional entry.
  - (5) Where the owner makes a supplementary declaration under subsection (4), any claim for refund shall be made within one month from the date of such supplementary declaration.
  - (6) Where any goods are provisionally entered for warehousing under subsection (3), such goods shall not be cleared for consumption or for removal to another bonded warehouse until a supplementary declaration has been accepted and signed by the proper officer.
  - (7) Where the owner of any goods referred to under this section does not or is not permitted to enter such goods in accordance with subsection (3), then the proper officer shall cause such goods to be removed into a customs warehouse.

[20 of 1975]

### 35. Responsibility for imported goods and duty

Without prejudice to the liability of the importer of goods to cause entry to be effected in accordance with [section 32](#) (1), goods which have been imported by any conveyance shall also remain the responsibility of the owner of the importing conveyance, and such owner shall be responsible for compliance with the customs laws and liable for the duty on all such goods until such goods have been entered or otherwise accounted for to the satisfaction of the Controller.

[5 of 1972]

### 36. Temporary importation

- (1) Goods may only be entered for temporary importation if so permitted by the Controller in accordance with this section.
- (2) Subject to the provisions of the customs laws the controller may, under such conditions (including a condition that the goods shall be re-exported) and for such period as he thinks fit, permit the temporary importation of goods for such purposes as he may approve.

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## Part V – Customs warehouses

### 37. Application of Part

This Part shall not apply to abandoned or forfeited goods.



### 38. Goods deposited in customs warehouses

- (1) Goods deposited in a customs warehouse shall be subject to such rent and other charges as may be prescribed:

Provided that the Controller may, having regard to the circumstances of such deposit—

- (i) instruct the proper officer to waive; or
- (ii) himself remit or refund,

the whole or any part of the rent payable or, as the case may be, paid on such goods.

- (2) Subject to the provisions of this Part any goods deposited in a customs warehouse under the provisions of Part IV or Part VI may be entered by the owner within one month after deposit, or such further period as the proper officer may permit:

Provided that if any such goods are unsuitable for storage or are of a perishable or dangerous nature, or if the Controller considers that unless the goods are sold the proceeds will not be sufficient to cover the full duty and expenses of removal and sale he may direct that they be sold, without notice, in such manner as he may deem fit, as soon as possible after deposit in a customs warehouse.

- (3) No goods shall be removed from any customs warehouse without the permission of the proper officer who shall satisfy himself that—
- (a) the person claiming such goods is lawfully entitled to them; and
  - (b) all the relative provisions of the customs laws including payment of or security for any expenses, rent, carriage or other charges have been satisfied and carriage charges due to any carrier have been paid.
- (4) If the proper officer authorizes or requires the removal of any goods from a customs warehouse, the owner shall remove such goods within such period as the proper officer may allow.

[20 of 1975]

### 39. Sale of goods

- (1) The Controller may cause any goods which are not entered within the period provided or sold under [section 38 \(2\)](#) or are not lawfully removed from a customs warehouse within the period allowed under [section 38 \(4\)](#) to be sold or resold by public auction or by tender after not less than one month's notice thereof being given in the *Gazette*.

- (2) Where any goods are sold or resold under this section or [section 38 \(2\)](#), the proceeds of such sale shall be applied in discharge of—

- (a) the full duty;
- (b) the expenses of removal and sale;
- (c) carriage charges due to any carrier;
- (d) the rent and other charges due to the Department; and
- (e) rent and storage charges due to any carrier,

in that order, and any balance of the proceeds after making such payments shall, unless the Controller is satisfied that such goods were imported in contravention of any written law, be paid to the owner upon application by him.

- (3) If the balance of the proceeds after making the payments referred to in paragraphs (a), (b) and (c) of subsection (2) is insufficient to make in full the payments referred to in paragraphs (d) and (e) thereof such balance shall be applied *pro rata* in making such last mentioned payments.
- (4) No application under this section for payment of the proceeds or balance of proceeds of sale shall be accepted by the Controller unless submitted to him within six months of the date of such sale.
- (5) Where any goods are subject to sale under this section and—
  - (a) they cannot be sold;
  - (b) the Controller considers that sale is unlikely to be effected within a reasonable time;
  - (c) the Controller considers that the goods cannot be sold for a sum sufficient to cover the full duty and expenses of removal and sale; or
  - (d) the Controller considers that the sale of the goods would be detrimental to the customs revenue or in contravention of any written law,

the goods may, without compensation, be appropriated to the Government, destroyed or disposed of in such manner as the Controller may direct.

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#### 40. Goods deemed to be in a customs warehouse

- (1) Where under the customs laws any goods are required to be deposited in a customs warehouse, the proper officer may in his discretion decide that it is undesirable or inconvenient to deposit such goods in a customs warehouse and may direct that such goods remain in or be deposited in any other place, and thereupon such goods shall for all purposes be deemed to have been deposited in a customs warehouse from the time they were required to be so deposited.
- (2) Where any goods are deemed to have been deposited in a customs warehouse, such goods shall, in addition to the provisions of this Part, be subject to such expenses incurred in the security, guarding and removing of them as the Controller considers necessary.

[20 of 1975]

### Part VI – Bonded warehouses

#### 41. Licensing of bonded warehouses

- (1) The Controller may, on application, license any place as a bonded warehouse for the deposit and security of dutiable goods.
- (2) The Controller shall license every bonded warehouse as either—
  - (a) a general bonded warehouse for the warehousing of dutiable goods generally; or
  - (b) a private bonded warehouse for the warehousing of dutiable goods which are the property of the licensee only.
- (3) A licence issued under this section shall be subject to such conditions as the Controller may impose.
- (4) The Controller, without assigning a reason, may refuse to issue a licence under this section, may impose such further conditions to or authorize such exceptions from such licence as he considers necessary, or may revoke (on repayment of the *pro rata* proportion of any fee paid) or refuse to renew any such licence which has been issued.
- (5) An applicant or licensee shall furnish such security as the Controller thinks appropriate for the protection of the revenue and compliance with the customs laws in respect of goods deposited or secured in accordance with any licence issued under this section.

- (6) An applicant or licensee shall pay such fee as may be prescribed, not exceeding one hundred pounds, and every licence shall expire on the 31st day of December next following the date of issue.

#### **42. Transfer of licence**

A bonded warehouse licence may, on application to the Controller, be transferred to apply to a different place approved by the Controller in accordance with [section 41](#) and which is in the possession of the person to whom the licence has been issued, but no licence may be transferred from one person to another.

#### **43. Revocation or non-renewal of licences**

- (1) When the Controller revokes or refuses to renew any bonded warehouse licence he shall cause to be served by post on the licensee notice of such revocation or refusal and thereupon such service shall be deemed to be notice of such revocation or refusal to the owners of all goods warehoused therein.
- (2) When any licensee proposes not to renew his licence in relation to any bonded warehouse, he shall cause thirty days notice of such intention to be given to the Controller and to the owners of all goods warehoused therein.
- (3) Where the licence in respect of any bonded warehouse has been revoked or has expired, then, within such time as the Controller may direct, all goods warehoused therein shall be entered and delivered in accordance with the provisions of [section 47](#), and where any goods have not been so entered and delivered the proper officer may cause such goods to be taken to a state warehouse and such goods shall thereupon be dealt with in accordance with the provisions of Part V.

#### **44. Licensees to provide facilities, and keep records etc.**

- (1) The licensee of a bonded warehouse shall—
  - (a) provide such weights, scales, measures and other facilities for examining and taking account of goods and for securing them as the proper officer may reasonably require;
  - (b) keep such records of all goods warehoused therein as the Controller may require and keep such records at all reasonable times available for examination by any officer;
  - (c) stack and arrange the goods warehoused therein so as to permit reasonable access to and examination of every package at all times;
  - (d) provide all necessary labour and materials for the storing, examining, packing, marking, cooping, weighing and taking stock of the goods warehoused therein whenever the proper officer so requires;
  - (e) on request of the proper officer produce, subject to any allowable deficiencies, any goods deposited in such warehouse.
- (2) Subject to any prescribed conditions or any directions of the Controller, the proper officer may direct in what part or division of a bonded warehouse and in what manner goods shall be deposited.
- (3) The licensee of a bonded warehouse shall be liable for the duty in respect of all goods deposited therein and shall pay the duty forthwith in respect of all goods not produced in accordance with subsection (1) (e).

#### **45. Entry for warehousing**

- (1) The importer of any dutiable goods on first importation and the manufacturer or purchaser of any goods liable to excise duty or surtax may enter such goods for warehousing in a bonded warehouse without prior payment of the duty or surtax, other than any dumping duty, thereon:

Provided that if the manufacturer or purchaser of excisable goods wishes to remove such goods from an excise warehouse to a bonded warehouse he shall so enter them prior to their removal from the excise warehouse.

- (2) The proper officer may at any time take an account of any goods entered for warehousing and such account, or, if no such account has been taken, the entry for warehousing shall, subject to any allowable deficiencies, be the basis upon which the duties in respect of such goods shall be ascertained and paid.
- (3) Where any goods entered for warehousing in a bonded warehouse (which are not subsequently entered for the purpose of removal from the warehouse) are not deposited forthwith, or within such time as the proper officer may permit, in the bonded warehouse for which they were entered, the proper officer may cause them to be so deposited at the expense of the licensee of such warehouse and the licensee of such warehouse shall, upon paying such expenses, have a lien on such goods for the cost involved.
- (4) Notwithstanding the provisions of this Part the Controller may permit, subject to such conditions as he may impose, any goods or class of goods not liable to duty to be entered for warehousing in a bonded warehouse and may specify the period during which such goods may be so warehoused.
- (5) When goods entered for warehousing in a bonded warehouse cease thereafter to be liable to duty by reason of an amendment to the customs laws in relation thereto or for any other lawful reason then, unless the Controller otherwise permits, the owner of such goods shall cause them forthwith to be duly entered and removed from the bonded warehouse.

#### **46. Operations in bonded warehouse**

The Controller may permit, subject to such conditions as he may impose—

- (a) spirits and wines in a bonded warehouse to be bottled from bulk stocks or to be broken down from greater to lesser strengths;
- (b) any goods in a bonded warehouse to be assembled, blended, mixed, converted, manipulated or manufactured wholly or partly from warehoused goods:

Provided that—

- (i) the provisions of this paragraph shall not apply if the finished products would be excisable goods; and
- (ii) where the finished product is entered for consumption, duty shall be paid upon any warehoused goods contained therein or consumed in such operations, and, when such duty is payable on value, the value of such goods as accepted at the time of entry for warehousing shall be their value for duty purposes.

#### **47. Entry of warehoused goods**

- (1) Except in respect of goods which, in accordance with the customs laws, are destroyed, abandoned, seized, temporarily removed or removed to a customs warehouse all goods which have been entered for warehousing shall, prior to removal from the bonded warehouse, be entered for—
  - (a) consumption;
  - (b) exportation; or
  - (c) rewarehousing.
- (2) When any warehoused goods are entered for exportation or rewarehousing the proper officer may require the owner of the goods to give security in such amount, not being less than the duty payable on the goods, as he thinks fit and such security shall not be discharged until the goods have been exported or rewarehoused in accordance with the customs laws and such further conditions as the

Controller deems desirable or until the duty payable on such goods has been paid in accordance with the customs laws.

- (3) Where any goods remain in any bonded warehouse for a period of more than fourteen days, or such further period as the proper officer may allow in any particular case, after they have been entered for removal from such warehouse in accordance with subsection (1) such goods shall, unless the Controller otherwise directs, be removed to a customs warehouse;
- (4) All warehoused goods which have not been entered for removal from a bonded warehouse in accordance with the provisions of this Part within six months of the date on which they were entered for warehousing shall be removed to a customs warehouse by the owner thereof:

Provided that the Controller may permit any particular kind of goods to be re-entered for warehousing after the initial period of six months for a further period, not exceeding six months, as he considers desirable.

*[20 of 1975]*

*[25 of 1988]*

*[5 of 1994]*

#### **48. Sampling of warehoused goods**

- (1) An officer may permit—
  - (a) the taking, subject to such conditions as may be prescribed, of samples of warehoused goods by the owner or importer of the goods; and
  - (b) the payment of duty on samples taken in terms of paragraph (a) to be deferred until the consignment of the records from which the samples were taken is entered for consumption or for exportation.
- (2) The Controller may at his discretion remit the duty on samples taken in terms of subsection (1).

### **Part VII – Carriage coastwise**

#### **49. Carriage coastwise**

- (1) Except in such circumstances as the Controller may allow, goods subject to customs control may not be loaded on or unloaded from a coastwise aircraft or vessel at any place other than a port.
- (2) Where any aircraft or vessel arrives from a foreign port or departs to a foreign port, the proper officer may permit such aircraft or vessel to carry goods from any port at which such aircraft or vessel calls to any other port within Malawi subject to the complete separation, to the satisfaction of the proper officer if he so requires, of such goods from the remainder of the cargo, if any, aboard such aircraft or vessel.
- (3) All goods intended for carriage coastwise shall in addition to any other requirements under the customs laws be declared by the master or agent of the coastwise aircraft or vessel in the manner prescribed.
- (4) Goods carried coastwise shall not be diverted for the consumption except in accordance with the customs laws.

## Part VIII – Exportation

### 50. Prohibited and restricted exports

- (1) Subject to subsection (2) no goods shall be exported contrary to the provisions of any written law prohibiting or restricting the exportation of such goods.
- (2) The Minister may authorize the exportation of any prohibited or restricted goods for the purpose of scientific investigation or study or for use as evidence in any judicial proceedings or for any other similar purpose.
- (3) This section shall not apply to goods in transit.

### 51. Entry for exportation

- (1) No goods shall be exported or accepted for carriage for exportation until they have been entered for exportation at the place prescribed for such purpose or at such other place as the Controller may direct:

Provided that the Controller may authorize such exportation or acceptance, subject to subsequent entry, in such cases as he considers desirable.

- (2) Upon entering goods for exportation, the owner of such goods shall—
  - (a) make a declaration in such manner and form as may be prescribed;
  - (b) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.
- (3) Notwithstanding the provisions of subsections (1) and (2), the Minister may prescribe goods, either generally or specifically, which may be exported without being entered.

### 52. Loading of goods

- (1) No goods shall be put on board an aircraft or vessel for exportation except at a port or such other place as may be prescribed or may be approved by the proper officer.
- (2) No person shall cause or permit any goods to be put on board an aircraft or vessel for exportation except with the prior permission of an officer.
- (3) No goods which have been—
  - (a) put on board an aircraft or vessel for exportation; or
  - (b) loaded on any vehicle for exportation and entered for exportation,shall, save with the permission of the proper officer and in accordance with such conditions as may be imposed, be unloaded or removed at any place within Malawi.

### 53. Failure to export

- (1) Where any goods entered for exportation are not exported in accordance with such entry the owner thereof shall forthwith notify the proper officer, who may direct that the goods shall remain within, or shall be removed into, a customs area appointed by the proper officer and shall remain therein pending re-entry for exportation, such re-entry to be completed within 10 days or within such further period not exceeding 30 days as the proper officer may allow.
- (2) Where any goods entered for exportation are exported contrary to any provision of their entry for exportation, the owner shall forthwith notify the proper officer.

#### 54. Departure of aircraft and vessels

- (1) The master of any aircraft or vessel shall not, except with the prior permission of the Controller, cause or permit his aircraft or vessel to depart to a foreign port except from a port approved for the exportation of goods by aircraft or vessels.
- (2) The master of every aircraft or vessel proceeding to a foreign port shall, prior to departure—
  - (a) make a declaration to the proper officer in such manner and form as may be prescribed in respect of such aircraft or vessel and of the cargo and stores aboard;
  - (b) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;
  - (c) obtain outward clearance for the intended voyage from the proper officer.
- (3) If an aircraft or vessel in respect of which outward clearance has been issued does not depart within thirty-six hours of the time when the clearance was issued, or within such further period as the proper officer may allow, such clearance shall lapse and the master shall, before the aircraft or vessel departs to a foreign port, obtain a new outward clearance.

#### 55. Departure of vehicles and persons

- (1) Before crossing the frontier the person in charge of any vehicle departing overland to a foreign port shall, unless the Controller has granted prior permission to the contrary—
  - (a) report his intended departure to the proper officer at the nearest port to the point of departure from Malawi;
  - (b) make a full declaration in such manner and form as may be prescribed in respect of such vehicle and any goods on board;
  - (c) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer;
  - (d) not cause such vehicle to be removed from such port except with the prior permission of the proper officer and in accordance with any conditions he may impose.
- (2) Every person shall, before departure to a foreign port, report to an officer and declare all goods in his possession which he proposes to export, produce all such goods for examination, and produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.

#### 56. Procedure to a foreign port

The master or person in charge of any conveyance shall not, after departure to a foreign port, cause or permit such conveyance to land, touch or enter at any place within Malawi except in accordance with the customs laws.

#### 57. Attempts to export

For the purposes of the customs laws, the entry of goods for exportation, the loading, taking or placing of any goods upon a conveyance which is about to leave Malawi or has other goods in it which are to be exported, the handing of any goods to any carrier or transport company or to the master or owner of a vessel or aircraft for the purpose of exportation or the placing in the post of a package addressed to a place outside Malawi, shall be deemed to be an attempt to export.

## Part IX – Stores

### 58. Entry of goods for use as stores

- (1) The owner of goods which are for use as stores on an aircraft or vessel proceeding to a foreign port, either directly or indirectly, shall cause such goods to be entered before departure:

Provided that imported goods remaining on board any aircraft or vessel for use as stores shall not be entered unless an officer so requires.

- (2) Officers shall not allow goods for use as stores to be entered unless they are satisfied, from the intended duration of the flight or voyage and the number of passengers and crew to be carried, that it is appropriate to allow such goods to be so entered.

### 59. Surplus stores

The proper officer may permit surplus stores to be entered for warehousing for future use as stores even if they are prohibited or restricted goods.

## Part X – Transit

### 60. Goods in transit

- (1) Except as otherwise provided, all goods in transit shall, on importation, be entered for transit by the owner.
- (2) All goods in transit shall be exported within such time as the proper officer may allow, not exceeding two months from the date of their importation or such further period as the Controller may allow.  
*[30 of 1969]*
- (3) Goods in transit shall not be diverted for consumption or warehousing without the prior written authority of the Controller or the proper officer and, if such authority is granted, such goods shall be so re-entered forthwith by the owner.

### 61. Transit without entry

Subject to such conditions as the Controller may impose goods imported on any conveyance which are intended to remain in and do remain in that conveyance may, subject to the approval of the proper officer, pass through Malawi without entry and be deemed to be goods in transit.

### 62. Security for goods in transit

- (1) The owner of any goods in transit shall give security in such sum as the proper officer may require for the protection of the revenue and compliance with the customs laws in respect of such goods. Such security shall not be released until evidence has been produced to the satisfaction of the Controller that such goods have been duly exported. Upon failure to give such security, such goods shall be unloaded and removed into a customs area appointed by the proper officer and shall be dealt with in accordance with the provisions of Part IV.
- (2) Notwithstanding the provisions of subsection (1) the proper officer may, in his discretion, dispense with security in respect of goods in transit which are to be conveyed through Malawi in such manner that the whole of such goods can be locked or sealed by an officer within a conveyance so that no access to such goods can be had without opening or breaking such lock or seal, or in respect of goods in transit which, in the opinion of the proper officer, will otherwise be secure from unauthorized access.



## Part XI – Excise management

### 63. Minister may make regulations

The Minister may make regulations providing for—

- (a) the manufacture and disposal of excisable goods;
- (b) the materials which may, or may not, be used in such manufacture;
- (c) the type, fitting, pattern, installation and placement of all premises, machinery, utensils, pipes and receptacles used in such manufacture;
- (d) notices which the holder of an excise licence must give to the proper officer in respect of his intended operations; and
- (e) the method of taking account of excisable goods,

and different regulations may be made in respect of different excisable goods or in respect of different premises.

### 64. Excise licences

- (1) Except as otherwise provided in the customs laws no person shall manufacture any excisable goods either in whole or in part unless authorized by, and in accordance with the conditions of, a valid excise licence issued by the Controller:

Provided that no such licence shall be required—

- (i) by a private individual in respect of excisable goods, other than spirits, manufactured by him for his own use or for the use of his family and not for sale or disposal for profit;
- (ii) by a person authorized by the Controller to manufacture excisable goods for experimental purposes and not for sale or disposal for profit subject to such conditions as the Controller may direct.

### 65. Licences, issue, conditions, etc.

- (1) Every applicant for an excise licence shall make application in writing to the Controller and shall provide such information in respect of the application as the Controller may require, and the Controller may issue such licence or may refuse to issue such licence at his discretion.
- (2) No excise licence shall be issued in respect of any premises until an appropriate entry of premises has been made.
- (3) An excise licence shall specify the class or classes of excisable goods to which it refers.
- (4) No excise licence shall be granted in respect of any premises which appear to the Controller from their situation or otherwise with reference to surrounding or adjacent buildings or places of business to be so constructed or arranged as to jeopardize the protection of the revenue.
- (5) Every excise licence shall expire on the 31st day of December next following the date of issue and the licence fee for each excise licence shall be such sum, not exceeding two hundred Kwacha, as may be prescribed either generally or in respect of any excisable goods separately.
- (6) Where any applicant includes or requires to be included in the entry of premises any premises which in the opinion of the Controller—
  - (a) are remote from the premises where the main processes of manufacture are to be carried on;or

- (b) are separated from other entered premises by a distance which is such as to cause protection of the revenue to be difficult or less effective without special measures,  
a separate excise licence in respect of each such premises shall be required.
- (7) An excise licence may be transferred by the Controller to an approved successor of the licence holder under such conditions as the Controller deems fit.
- (8) If the holder of an excise licence obtains the permission of the Controller to remove his business to other premises, such change of premises may be noted by the Controller on such licence after a new entry of premises has been submitted and accepted by the Controller in respect of the new premises.
- (9) The Controller shall cause the serial number of every excise licence, the name and address of the licensee and the class of excisable goods such licensee is licensed to manufacture to be published in the *Gazette* at such intervals each year as may be expedient.
- (10) If any licensee fails to carry out any duty imposed upon him by this Act or by any regulations made thereunder with respect to his premises or any security, buildings, appliances, stock books, returns or the like, or the mode of conducting his business, the Controller may, after having given one month's notice in writing requiring the omission to be rectified or the irregularities to be corrected, and upon failure by the licensee to comply with the notice, declare in writing that the excise licence is suspended and therefore invalid, and such suspension shall continue until withdrawn by the Controller upon full compliance with the requirements of the law.
- (11) If the requirements of the law are not complied with within a period to be specified by the Controller, he may cancel or refuse to renew the licence.
- (12) If the Controller in his discretion refuses to issue any excise licence or refuses to renew any such licence or cancels any such licence the applicant or licensee, as the case may be, may appeal to the Minister against such action by the Controller and the decision of the Minister shall be final and shall not be questioned in any court.

#### **65A. Renewal of licences**

- (1) Upon expiry of his or her licence, a licensee shall immediately cease to manufacture any excisable goods, unless his or her licence has been renewed by the Controller in accordance with this Act.
- (2) Any person who contravenes subsection (1) is guilty of an offence and, shall be liable to a fine of K200,000.

*[10 of 2014]*

#### **66. Entry of premises, etc.**

- (1) Every applicant for an excise licence shall deliver to the Controller an entry of premises in the prescribed form containing such information and accompanied by such plans as the Controller may require concerning the goods to be manufactured and the processes, premises and plant to be used.
- (2) Unless he has obtained the written permission of the Controller, no holder of an excise licence shall carry on any business on his entered premises other than the business for which such licence was issued.
- (3) No alterations shall be made to any entered premises or to the plant, machinery or apparatus therein except with the prior consent of the Controller.
- (4) No room, plant, machinery or apparatus shall be used for the production or storage of excisable goods unless such room, plant, machinery or apparatus has been specified for that purpose in the appropriate entry of premises.

- (5) The Controller may at any time require the holder of an excise licence to make a new entry of premises within such period as the Controller may direct.
- (6) Except with the prior permission of the proper officer no plant, machinery, room or other part of entered premises shall be used for any purpose other than that specified for such plant, machinery, room or part in the entry of premises.
- (7) All machinery, plant and utensils used in the manufacture or storage of excisable goods on entered premises shall be so placed to the satisfaction of the Controller as to allow full examination by an officer at any time.

#### **67. Marking of rooms etc.**

Every holder of an excise licence shall mark the rooms, stores, plant, equipment, vessels and warehouses referred to on his entry of premises in such manner as may be prescribed or as the Controller may direct and shall not remove, obliterate or erase such mark except with the consent of the proper officer.

#### **68. Accommodation etc.**

- (1) Every holder of an excise licence shall provide free of charge such lighting, office and sanitary accommodation, equipment, assistance and other facilities as may be required by the Controller to enable officers to exercise their powers under the customs laws.
- (2) If the Controller is satisfied that no suitable living accommodation can be found or provided for officers having control over any entered premises he may, as a condition for the grant of an excise licence, require the licensee to provide, to the satisfaction of the Controller, lodgings for those officers conveniently situated with respect to such premises but not forming part thereof or of the licensee's dwelling house at a rent to be agreed between the licensee and the Controller.
- (3) If an applicant for or the holder of an excise licence—
  - (a) fails to provide any facilities required by the Controller under subsection (1);
  - or
  - (b) fails to provide lodgings required by the Controller under subsection (2); or
  - (c) fails to keep and maintain such lodgings in good repair; or
  - (d) in any way interferes with the use and enjoyment of such lodgings by the officer residing therein,

the Controller may refuse to issue or renew or may suspend or cancel such excise licence.

#### **69. Excise bond**

Every applicant for an excise licence shall furnish such security, and in such amount, as the Controller considers appropriate as a condition to the grant of the excise licence; and such security shall be subject to such conditions for compliance with the customs laws as the Controller may specify either generally or in any particular case.

#### **70. Name of licence holder to be exhibited**

Every holder of an excise licence shall, if required by the Controller, have his name affixed in a conspicuous place on the outside of the entered premises in such form and manner as the Controller may direct.

### 71. Security of buildings etc.

- (1) The Controller may require the holder of an excise licence to provide any store or room and to lock or secure any building, store room, place, still, utensil or fitting, or to provide and affix an approved meter to any receptacle or pipe on the entered premises and such licence holder shall, to the satisfaction of the proper officer, provide, affix, repair and renew all plugs, cocks, taps, covers, fastenings, and other requisites for the purpose of enabling officers to affix locks or seals thereto or otherwise to secure the same.
- (2) If on any entered premises any meter, rod, lock, key or fitting is tampered with, damaged or broken and if any fastening or fitting used to affix a customs lock or seal is damaged or broken, the licence holder shall if the proper officer so directs forthwith repair or renew the article in question to the satisfaction of the proper officer.
- (3) All keys or other means of opening any locks, doors or fastenings within the entered premises other than customs locks or fastenings shall be kept by the licensee in such secure place as shall be available for use by any officer in the course of his duty at any time he may deem fit.

### 72. Tables

For the purpose of calculating the full quantity of excisable goods produced on any entered premises, tables may be prescribed showing the quantity of such goods which shall be deemed to have been produced from a given quantity of material, or the quantity of fully manufactured goods which shall be deemed to have been produced from a given quantity of partly manufactured goods subject to such allowances as may be prescribed therewith.

### 73. Stores and excise warehouses

- (1) Every holder of an excise licence shall provide on his entered premises to the satisfaction of the Controller—
  - (a) a store or stores where he shall deposit and store all materials for the manufacture of excisable goods;
  - (b) a store or stores where he shall store all excisable goods in an intermediate stage of manufacture or process; and
  - (c) an excise warehouse or excise warehouses where he shall store all finished products.
- (2) The Controller may direct that only certain goods and no others may be stored in any of the stores or excise warehouses provided under subsection (1).
- (3) Save as may be allowed by the proper officer no excisable goods may be stored on entered premises except in a store or warehouse provided under subsection (1).
- (4) Save as may be allowed by the proper officer no excisable goods—
  - (a) may be moved from a store or warehouse provided under subsection (1);
  - (b) shall be removed from the entered premises except from an excise warehouse;
  - (c) after removal from an excise warehouse shall be returned thereto.
- (5) No holder of an excise licence shall store duty paid goods on his entered premises except in a store or place approved for that purpose by the Controller and subject to such conditions as the Controller may specify.

### 74. Prohibitions in respect of excisable goods

- (1) Except with the permission of the Controller, no holder of an excise licence shall have on his entered premises excisable goods other than those manufactured on such entered premises.

- (2) No person shall conceal, interfere with, or, without the permission of the proper officer, mix any other substance with, any excisable goods in any manner which may prevent the proper officer taking a true account thereof.

#### **75. Stock books, etc.**

- (1) Subject to the provisions of this section, every holder of an excise licence shall keep a stock book or computer records in English to be written up legibly and clearly not less frequently than each working day, in such form as the Controller may approve and in as many copies as the Controller may require.
- (2) In each such stock book or computer records there shall be recorded in respect of each kind and each brand and each packing of excisable product separately, details of receipts into and disposals from the excise warehouse by reference to factory records and invoices respectively; and separate stock books or computer records may be kept if one is insufficient to include all the required details.
- (3) Every person licensed to manufacture tobacco products shall keep an operations account legibly in English, in such form and in as many copies as the Controller may require and therein shall record not less frequently than each working day an accurate account by description and weight of all receipts of raw or leaf tobacco into the entered premises and all disposals thereof whether for manufacturing purposes on his premises or otherwise.
- (4) Every holder of an excise licence shall, if required to do so by the Controller, keep such other books and records instead of, or in addition to, or supplemental to the stock book or computer records as the Controller may direct.
- (5) Every stock book or computer records and such books as may be required under subsections (3) and (4) hereof shall be ruled off, itemized, totalled, and balanced at the end of each month in such manner and to such extent as the Controller may direct and such copies of such sheets or pages as may have been used in that month as the Controller may require shall be transmitted to the Controller with the excise return for that month.
- (6) Where the proper officer is satisfied that it is necessary for the purpose of securing the collection of duty, he may require any holder of an excise licence to produce forthwith to an officer any book or document whatsoever relating to his business.
- (7) Every holder of an excise licence shall keep all books and records which may be required under the provisions of the customs laws on the entered premises to which such books and records refer, shall at all times keep them accessible to an officer for his inspection, and shall allow such officer at any time to inspect them or to make notes therefrom or copies thereof or to remove them if the officer considers it necessary to do so.

*[11 of 2003]*

#### **76. Liability to excise duty**

- (1) Subject to the provisions of this Act, excise duties shall be due and payable immediately upon the removal of excisable goods from the excise warehouse.
- (2) For the avoidance of doubt, any goods liable to excise duty in a finished or semi-completed state and whereof the manufacture has begun shall from that time onwards be deemed to be excisable goods to be dealt with in accordance with the provisions of this Act and such goods shall not cease to be excisable goods if they are dealt with contrary to the provisions of this Act.
- (3) When excisable goods are removed from an excise warehouse—
  - (a) for exportation; or
  - (b) for sale to a person entitled to purchase excisable goods at a reduced rate of duty; or
  - (c) for removal into a bonded warehouse; or

- (d) for removal to other entered premises for further manufacture or for blending or packing, such goods shall be recorded in all books, returns and documents as dutiable goods until such time as they have been duly accounted for to the satisfaction of the Controller.
- (4) Any excisable goods except beer and spirits may be removed under prescribed conditions from one entered premises to another entered premises for the purpose of further manufacture and the duty on such goods shall, subject to any allowable deficiency, be paid at the time of and in addition to any other duty which may be payable on the finished product.
- (5) Excisable goods of beer and spirits may be removed from one entered premises to another entered premises and from one part of entered premises to another part thereof only in accordance with prescribed conditions, or when no conditions are prescribed in accordance with such conditions as the Controller may deem fit and subject always to the provisions of this Act and in particular the liability for duty of such goods.

## 77. Excise return and payment of excise duty

Unless the Controller directs to the contrary either generally or in any particular case or for any particular period of time, the payment of duty on excisable goods may be deferred for a period not exceeding twenty days from the end of each month in respect of disposals of excisable goods during that month and the duty on all such disposals during that month shall be paid to the Controller no later than the twentieth day of the succeeding month supported by—

- (a) a correct and legible excise return and declaration in the prescribed form together with such additional copies thereof as may be required; and
- (b) the copies of the sheets or pages of the stock book and other records specified in [section 75](#) (5), in respect of the month to which the payment of duty refers.

### 77A. Cigarette tax stamps

- (1) Subject to [section 77](#), any person who manufactures, distributes or imports cigarettes shall, upon application in the prescribed form, affix a cigarette tax stamp, on to each individual purchase of cigarettes in such a manner as may be prescribed by the Commissioner General.
- (2) For the purposes of this section, “cigarette tax stamp” means such mark whether in electronic form or otherwise, as the Minister may, by order published in the *Gazette*, prescribe.
- (3) Any person who contravenes subsection (1) commits an offence.
- (4) The Commissioner General shall not grant an application for cigarette tax stamps to an applicant unless the Commissioner General is satisfied that—
- (a) the applicant is licensed under [section 64](#); or
- (b) in the case of an importer or distributor, is duly registered for that purpose.

[12 of 2008]

## 78. Samples

Subject to such conditions as the Controller may approve, a holder of an excise licence may take such samples from his products, at any stage of their manufacture, as may be necessary for the proper conduct of this business as a manufacturer of excisable goods and the Controller may remit the duty on such samples.

## 79. Responsibility for losses, etc.

No action shall lie against the Government or any officer or person in the employ of Government in respect of the loss of or damage to any excisable goods in entered premises, or in respect of any incorrect or improper delivery therefrom or thereto.

## 80. Procedure upon termination of licence

- (1) If the holder of an excise licence intends to cease the manufacture of excisable goods he shall inform the Controller in writing of the date on which he will cease manufacture.
- (2) A licensee shall cease manufacture—
  - (a) on the date notified to the Controller under subsection (1); or
  - (b) on the 31st day of December next following notification by the Controller that the licence will not be renewed; or
  - (c) forthwith upon notification by the Controller that the licence is suspended or cancelled.
- (3) Within one month of the cessation of manufacture under subsection (2) the licensee shall render to the proper officer a true and complete return, as required under [section 77](#) of his transactions in excisable goods since his last monthly return and of his stock of excisable goods on hand, and shall with that return pay the duty on such excisable goods to the proper officer:

Provided that if a licence has been cancelled as a result of noncompliance by the licensee with the provisions of the customs laws the whole of the stock on hand at the time of cancellation shall be liable to forfeiture.

- (4) If a licensee fails or neglects to render the return required under subsection (3) within the time allowed the proper officer may seize the stock of excisable goods on hand and may sell them and the proceeds of the sale shall be applied in accordance with [section 39](#) (2) and (3).
- (5) Nothing contained in this section shall be deemed to deprive the Government of any right it may have against the property of the estate of the manufacturer or those of its sureties in respect of any duty which may remain unpaid after such sale or forfeiture as provided for in this section, nor shall such sale or forfeiture relieve the manufacturer of liability to prosecution under this Act.

## 81. Keeping of stills

- (1) The Controller may permit the keeping and using of a still or stills without licence—
  - (a) for experiments in chemistry or experiments in the distillation of spirits; or
  - (b) by persons carrying on trade or otherwise for the manufacture of any articles other than spirits.
- (2) Every person permitted to keep a still under the provisions of this section shall conform to such conditions as the Controller may specify and shall receive a certificate of registration, which may be cancelled by the Controller on any failure to conform to such conditions.
- (3) Any person other than a licensed distiller who imports or is found in possession of or uses a still for which he has no certificate of registration shall, for the purpose of this Act, be deemed to be a distiller and to distil spirits.

## Part XII – Duties

### 82. Duties payable

Subject to the provisions of the customs laws, there shall be charged, levied, collected and paid under this Act—

- (a) in respect of goods imported into or manufactured or produced in Malawi, surtax in accordance with the provisions of a surtax tariff prescribed by the Minister;
- (b) in respect of goods imported into or sold in Malawi dumping duties in accordance with the provisions of a dumping duties tariff prescribed by the Minister;
- (c) in respect of goods imported into Malawi, customs duties in accordance with the provisions of a customs tariff prescribed by the Minister;
- (d) in respect of imported goods and goods manufactured or produced in Malawi, excise duties in accordance with the provisions of an excise tariff prescribed by the Minister; and

*[3 of 1993]*

- (e) in respect of goods manufactured or produced in Malawi, export duties in accordance with the provisions of an export duties tariff prescribed by the Minister.

*[5 of 1985]*

- (f) in respect of airtime, gaming and betting, including lotteries, excise duties in accordance with the provisions of an Excise Tariff prescribed by the Minister.

*[12 of 2008]*

*[3 of 1993]*

### 83. Tariffs prescribed

- (1) The Minister may, subject to [section 84](#), by order published in the *Gazette*, prescribe a surtax tariff, a dumping duties tariff, a customs tariff and excise tariff and an export duties tariff for the purposes of this Act, and may similarly amend any such tariff.
- (2) Until the Minister prescribes as tariff under subsection (1) the relevant tariff in force at the date of commencement of this Act shall be deemed to be the appropriate tariff prescribed under subsection (1) and may be amended in like manner as though it were so prescribed.

*[5 of 1985]*

### 84. Procedure for prescribed or amending tariff

- (1) An order made under [section 83](#) shall not be made retrospective and shall cease to be of effect upon the expiration of the period specified in subsection (2) unless approved by a resolution of the National Assembly passed in accordance with the conditions referred to in subsection (2).
- (2) For the purposes of subsection (1) a resolution of the National Assembly approving an order made under [section 83](#) shall be passed before the expiration of the period of 28 days from the date of commencement of such order:

Provided that—

- (a) if, before the expiration of the said period of 28 days the National Assembly is dissolved or is prorogued or adjourned for more than 7 days, such resolution shall be passed before the end of the next meeting of the National Assembly; or



- (b) if, on the date of commencement of the order the National Assembly stands dissolved or is prorogued or adjourned, such resolution shall be passed before the expiration of the period of 28 days from the date of commencement of the next meeting of the National Assembly, or if the National Assembly is earlier dissolved or is earlier prorogued or adjourned for more than 7 days, then before the end of the next following meeting of the National Assembly.
- (3) Where an order ceases to be of effect under this section—
- (a) any person who has paid a new duty or increase of duty in accordance with such order shall, subject to the provisions of [section 100](#), be entitled to a refund—
    - (i) in the case of such new duty, of the amount of such duty paid by him;
    - (ii) in the case of such increase of duty, of an amount of equal to the difference between the duty paid by him and the duty in force immediately before the date of commencement of such order;
  - (b) no payment by way of duty under-collected or duty not collected shall be required from any person in respect of goods properly entered at the reduced rate of duty during the period when the rate of duty was reduced in accordance with such order; and
  - (c) the amended provisions of the tariff or tariffs shall revert to those in force immediately before the date of commencement of such order.

## 85. Investigations as to dumping

The Minister may make regulations governing the manner in which complaints as to the dumping of goods shall be made and investigated and such regulations may provide, *inter alia*, that—

- (a) the board or person charged with the investigation of a complaint as to dumping shall have any or all of the powers, rights, privileges and duties conferred upon a Commissioner by the Commissions of Inquiry Act, with or without modifications; and

[Cap. 18: 01]

- (b) any or all of the provisions of the Commissions of Inquiry Act shall apply to an inquiry held for the purpose of investigating a complaint referred to in paragraph (a) and to persons summoned to give evidence or giving evidence at such an inquiry.

[Cap. 18: 01]

## 86. Payment of dumping duties

Dumping duties shall be payable by the importer on the importation of the goods concerned except that in the case of sales dumping duty, such duty shall be payable by the seller of such goods within Malawi, and dumping duties shall be payable in addition to any other duty payable or paid on such goods:

Provided that where goods are imported under rebate of the ordinary duty for use in manufacture in Malawi no dumping duty shall be payable unless it is prescribed that the dumping duty shall apply to such goods.

## 87. Seller under contract may recover any increase and purchaser may deduct any decrease of duty

- (1) When any duty is imposed or increased on any goods and such goods, in pursuance of a contract made before the duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of agreement to the contrary, recover from the purchaser as an addition to the contract price a sum equal to any amount paid by him by reason of the said duty or increase.

- (2) Whenever any duty is withdrawn or decreased on any goods and such goods, in pursuance of a contract made before such withdrawal or decrease becomes effective are delivered thereafter, the purchaser of the goods may, in the absence of agreement to the contrary, if the seller has in respect of those goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to the said duty or decrease.
- (3) The provisions of this section shall also apply to a contract for the hiring of any goods, and the words “seller” and “purchaser” shall be construed as including the person from whom and the person to whom the goods are hired.
- (4) For the purposes of this section, “duty” includes any duty which was leviable immediately prior to the date of commencement of this Act.

## **88. Rate of duty in relation to time of importation, exportation or entry**

Unless otherwise provided under this Act—

- (a) goods which are imported into Malawi other than goods referred to in paragraph (b) shall be liable to the rates of duty which are in force at the time when they are imported or at the time of the receipt by a proper officer of the declaration for the purpose of entry for consumption, whichever shall be the later, so, however, that in no case, except in the case of goods which are lawfully removed from a bonded warehouse, shall the rate of duty be less than that in force at the time of importation;
- (b) goods which are imported into Malawi by post, as air freight or in accompanied baggage shall be liable to the rates of duty applicable when such goods are presented to the proper officer for assessment of duty; and
- (c) goods which have been manufactured in Malawi shall be liable to the rates of duty which are applicable to those goods at the time when they are delivered for consumption or are used or otherwise disposed of by the manufacturer.

## **89. Rebates in respect of specified countries**

Subject to the provisions of sections [117](#) and [118](#), rebates of customs duties may be allowed in respect of goods imported into Malawi which have been grown, produced or manufactured in countries specified for the purpose in the customs tariff.

## **90. Sellers of goods to produce proof of payment of duty**

Any person being in possession or control of imported goods or goods which are liable to duty under the provisions of this Act, and any person who offers for sale, exports, or attempts to export such goods or has such goods entered in his books or mentioned in any document referred to in [section 167](#) shall, when requested by an officer so to do, produce proof as to the place and date of entry of the goods and that duty due thereon was paid. If he himself did not pay the duty or make entry of the goods, such person shall produce such evidence as the officer may require to enable him to discover the person who did make such entry and payment in respect of the goods.

## **91. Short levy or erroneous refund**

- (1) Where any amount of duty has been underpaid or not paid, the person who should have paid such duty or the person in whose possession the goods in respect of which the underpayment was made shall pay such outstanding amount.

- (2) Where any amount of duty has been erroneously refunded, the person to whom the refund has erroneously been made shall repay the amount erroneously refunded.

*[11 of 2003]*

*[8 of 2005]*

## 92. Liens and preferences

The correct amount of duty payable in respect of any goods or services shall, from the time when it should have been paid, constitute a debt due to the Government by the person concerned, and shall, at any time after it becomes due, be recoverable in court by proceedings in the name of the Controller, and any goods in a bonded warehouse or in the custody of the Department or any goods used or produced in the business concerned and belonging to that person, and any goods afterwards imported or entered for exportation by the person by whom the duty is due, shall, while still under the control of the Department, be subject to a lien for such debt and may be detained by the Department until such debt is paid, and the claims of the Government shall have priority over the claims of all persons upon the said goods of whatever nature and may be enforced by sale or other proceedings if the debt is not paid within three months after the date upon which it became due.

*[25 of 1988]*

## 93. Payment of fines and duty instalments

- (1) Subject to such conditions, including the payment of interest at the rate specified in subsection (2), the Controller may permit any fine imposed by him under this Act or any duty payable under customs laws, other than surtax payable under Part XIIA, to be paid by instalments of such amounts and at such times as he may determine.
- (2) The interest payable under subsection (1) shall be at a rate of three percentage points above the prevailing rate of interest paid by the Government on stock, bonds or promissory notes under section 26 of the Finance and Audit Act issued for a period of five years.

*[Cap. 37: 01]*

*[6 of 1987]*

*[25 of 1988]*

## 94. Provisions relating to collection of duties

Notwithstanding the provisions of this Act—

- (a) if the value for duty purposes of any goods is not an exact number of Kwacha, then, for the purposes of assessing the amount of duty payable, such value shall be calculated to the nearest Kwacha, fifty tambala being deemed to be less than one half of one Kwacha; and
- (b) the Controller may in his discretion remit the customs duty on any single consignment of goods where the total amount of such duty is less than ten tambala.

*[40 of 1970]*

## 95. Re-imports

- (1) Subject to the production to the proper officer of satisfactory proof of origin and identity, goods grown, produced or manufactured in Malawi, exported therefrom and subsequently returned thereto shall—
- (a) in the case of dutiable goods originally lawfully exported without payment of duty or goods exported on drawback of that duty, be liable to the payment of such duty as may be

applicable on similar goods grown, produced or manufactured in Malawi at the time of re-importation;

[5 of 1972]

- (b) in the case of other goods originally exported under drawback, be liable to an amount of duty equal to the amount of drawback paid or payable;
  - (c) in the case of other goods, be admitted free of duty.
- (2) Where any goods other than those provided for in subsection (1) are re-imported after having been exported from Malawi and the Controller is satisfied—
- (a) that any customs duty to which the goods were liable prior to their exportation was paid; and
  - (b) that no drawback or other refund of such customs duty was paid or is payable on account of their exportation; and
  - (c) that any conditions governing their original importation at a reduced rate of duty remain applicable; and
  - (d) that, subject to any particular waiver by the Controller, the owner of such goods, prior to their exportation, gave notice thereof in writing to the proper officer and produced such goods for inspection by him at the port or place from which they were exported,
- the goods shall be admitted free of duty.
- (3) Notwithstanding the provisions of this section, any re-imported goods which were subjected to any process of repair, renovation or alteration while abroad shall be subject to any special conditions in relation thereto contained in the customs tariff.

## 96. Suspensions, rebates, remissions and refunds of duty

- (1) The Minister may, by regulations made under [section 175](#) and subject to such conditions as he may prescribe—
- (a) suspend wholly or in part any of the duties appearing in any tariff;
  - (b) grant a rebate, remission or refund of the duty otherwise payable, or already paid, on such goods, in such circumstances or to such classes of persons as he may specify,
- and such suspension, rebate, remission or refund may be granted with retrospective effect.
- (2) The Minister may by notice published in the *Gazette* withdraw any suspension, rebate, remission or refund of duty prescribed in terms of subsection (1):
- Provided that such notice shall not be made retrospective.
- (3) No duty shall be payable on goods imported or taken out of a bonded or excise warehouse for the use of the President, and a refund shall be made of any duty paid on goods acquired for the use of the President.

## 97. Drawback

Where goods are exported from Malawi in accordance with this Act, drawback of any duty paid on such goods or on any materials used in the manufacture or processing of such goods in Malawi may be granted in accordance with and subject to such limitations and conditions as may be prescribed in regulations made under this Act.

## 98. Remission of duty on goods exported

Subject to compliance with the provisions of any security or undertaking required by the Controller in accordance with this Act, the duties otherwise payable shall be remitted on goods which are entered for

- (a) transit; or
- (b) temporary importation; or
- (c) exportation from a bonded warehouse or from entered premises,

where the Controller is satisfied that they have been duly exported.

## 99. Remission or refund of duty upon loss etc. of goods

- (1) Where any goods subject to customs control, other than goods which are placed under embargo under [section 149](#) or in respect of which an offence has been committed, are lost or destroyed by accident and the officer is satisfied—

- (a) that the goods did not go into consumption; and
- (b) that every reasonable effort was made and precaution taken to prevent their loss or destruction,

the Controller may, subject to such conditions as may be prescribed, remit or refund the duty payable or paid on such goods.

- (2) Where any goods subject to Customs control, other than goods which are placed under embargo under [section 149](#) or in respect of which an offence has been committed, are damaged by accident or other unavoidable cause and the officer is satisfied that every reasonable effort was made and precaution taken to prevent such damage the Controller may, subject to such conditions and limitations as may be prescribed, remit or refund such part of the duty otherwise payable or paid as he considers equitable in the circumstances.

- (3) The Controller may, subject to compliance by the owner with such conditions as may be prescribed, grant a refund of duty paid on any goods which are imported under a firm contract of sale and which, after release from customs control, are found not to be in accordance with the terms of that contract in respect of their description, quality, state or condition and with the consent in writing of the owner and the foreign supplier—

- (a) are produced to an officer and destroyed under his supervision; or
- (b) are surrendered to the Controller to deal with as he thinks fit; or
- (c) are returned to the foreign supplier and on exportation are entered and produced to an officer as goods to which this subsection applies:

Provided that—

- (i) any refund granted shall be limited to that proportion of the duty paid which the credit or other allowance made by the supplier to the importer in respect of the defect bears to the price originally paid for the goods; and
- (ii) this section shall not apply where the goods have been put into use in Malawi, or are brought to the attention of an officer more than three months, or such further period as the Controller may in any particular case allow, after the payment of duty, or when such goods are imported on approval or on sale or return or on any similar terms.

- (4) Subject to compliance by the owner with the provisions of this Act and any prescribed conditions, the Controller may remit or refund the duty payable or paid, in whole or in part, on any goods which are shown to his satisfaction to have been damaged, diminished or pilfered before importation.

### 100. Refund of moneys paid to Department

- (1) No moneys paid to the Department shall be refunded except in accordance with the provisions of this Act or of any other written law authorizing the same.
- (2) If the Controller is satisfied that any person has paid moneys to the Department exceeding the amount properly due he shall authorize refund of the amount overpaid provided that application in the prescribed manner for such refund is received by an officer within six months of the date of such payment or within such further period as the Controller may in any particular case allow.
- (3) No refund shall be granted in accordance with this section where the amount overpaid is less than ten tambala.

### 101. Refund of cash deposits

- (1) No refund of any cash deposited as security shall be granted unless—
  - (a) an application in the prescribed manner for such refund is received by the proper officer within the prescribed period; and
  - (b) the applicant proves to the satisfaction of the Controller that he has complied with all of the provisions of this Act and of any conditions which were imposed in respect of the security.
- (2) Any cash deposited as security and not refunded in accordance with subsection (1) shall be forfeited.

### 102. Goods returned for destruction or further manufacture

Subject to such conditions and limitations as may be prescribed, there shall be granted to the holder of an excise licence a refund of excise duty and surtax paid by him on any goods manufactured by him which, after being found defective or otherwise unsuitable for consumption—

- (a) are returned to his entered premises for destruction or for further manufacture and are so destroyed or taken into stock for further manufacture; or
- (b) are, with the approval of the Controller, destroyed at any other place under such conditions as the Controller may impose.

### 103. Deficiencies in goods subject to customs control

- (1) Subject to the provisions of the customs laws, where the Controller is satisfied that any deficiency in goods subject to customs control has been occasioned—
  - (a) by natural wastage; or
  - (b) in the course of, or by reason of, the process of manufacture or the storage or the manipulation of the goods; or
  - (c) by accident or other similar cause,and that the goods have not gone into consumption, that the deficiency is not excessive and that every reasonable effort was made and precaution taken to prevent it, he shall grant a refund or remission of the duty paid or payable in respect of such deficiency.
- (2) Where any deficiency arises in any goods subject to customs control and the Controller is not satisfied in accordance with subsection (1) the owner shall, if the duty has not been paid on the goods, enter and pay duty in respect of such deficiency forthwith upon demand being made by the proper officer.
- (3) Nothing in this section shall prejudice the right of the Controller to institute proceedings for any infringement of the customs laws which gave rise to any deficiency.

#### 104. Surpluses in goods subject to customs control

Where any surplus is found in goods subject to customs control the owner shall forthwith upon demand being made by the proper officer enter and pay duty on so much of the surplus as is not accounted for to the satisfaction of the Controller:

Provided that nothing in this section shall prejudice the right of the Controller to institute proceedings for any infringement of the customs laws which gave rise to such surplus.

#### 105. Destruction of goods subject to customs control

If the owner of any goods subject to customs control wishes to destroy such goods or any portion of them, the Controller may, upon written request by the owner, allow such destruction under the supervision of an officer and upon being satisfied that the goods concerned or any portion of them have been destroyed shall remit or refund the duty payable or paid on such goods, but without prejudice to the claim of duty on such portion of the goods as remain. If the destruction takes place in any place other than a customs area the owner shall pay such fees as may be prescribed in respect of the attendance of an officer.

#### 106. Bringing into force and publication of agreements

- (1) Subject to the provisions of subsection (2) the provisions of any agreement concluded by the Government with the government of any other country whereby concessions are required to be allowed in respect of goods grown, produced or manufactured in or imported from such other country, may be brought into force by the Minister by notice published in the *Gazette* as from such date, which may be retrospective, as he may in such notice declare.
- (2) Every agreement brought into force under the powers conferred by subsection (1) shall be published in the *Gazette* on or before the date on which the notice referred to in subsection (1) is so published.
- (3) The Minister shall lay a copy of an agreement referred to in subsection (1) before the National Assembly—
  - (a) in the case of an agreement concluded when the National Assembly is meeting, within twenty-eight days of the conclusion of the agreement or, if before the copy of the agreement is so laid the National Assembly is dissolved or is prorogued or adjourned for more than seven days, before the end of the next meeting of the National Assembly; and
  - (b) in the case of an agreement concluded when the National Assembly is not meeting, within twenty-eight days of the next meeting of the National Assembly, or, if before the copy of the agreement is so laid the National Assembly is dissolved or is prorogued or adjourned for more than seven days, before the end of the next meeting of the National Assembly.
- (4) The National Assembly may, before it is next dissolved or is next adjourned or prorogued for more than seven days, by resolution decline to approve an agreement a copy of which is laid before it in accordance with subsection (3) and may resolve that it shall cease to be of force from the day on which such resolution is approved. Otherwise, the agreement shall be of full force and effect.

#### 107. Duties under agreements may be suspended etc.

Any suspension, rebate, remission or refund of customs duty granted in accordance with [section 96](#) shall be extended to any corresponding special rate of duty which may be applicable under any agreement to goods grown, produced or manufactured in any particular country unless the Minister by notice published in the *Gazette* otherwise directs.

#### 108. Agreements to prevail

The provisions of any agreement brought into force in accordance with [section 106](#) shall have force and effect notwithstanding anything inconsistent therewith contained elsewhere in the customs laws.

### 109. Burden of proof in respect of claims

Where any claim is made for exemption from or suspension, drawback, rebate, remission or refund of any duty, fee or charge in accordance with the provisions of this Act, the burden of proof shall lie upon the claimant to show that he is entitled to such exemption, suspension, drawback, rebate, remission or refund.

### 110. Classification of goods

- (1) The interpretation of and classification of goods in any tariff shall be governed in accordance with any principles set out in such tariff.
- (2) Save as provided in Part XIV, if any practice relating to the interpretation or classification of any goods for the purpose of the liability to duty is altered with the result that less duty is thereafter charged on goods of the same class or description, no person shall thereby become entitled to any refund of any duty paid before such alteration took place.

## Part XIIA – Surtax

*[Sections 110A-110R repealed by section 65 of the Surtax Act, Cap. 42: 02]*

*[25 of 1988]*

*[14 of 2001]*

## Part XIII – Value, quantity and origin

### 111. Value of imported goods

- (1) The proper officer may value or cause to be valued, in accordance with the provisions of this Act, any imported goods and such valuation shall be presumed to be the correct valuation of the goods until the contrary is proved.

*[25 of 1988]*

- (2) The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties *ad valorem* or *ad rem* shall be paid on that value.

*[10 of 2014]*

*[25 of 1988]*

### 112. Appeals against valuation

If an owner or importer is of the opinion that goods have been incorrectly valued under [section 111](#) (1) he may appeal to the Controller.

### 113. Rate of exchange

The rate of exchange to be used for the conversion of any value expressed in the currency of a foreign country shall be the rate of exchange, as the Controller may determine after consultation with the Reserve Bank of Malawi, at the time when the duty becomes payable.

*[3 of 1993]*



#### 114. Valuation of exported goods

- (1) The proper officer may value or cause to be valued, in accordance with the provisions of this Act, any exported goods, and such valuation shall be presumed to be the correct valuation of the goods until the contrary is proved.
- (2) The value of exported goods shall be determined in accordance with the provisions of Schedule B to this Act.

*[10 of 2014]*

#### 115. Weights and measures

- (1) Unless otherwise specially provided, where goods are subject to duty by weight or quantity, such weight or quantity shall be the net weight or quantity, and duty shall be charged in proportion on any fraction of a whole unit of such weight or quantity. The weight of any goods may be ascertained by weighing net or by deducting from the gross weight the actual tare or an allowance therefor. The Controller may fix such allowances for tare and may, in his discretion, grant such allowances subject to such conditions as he may impose.
- (2) Unless otherwise specially provided, where the duty or the rate of duty on goods is determined by reference to weight or quantity, the Controller may determine that a package of such goods shall be deemed to contain a specified weight or quantity of such goods.
- (3) Unless otherwise specially provided, a package of a declared weight or quantity, containing not more than such weight or quantity, shall be deemed to contain not less than such weight or quantity.

#### 116. Strength of spirits

Unless otherwise specially provided, all spirits shall be deemed to be of such strength as is ascertained by such tests as are prescribed.

*[9 of 1979]*

#### 117. Origin of goods

For the purposes of this Act, the country of origin of any goods, shall be deemed to be, in the case of goods not manufactured, the country in which such goods were grown or produced, or, in the case of manufactured goods, the country in which the last process of manufacture was performed.

#### 118. Specified country content of goods on which preferential rates of duty are allowed

- (1) The rebates of duty mentioned in [section 89](#) shall be allowed only—
  - (a) in respect of goods which have been grown or produced in a specified country; or
  - (b) in the case of manufactured goods, in respect of—
    - (i) goods which have been subjected to the last process of manufacture in a specified country and contain not less than such proportion of the material or labour of that specified country as may be specified in the customs tariff; or
    - (ii) goods which have been subjected, in a specified country in which the last process of manufacture has been performed, to such processes of manufacture as may be specified in the customs tariff.
- (2) The content referred to in subsection (1) (b) (i) may be fixed at varying scales for different classes of goods and shall be related to the factory or works cost of the finished articles.

- (3) This section shall apply in respect of any goods covered by any agreement brought into force in accordance with [section 106](#) unless stated to the contrary in such agreement.

### 119. Burden of proof of origin

When, for any purpose under the provisions of this Act, it is necessary to prove the country of origin of any goods, the onus of proof of such origin shall be upon the owner or importer of such goods.

## Part XIV – Disputes as to amount of duty payable

### 120. Appointment of Special Referee

For the purpose of hearing and determining appeals under [section 121](#) the Minister shall appoint a Special Referee.

### 121. Determination of disputes

- (1) If a dispute arises between the owner of any goods and the Controller as to the amount of duty payable on those goods, the owner may, if he pays the amount demanded as duty by the Controller or furnishes security to the satisfaction of the Controller for the payment of that amount, within three months after the payment or furnishing of security, appeal to the Special Referee against such demand.
- (2) If a dispute arises as to the amount of duty payable in respect of goods which a person proposes to import or manufacture he may appeal to the Special Referee at any time prior to such importation or manufacture but if he imports or manufactures the goods before the dispute has been determined he shall pay such amount of duty as the Controller shall demand or give security therefor.
- (3) A notice of appeal shall be in writing and shall state clearly and specifically the grounds of the appeal.
- (4) The date of the hearing of any appeal shall be determined by the Special Referee.
- (5) Where the appeal arises solely as a result of the Controller's classification of goods for tariff purposes the Special Referee shall publish in the *Gazette* the date of the hearing of the appeal at least one month prior to that date, and any person who satisfies the Special Referee that he has a legitimate trade interest in the appeal and who not later than ten days before that date enters an appearance in the manner specified in the notice may be heard on the appeal.
- (6) On the hearing and determination of any appeal the Controller, or any person authorized by him, may appear in support of his decision, and the appellant and any person who has entered an appearance in accordance with the provisions of subsection (5) may appear either in person or by a legal practitioner.
- (7) The Special Referee may on any appeal confirm or set aside the demand or assessment made by the Controller and, if he sets aside such demand or assessment, shall refer the matter back to the Controller with such observations as he considers proper.
- (8) Where the Special Referee refers the matter back to the Controller, the Controller shall make a new demand or assessment and if such new demand or assessment is for a lesser amount of duty or no duty, then notwithstanding the provisions of [section 100](#) any amount of duty overpaid shall be repaid by the Controller.

## 122. Procedure

The procedure on any appeal shall be as determined by the Special Referee, who may permit evidence to be led by the Controller, the appellant and any person who has entered an appearance in accordance with the provisions of [section 121](#) (5).

## Part XV – Securities

### 123. Controller may require security

The Controller may require the owner of any goods subject to customs control to give security in respect of such goods for the protection of the revenue and compliance with the customs laws, and, pending the giving of any such security, the Controller may refuse to permit their unloading, removal, delivery or exportation.

### 124. Securities generally

- (1) Where any security is required to be given under the customs laws, then such security may, as the Controller may require, be given either—
  - (a) by cash deposit;
  - (b) by bond in such sum and subject to such conditions and with such sureties as the Controller may reasonably require;
  - (c) partly by cash deposit and partly by bond; or
  - (d) with the special permission of the Controller and subject to such conditions as he may impose, by bank or other guarantee.
- (2) Where any security is required to be given under the customs laws for any particular transaction, such security may be given to cover any other similar transactions which the person giving such security may enter into within such period as the Controller may approve.
- (3) The Controller may refuse to recognize any surety to any bond required under the customs laws.
- (4) Any bond required to be given under the customs laws shall be so framed that the person giving such bond, and any surety thereto, is bound to the Controller for the due performance of the conditions of such bond, and any such bond or any guarantee may, unless sooner discharged by the due performance of the conditions thereof, be discharged by the Controller on the expiration of three years from the date thereof, but without prejudice to the right of the Controller at any time to require new security prior to discharge, or to require that the form or amount of such security shall be altered in such manner as he shall determine.
- (5) Where any bond or guarantee given under the customs laws is discharged, the Controller shall cause such bond or guarantee to be cancelled and an endorsement to that effect shall be made thereon.
- (6) Any bond or guarantee given under the customs laws shall, notwithstanding that any such bond or any surety thereto or any such guarantee is given by any person under the age of twenty-one years, be valid and enforceable as if it were so given by a person of full age.
- (7) The conditions of any security given under the customs laws and the enforcement thereof shall not be construed as exempting any person from any prosecution to which he may be liable under the customs laws or any other written law in respect of matters provided in such conditions.
- (8) Unless otherwise provided therein, the subscribers to any bond or guarantee executed in terms of this Act shall be liable thereon jointly and severally for the full amount stated therein.

### 125. Provisions relating to sureties

- (1) Without prejudice to any right of a surety to any bond given under the customs laws against the person for whom he is surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly the surety shall not be discharged, nor his liability affected, by the giving of time for payment, or by the omission to enforce the bond for any breach of any conditions thereof, or by any other act which would not have discharged the bond if he had been the principal debtor.
- (2) If any person being a surety—
  - (a) dies;
  - (b) becomes a bankrupt or enters into any arrangement or composition with, or for the benefit of, his creditors; or
  - (c) departs from Malawi without leaving sufficient property therein to satisfy the whole amount of the bond,

the Controller may require the person giving the bond to enter into new security.

### 126. Enforcement of bond or guarantee

- (1) Where the conditions of any bond or guarantee have not been complied with, the Controller may take legal proceedings for the enforcement thereof.
- (2) If any goods which have been lawfully permitted to be removed for any purpose without payment of duty are unlawfully taken from any conveyance or place before that purpose is accomplished, the Controller may if he sees fit take legal proceedings for the enforcement of any bond or guarantee given in respect thereof notwithstanding that any time set out in the bond or guarantee for accomplishing that purpose has not expired.
- (3) Where any proceedings are taken under this section for the enforcement of a bond, then production of the bond shall, without further proof, entitle the Controller to judgment for the stated liability, which shall be deemed to be liquidated damages calculated to reimburse the Government for loss occasioned by breach of the conditions of the bond, unless the person against whom such proceedings are taken proves compliance with all the conditions of the bond, or that the bond or surety was not executed by him, or that he has been leased from the provisions of the bond or surety, or that he has already made satisfaction for the full amount thereof.
- (4) Bonds and guarantees executed under any of the legislation repealed under this Act shall, notwithstanding such repeal, remain in force for the period during which they would have remained in force but for such repeal or until varied, replaced, or cancelled under this Act.
- (5) Notwithstanding any legal proceedings that the Commissioner-General may take in respect of any bond or guarantee, the Commissioner-General may require that the liability under the bond be liquidated by guarantor.

*[11 of 2003]*

## Part XVI – Agents

### 127. Authorized agents

- (1) Where under the provisions of the customs laws the owner of any goods or conveyance or the licensee of any bonded warehouse or the holder of an excise licence (hereinafter collectively referred to in this Part as “the principal”) is required or authorized to perform any act, then such act may be performed on his behalf by an authorized agent:

Provided that the Controller may direct that certain matters be dealt with exclusively by the principal and the performance of such matters by an authorized agent shall not be recognized.

- (2) A person shall not be an authorized agent unless he is—
  - (a) exclusively in the employment of his principal; or
  - (b) a customs agent,and, in either case, such person is authorized in writing by the principal, either generally or in relation to any particular act, to perform the act in question on behalf of the principal.
- (3) An officer may require from any person purporting to be an authorized agent the production of written authority of his principal and in default of the production of such authority such officer may refuse to recognize the person as an authorized agent.

### **128. Customs agents**

- (1) The Commissioner General may, on application, license persons as customs agents for the purpose of transacting business with the Malawi Revenue Authority on behalf of other persons.
- (2) An application for a licence under subsection (1) shall be subject to such conditions as may be prescribed.
- (3) An applicant for a licence, or a licensee under this section, shall furnish security; and pay such fees as may be prescribed.

*[8 of 2005]*

*[28 of 2010]*

### **128A. Appointment of Advisory Committee and Appeals Committee**

- (1) The Commissioner General shall, every two years, appoint an Advisory Committee comprising officers of the Malawi Revenue Authority, whose functions shall include—
  - (a) conducting interviews for persons wishing to transact business of customs agents;
  - (b) ensuring compliance by customs agents with tax laws and customs procedures;
  - (c) assessing applications for renewal of customs agents licence; and
  - (d) performing such other functions as may be assigned to the Committee by the Commissioner General.
- (2) The Minister shall, every two years, appoint an Appeals Committee comprising—
  - (a) three officers of the Malawi Revenue Authority;
  - (b) one representative of the Malawi Confederation of Chambers of Commerce and Industry;
  - (c) two representatives of any association of customs agents; and
  - (d) one representative of the Ministry of Industry and Trade.
- (3) The Appeals Committee shall be responsible for considering appeals from an aggrieved customs agent or an applicant for a licence for a customs agent.

*[28 of 2010]*

### **129. Master may appoint agent**

- (1) The master of any aircraft or vessel may, instead of himself performing any act, including the answering of questions, required by or under this act to be performed by him, appoint an agent on

his behalf and at his risk to perform any such act, and any such act performed by such agent shall in all respects and for all purposes be deemed to be the act of the master, so, however, that the personal attendance of the master may be demanded at any time by the proper officer at any port.

- (2) An agent appointed under the terms of subsection (1) shall furnish security to the satisfaction of the Controller for the protection of the revenue and compliance with the customs laws.

### 130. Liability of agent

Any authorized agent or an agent appointed under [section 129](#) who performs any act on behalf of his principal or of the master of an aircraft or vessel shall, for the purposes of the customs laws, be deemed to be such principal or master in respect of such act and shall, accordingly be personally liable for the performance of all related acts and obligations including the payment of any duty and the answering of any questions which may be required of the principal or master under the provisions of the customs laws, and may be prosecuted for any offence committed by the principal or master as if he had himself committed the offence:

Provided that nothing herein contained shall relieve the principal or master from liability for the performance of any act or obligation under the customs laws or from prosecution under the customs laws.

### 131. Liability of principal for acts of other persons

Any principal or master of an aircraft or vessel who authorizes any other person to act for him for any purpose under the customs laws shall be liable for the acts and statements of such other person in respect of that authorization and may accordingly be prosecuted for any offence committed by such other person as if the principal or master had himself committed the offence:

Provided that—

- (a) nothing herein contained shall relieve such other person from any liability to prosecution in respect of any such offence;
- (b) neither the principal or master nor the other person shall be sentenced to imprisonment for any such offence unless it is shown that he was knowingly concerned in the act which constituted such offence.

## Part XVII – Offences and penalties

### 132. Offences in respect of persons

Any person who—

- (a) being required by or in accordance with the customs laws to answer any question or supply any information fails or neglects to do so or gives or makes any untrue, incorrect, false or incomplete answer or representation;
- (b) being required by or in accordance with the customs laws to perform any act or to comply with any provision or condition thereof, fails or neglects to do so;
- (c) assaults, abuses, resists, obstructs, hinders or interferes with any officer or police officer, or any person aiding or assisting an officer or police officer, in the exercise of his powers or the performance of his duties under the customs laws;
- (d) rescues any person apprehended for any offence against the provisions of the customs laws or who prevents such apprehension;
- (e) counterfeits or without authority uses any seal, signature, initials or other mark of, or used by, any officer for any purpose relating to the customs laws;

- (f) removes, breaks, damages, defaces, destroys, cuts away, casts adrift, maliciously shoots at, or in any way interferes or tampers with any lock, seal, sign, mark, fence, barrier, rope, chain, anchor, buoy, conveyance or other thing used by the Department for any purpose under the customs laws;
- (g) fails to stop at a customs barrier established in accordance with [section 16](#) (7);  
*[30 of 1969]*
- (h) falsely holds himself out to be an officer;
- (i) uses any place as a customs area unless it is properly licensed, appointed or approved under the customs laws as such; or
- (j) conspires with another to commit an offence against the customs laws,  
shall be guilty of an offence.

### 133. Accessories etc.

Any person who—

- (a) is an accessory before or after the fact to the commission of;
- (b) counsels or procures any other person to commit; or
- (c) attempts, causes, permits, aids, connives at or abets the commission of,

any offence against the customs laws shall be deemed to have committed such offence and shall be punishable as if he had himself committed such offence.

### 134. Offences in respect of goods

Any person who—

- (a) imports, exports, carries coastwise or in transit, loads, unloads, removes, possesses or conveys goods contrary to the provisions of the customs laws;
- (b) imports or exports any goods in pursuance of any document or computer records and other electronic data in which a false declaration has been made;
- (c) except in accordance with the customs laws, buys, receives, harbours, offers for sale or deals in, or has in his possession any goods subject to customs control;
- (d) except in accordance with the customs laws, conceals, moves, alters, damages, destroys, removes, disposes of or in any way interferes or tampers with goods subject to customs control;
- (e) offers for sale or deals in or possesses any goods under the pretence that they are smuggled goods whether or not they are in fact smuggled goods,

shall be guilty of an offence.

*[30 of 1969]*

*[11 of 2003]*

### 135. Offences in respect of documents, books, licences, etc.

(1) Any person who—

- (a) makes or signs any declaration, bill of entry, certificate or other document or computer records and other electronic data made for submission to an officer which is untrue or incorrect;

- (b) being required by or in accordance with the customs laws to produce any book, document or computer records and other electronic data or other thing within his possession or control, fails or neglects to do so;
- (c) being required by, or in accordance with, the customs laws to keep or submit any book or document or computer records and other electronic data—
  - (i) fails or neglects to keep or submit such book or document or computer records and other electronic data;
  - (ii) fails or neglects to make an entry in such book or document or computer records and other electronic data in good time;
  - (iii) with intent to deceive erases or obliterates any entry in such book or document or computer records and other electronic data;
  - (iv) with intent to deceive mutilates or tears any page or leaf in or from such book or document or computer records and other electronic data;
  - (v) with intent to deceive destroys, conceals or makes away with any such book or document or computer records and other electronic data;
  - (vi) forges, falsifies or frames so as to deceive any entry in such book or document or computer records and other electronic data;
  - (vii) procures or attempts to procure any such book or document or computer records and other electronic data which is forged, falsified or framed so as to deceive;
- (d) knowingly uses or attempts to use for any purpose of the customs laws any book or document or computer records and other electronic data which has been forged, falsified or framed so as to deceive;
- (e) with intent to deceive, brings into Malawi or has in his possession any blank or incomplete invoice, bill head or other similar document or computer records and other electronic data capable of being filled out and used as an invoice for imported goods; or
- (f) uses any licence, permit, certificate or other document or computer records and other electronic data issued under the customs laws in any manner contrary to the provisions or conditions of the customs laws or of such licence, permit, certificate or other document or computer records and other electronic data,

shall be guilty of an offence.

- (2) For the purposes of this section, the forgery of a document or computer records and other electronic data is the making of a false document or computer records and other electronic data, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine whether within Malawi or not, and making a false document or computer records and other electronic data includes making any false material alteration in a genuine document or computer records and other electronic data, whether by addition, insertion, obliteration, erasure, removal, or otherwise.

*[11 of 2003]*

### **136. Offences in respect of conveyances**

- (1) Any person who uses a conveyance having a false bulkhead, false bow or stem, double side or bottom, or any secret or disguised place, adapted for the purpose of smuggling goods, shall be guilty of an offence unless he proves that he was unaware of such condition of such conveyance.
- (2) Where, on any conveyance being boarded by an officer, any goods subject to customs control are found therein, and on such conveyance being subsequently boarded, whether by the same or another officer, such goods or any part thereof are no longer therein or additional goods subject to



customs control are found therein, then unless the master of such aircraft or vessel or the person in charge of such vehicle accounts for such goods to the satisfaction of the officer or proves that he took all reasonable precaution to prevent the removal or addition of such goods, such master or person in charge shall be guilty of an offence.

### 137. Offences by masters or persons in charge of conveyances

- (1) Whenever any lock, mark or seal has been placed by an officer upon any part of a conveyance or upon any goods on board any conveyance the master of the aircraft or vessel or the person in charge of the vehicle, as the case may be, shall ensure that such lock, mark or seal is not opened, altered or broken except with the authority of an officer and if he fails so to ensure he shall be guilty of an offence unless he proves that he took all reasonable precautions to prevent such act.
- (2) If-
  - (a) any conveyance is used in smuggling or in the carriage of smuggled goods;
  - (b) any vessel fails to stop for boarding when lawfully required to do so;
  - (c) any ship fails to depart from Malawi within twenty-four hours after being so required by an officer; or
  - (d) any goods on any conveyance are thrown overboard, staved or destroyed to prevent seizure,the master of the aircraft or vessel or the person in charge of the vehicle, as the case may be, shall be guilty of an offence unless he proves that he took all reasonable precautions to prevent the act which constituted the offence.

### 138. Offences in respect of customs areas

Any person who—

- (a) uses, or permits to be used, any customs area in contravention of any of the terms of the licence, appointment or approval for such customs area;
  - (b) not being an officer in the course of his duty, or the licensee or owner of a customs area, or the authorized employee of such licensee or owner, opens or enters any part of that customs area without lawful excuse or without the permission of the proper officer;
  - (c) opens or enters any part of a customs area contrary to the orders of an officer or refuses to leave any part of a customs area when lawfully directed to do so by an officer; or
  - (d) removes any goods from a customs area without the permission of the proper officer,
- shall be guilty of an offence.

### 139. Offences by or in relation to officers

- (1) Any officer who—
  - (a) directly or indirectly asks for or takes, in connexion with any of his duties, any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive; or
  - (b) enters into or acquiesces in any agreement or conspires with any person to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the revenue is or may be defrauded, or which is contrary to the provisions of the customs laws or the proper execution of his duty; or

- (c) discloses, except for the purposes of the customs laws, or when required to do so as a witness in any court, or with the approval of the Controller, any information relating to any person acquired by him in the performance of his duties,

shall be guilty of an offence.

- (2) Any person who, without lawful authority—

- (a) directly or indirectly offers or gives to any officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

- (b) proposes or enters into any agreement or conspires with any officer,

in order to induce him to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the revenue is or may be defrauded, or which is contrary to the provisions of the customs laws or the proper execution of the duty of any officer, shall be guilty of an offence.

#### 140. Special offences in respect of excise

Any person who—

- (a) manufactures any excisable goods contrary to the provisions of the customs laws;
- (b) is found without lawful excuse in any place where the illegal manufacture of excisable goods is being carried out;
- (c) without lawful authority deals in or has in his possession, custody or control any manufactured or partially manufactured excisable goods upon which duty has not been paid;
- (d) without lawful authority or payment of any duty which may be due, imports any excisable goods after they have been exported;
- (e) imports, keeps, possesses or uses any still, the keeping, possession or use of which is not authorized in accordance with a certificate issued by the Controller, or an excise licence;
- (f) supplies the means or materials for, or assists in establishing, repairing, maintaining or working any still, the keeping and using of which has not been authorized under the customs laws, knowing at the time when he so supplies or assists that it was such a still;
- (g) contravenes the provisions of [section 82](#) (f);
- (h) fails to pay excise tax;
- (i) makes a late payment of excise tax;
- (j) makes an underpayment of excise tax;
- (k) makes a late submission of a return;
- (l) fails to submit a return;
- (m) submits an incorrect return; or
- (n) issues a cheque that is subsequently dishonoured by a bank, regardless of the reason for the bank dishonouring the cheque,

shall be guilty of an offence.

*[25 of 2011]*

### 141. Offences by officers of corporations, etc.

Any contravention of the customs laws by a person acting in his capacity as a director, manager, secretary or other similar officer or a partner of a company, firm, society or other body of persons shall be deemed to be a contravention by such company, firm, society or other body of persons as the case may be.

### 142. Penalties for certain offences

- (1) Any person guilty of an offence under this Act with intent to defraud the Government of any duty or to evade any restriction or prohibition on the importation or exportation of any goods shall—
  - (a) in the case of dutiable goods which are not prohibited goods, be fined not less than three times the amount of the duty or K10, 000 whichever is the lesser and not more than ten times the amount of the duty or K10, 000 whichever is the greater and shall be liable to imprisonment for three years;
  - (b) in the case of prohibited goods, be fined not less than three times the value of the goods or K10, 000 whichever is the lesser and not more than five times the value of the goods or K10,000 whichever is the greater and shall be liable to imprisonment for three years;
  - (c) in the case of an offence punishable under paragraphs (a) or (b), where such person has previously been convicted of such an offence the minimum fine shall be double that otherwise provided for;
  - (d) in the case of goods which are neither dutiable nor prohibited be liable to the penalties provided for in [section 143](#).
  - (e) in the case of taxable goods or taxable services, to be fined not less than three times the amount of duty or K10, 000, whichever is the lesser, and not more than ten times the amount of duty or K10, 000, whichever is the greater, and shall be liable to imprisonment for three years.

[37 of 1998]

- (2) Notwithstanding any other provisions of the customs laws the amount of duty or the value of goods for the purposes of this section and of sections [143](#), [146](#) (5) and [162](#) may be determined by the Controller, and a certificate of such amount of duty or value under the hand of the Controller shall be *prima facie* evidence of the amount of duty or the value of such goods.

[5 of 1972]

[37 of 1998]

### 143. General penalty

Any person guilty of an offence against this Act for which no penalty is otherwise specifically provided shall be liable to a fine of K10, 000 or to three times the value of the goods in respect of which the offence was committed, whichever is the greater, and to imprisonment for three years.

[37 of 1998]

### 143A. Penalty for offences committed under s. 140

Any person who commits an offence under [section 140](#) (g) shall be liable on conviction to a fine of five times the Excise or revenue involved in the commission of the offence and to imprisonment for two years.

[12 of 2008]

### 143B. Administrative penalties

Any person who contravenes—

- (a) section 140 (h) shall be liable to pay the excise tax plus a penalty of twenty per cent of the excise tax;
- (b) section 140 (i) shall be liable to pay the total excise tax plus a penalty of twenty per cent of the excise tax, and an additional penalty of five per cent of the total excise tax due, for every month that lapses after the month when payment of the total excise tax became due;
- (c) section 140 (j) shall be liable to pay the total excise tax underpaid plus a penalty of twenty per cent of the underpaid excise tax;
- (d) section 140 (k) shall be liable to a penalty of K20, 000, and K1, 000 for each additional day;
- (e) section 140 (l) shall be liable to a penalty of K100,000;
- (f) section 140 (m) shall be liable to a penalty of twenty per cent of the total excise tax which would otherwise have been payable if the return was correct; and
- (g) section 140 (n) shall be liable to pay in cash or through a bank certified cheque the total amount referred to drawer plus a penalty of thirty per cent of the value of the cheque.

[25 of 2011]

### 144. Offences cognizable

All offences under the customs laws shall be cognizable to the police.

## Part XVIII – Forfeiture, seizure, embargo and abandonment

### 145. Goods liable to forfeiture

- (1) Any goods in respect of which an offence has been committed under the customs laws shall be liable to forfeiture.
- (2) Any conveyance which has been used without lawful authority for the importation, landing, removal, conveyance, exportation or carriage coastwise or in transit of goods liable to forfeiture, shall be liable to forfeiture:

Provided that no conveyance engaged in any public service for the conveyance of passengers or goods and operated in accordance with a public timetable shall be liable to forfeiture except on the specific authority of the Minister.

- (3) In addition to any other forfeiture under this section—
  - (a) where any manufacturer of dutiable goods is guilty of an offence under the customs laws in respect of those goods, all goods in respect of which excise duty or surtax is payable or has been paid and all substances, spirits, mixtures or compounds used in the preparation of dutiable goods found in the possession of the manufacturer or on his premises, and all machinery, utensils and materials for the manufacture of such goods shall be liable to forfeiture;
  - (b) where any goods are liable to forfeiture, then the package, cask, receptacle or utensil in which such goods are contained, and all the contents of such package, cask, receptacle or utensil shall also be liable to forfeiture therewith; and

- (c) any security retained by the Controller in respect of any goods or conveyance liable to forfeiture shall itself be liable to forfeiture.

*[13 of 1973]*

#### **146. Seizure of goods**

- (1) An officer or police officer may seize any goods or conveyance which he reasonably suspects may be liable to forfeiture.
- (2) Where any goods or conveyance are seized under the customs laws, the proper officer shall, within 30 days of such seizure, give notice to the owner in writing of such seizure:

Provided that no notice shall be required where—

- (a) within such period of 30 days either a person has been prosecuted for an offence by reason of which such goods or conveyance were seized or such offence has been dealt with under Part XIX; or
- (b) no owner can with reasonable diligence be found.
- (3) Notice of seizure given to any person coming within the definition of owner in respect of the goods or conveyance seized shall be deemed to be notice to all persons coming within such definition.
- (4) Any goods or conveyance which have been seized shall, as soon as convenient, be delivered into the care of the proper officer or, in the event of their being of such nature that they cannot be so delivered, the officer seizing such goods or conveyance may declare them as having been so delivered in the place where he found them.
- (5) If any goods or conveyance which are liable to forfeiture cannot be found or recovered, the Controller, without delegation, may declare that the person from whom such goods or conveyance would have been seized shall deposit with the Controller a sum of money equal to the duty paid value of such goods or conveyance at that time and the Controller may recover such amount by civil action in a court of competent jurisdiction. Any such amount so deposited or recovered shall be dealt with as if it were itself such seized goods or conveyance.

*[5 of 1972]*

#### **147. Detention and disposal of seized goods**

- (1) Where any goods or conveyance are seized in accordance with the customs laws, then—
- (a) they shall be restored immediately to the owner if proceedings for an offence in respect thereof are time-barred;
- (b) if any person is prosecuted for an offence by reason of which such goods or conveyance were seized, such goods or conveyance shall be detained until the determination of such prosecution and thereupon dealt with in accordance with [section 159](#);
- (c) in any other case, such goods or conveyance shall be detained until 30 days after the date of the seizure or the giving of any required notice of seizure, whichever is the later, and, if no claim is made therefor in accordance with subsection (2), such goods or conveyance shall be forfeited:

Provided that where any goods are seized which are of a perishable nature or are animals, the Controller, without delegation, may direct that such goods be sold forthwith in such manner as he may deem fit and the net proceeds of such sale, after the deduction of the duty, if any, and the expenses of such sale, shall be retained and dealt with as if they were such seized goods.

- (2) Where any goods or conveyance are seized in accordance with the customs laws and no proceedings have been instituted in respect of an offence by reason of which such goods or conveyance were seized, the owner thereof may claim such goods or conveyance within 30 days of the date of the

seizure or of the giving of any required notice of seizure, whichever is the later, by notice of claim in writing to the Controller.

- (3) The Controller may within three months of the date of seizure or of the giving of any notice of seizure, whichever is the later, permit any goods or conveyance which have been seized in accordance with the customs laws and for which a notice of claim in accordance with subsection (2) has been received by him—
  - (a) to be restored conditionally or unconditionally to the claimant; or
  - (b) to be delivered to the claimant upon the payment by him of any duty payable; or
  - (c) to be delivered to the claimant upon the giving by him of such security as the Controller may think appropriate for the payment of the full duty-paid value of such goods or conveyance in the event of their forfeiture, and upon compliance with and subject to such conditions as the Controller may impose.
- (4) If, within 30 days after the making of a claim for any goods or conveyance in accordance with subsection (2), the Controller does not restore or deliver them to the claimant or delivers them upon the giving of security under subsection (3) (c), the claimant may, within three months of the date of seizure, or of the giving of any required notice of seizure, whichever is the later, institute proceedings for the recovery of such goods or conveyance or of any security given therefor, giving notice in writing to the Controller of the institution of such proceedings.
- (5) Where a claimant does not institute proceedings in accordance with subsection (4) such goods or conveyance or any security given therefor shall be forfeited.
- (6) Where a conveyance to be restored or delivered to the claimant under subsection (3) has a false bulkhead, false bow or stem, double side or bottom, or any secret or disguised place, adapted for the purpose of smuggling goods, the owner of such conveyance shall, as a condition of such restoration or delivery of the conveyance to him remove such false bulkhead, false bow or stem, double side or bottom or such secret or disguised place to the satisfaction of the Controller and if the owner refuses, fails or neglects to effect such removal within such reasonable period as the Controller may direct, the conveyance shall be forfeited.

#### 148. Forfeited goods

Where any goods are forfeited under the customs laws such goods shall, without compensation, vest in the Government and may be sold, destroyed or otherwise disposed of as the Controller thinks fit. If the goods are sold the Controller may make such payments out of the proceeds of the sale as he thinks fit in respect of expenses incurred in the sale, carriage charges claimed by and due to any carrier, or warehouse rent, storage charges and portorage charges:

Provided that any claim for such payment shall be made in writing and shall be delivered to the Controller not later than six months after the sale of the goods.

#### 149. Embargo on goods

- (1) Where an officer has reason to believe that an offence has been committed under the customs laws in respect of any goods which have been released from customs control and in respect of which any proceedings could be commenced under the customs laws, he may, instead of seizing such goods, place an embargo on them regardless of where or in whose possession such goods are found.
- (2) Where an embargo has been placed on goods by an officer, that officer shall forthwith give notice to the owner in writing of such embargo.
- (3) Notice of embargo given to any person coming within the definition of owner in respect of the goods upon which the embargo has been placed shall be deemed to be notice to all persons coming within such definition.

- (4) Except with the permission in writing of the proper officer no person shall remove or in any way deal with goods upon which embargo has been placed until the embargo has been withdrawn in writing by the proper officer.

### 150. Abandonment of goods

Where any goods are subject to customs control the Controller may, subject to such conditions as he may impose, permit the owner of such goods to abandon them to the Department and in that case the Controller shall, if so requested at the time, remit or refund the duty payable or paid on such goods, as the case may be. Upon such abandonment such goods shall, without compensation, vest in the Government and may, at the expense of the owner thereof, be sold, destroyed or otherwise disposed of in such manner as the Controller may direct:

Provided that this section shall not apply to goods which are seized or forfeited or which are placed under embargo under [section 149](#), or in respect of which an offence has been committed.

### 151. Saving

For the avoidance of doubt, any action taken in accordance with this Part shall not—

- (a) prevent or effect the institution of any proceedings or any action taken under any written law against any person from whom goods or any conveyance are liable to forfeiture or have been seized, or in respect of any such goods or conveyance;
- (b) prevent the settlement of any case by the Controller under Part XX;
- (c) affect liability for the payment of any duty in respect of goods seized or forfeited;
- (d) entitle any person to claim any refund or remission of duty paid or payable in respect of goods seized or forfeited or otherwise dealt with under this Part; or
- (e) authorize the sale or disposal of prohibited goods except in accordance with the written law under which they are so prohibited.

## Part XIX – Legal proceedings

### 152. Jurisdiction in respect of claims

Any civil proceedings under the customs laws relating to any claim to any goods which have been seized under the customs laws, and any claim to any duty, rent, charge, expense or other sum, payable under the customs laws, may be heard and determined without limit of amount before a court of a Resident Magistrate.

### 153. General immunity from legal proceedings

Except as otherwise specifically provided in the customs laws, no claim shall lie against the Government, the Department, the Controller, nor any officer for anything done in good faith under the powers conferred by the customs laws.

### 154. Actions by or against the Controller

- (1) Where under the provisions of the customs laws any proceedings may be brought by or against the Controller, then the Controller may sue or be sued by the name of the Controller of Customs and Excise, and may for all purposes be described by that name.
- (2) Where any proceedings are brought against the Controller under the customs laws and judgment is given against the Controller then, if the court before which such proceedings are heard is satisfied that there were reasonable grounds for the action giving rise to the institution of the

proceedings, the plaintiff shall be entitled to recover anything seized, or the value thereof, but shall not otherwise be entitled to any damages, and no costs shall be awarded to either party:

Provided that this subsection shall not apply to any action brought in accordance with sections 20 and 174.

- (3) Except as provided in subsection (2), where any proceedings are brought by or against the Controller, costs may be awarded to or against the Controller.
- (4) Where under the provisions of the customs laws any proceedings are brought by or against the Controller and—
  - (a) any sums or costs are recovered by the Controller, such sums or costs shall be credited to the revenue;
  - (b) any damages or costs are ordered to be paid by the Controller, such damages or costs shall be paid out of moneys appropriated for the administration of the Department and the Controller shall not be personally liable therefor.

### 155. Limitation of proceedings

- (1) Any proceedings for an offence against the customs laws may be commenced within two years of the date of the offence and the powers of seizure under section 146 may be exercised within two years of the date when the goods first became liable to seizure:  
Provided that—
  - (i) in any case where fraud is a material element the said periods of two years shall be extended to five years; and
  - (ii) prohibited goods may be seized at any time.
- (2) For the purposes of this section, the date when any goods are seized shall be deemed to be the date of commencement of any proceedings for an offence in respect of such goods.

### 156. Provisions relating to burden of proof

In any proceedings under the customs laws—

- (a) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;
- (b) the burden of proving—
  - (i) the place of origin of any goods;
  - (ii) the payment of the proper duties;
  - (iii) lawful permission or authority; or
  - (iv) the lawful importation, exportation, carriage coastwise or in transit, loading, unloading, removal, possession, disposal, use or conveyance of goods,shall be on the person prosecuted or on the claimant of any goods seized under the customs laws;
- (c) the fact that security has been given for the payment of any duty or for the compliance with any condition in respect of the nonpayment of which or non-compliance with which the proceedings were brought, shall not be a defence.



### 157. Provisions relating to evidence

In any proceedings under the customs laws—

- (a) an averment—
  - (i) that the proceedings were instituted on the direction of the Controller;
  - (ii) that any person is or was an officer or is or was employed in the prevention of smuggling;
  - (iii) that any person is or was authorized or appointed to discharge or was engaged on the direction or concurrence of the Controller in the discharge of, any duty;
  - (iv) that any goods which were thrown overboard, staved, broken or destroyed were so dealt with in order to prevent or avoid seizure of those goods;
  - (v) that any act was done within the limits of any customs area or at, in or over any part of Malawi; or
  - (vi) that the Controller, or any other officer, is or is not satisfied as to any matter as to which he is required to be satisfied under the customs laws,

shall be *prima facie* evidence thereof;

- (b) a certificate purporting to be signed by a government analyst or a government chemist shall be receivable in evidence and shall be *prima facie* evidence of the matters recorded therein;
- (c) any entry in any book or document required to be kept for the purposes of the customs laws, or any copy thereof certified under the hand of the Controller, shall be receivable in evidence by or on behalf of the Controller or the prosecutor and shall be *prima facie* evidence of the matters recorded therein;
- (d) any certificate or copy of an official document purporting to be certified under the hand and seal or stamp of office of any public officer or of an officer of the customs and excise of any country shall be receivable in evidence and shall be *prima facie* evidence of the matters recorded therein;
- (e) any invoice or other document submitted or used by any person for any purpose under the customs laws, and any copy thereof, may be produced as evidence by or on behalf of the Controller or the prosecution in any proceedings without calling the person who prepared or signed it;
- (f) when any goods reasonably believed to be liable to forfeiture are seized, it shall be sufficient to open and examine 10 per cent only of each description of package or receptacle in which such goods are contained and, if necessary, to test only a representative sample of the contents thereof, chosen at random, and the court shall presume that the goods contained in the unopened packages and receptacles of the same description, and the balance of the contents when tested, are of the same nature, quantity and quality as those found in similar packages or receptacles which have not been opened or tested as the case may be;
- (g) a certificate signed by the Controller—

[25 of 1988]

  - (i) that a person was or was not, at any date, registered under Part XIIA; or
  - (ii) that any return required by or under Part XIIA has not been made or had not been made at any specified date;

- (iii) that any surtax shown as due on any return or assessment made in pursuance of section 110L has not been paid,

[11 of 1989]

shall be *prima facie* evidence thereof.

[25 of 1988]

[11 of 1989]

### 158. Provisions relating to witnesses

- (1) No witness on behalf of the Government or of the Controller in any proceedings under the customs laws shall be compelled to disclose the fact that he received any information relating to any customs or excise matter, or the nature of any such information, or the name of the person who gave any such information, or any matter which might lead to his discovery.
- (2) No officer or police officer appearing as a witness in any proceedings under the customs laws shall be compelled to produce any report, or any information received by him in his official capacity.

### 159. Effect of conviction or acquittal on goods or conveyance liable to forfeiture

- (1) Where any person is prosecuted for any offence against the customs laws and any goods or any conveyance have been seized by reason of the commission of such offence, then, on the conviction of such person of such offence, such goods and conveyance shall without further order, be forfeited.
- (2) If any goods or conveyance liable to forfeiture under [section 145](#) cannot be found or recovered, the court convicting the offender may order him to pay to the Controller an amount equal to the duty-paid value of such goods or conveyance at the time of the offence.
- (3) Where any person is prosecuted for any offence against the customs laws and goods have been seized under [section 146](#), then on the acquittal of such person the court may order such goods either—
- (a) to be released to the person from whom they were seized, or to the owner thereof, subject to payment of any duty payable and to such conditions as the court may impose; or
- (b) to be forfeited where the court is satisfied that, notwithstanding such acquittal, an offence has been committed in respect of such goods,

but where the court does not at that time make such an order then such goods shall be released to the person from whom they were seized.

### 160. Proceedings for recovery of goods etc.

Where proceedings have been instituted pursuant to a notice under [section 147](#) (4) for the recovery of such goods, conveyance or security, then—

- (a) if the claimant fails to satisfy the court that such goods, conveyance or security were not liable to forfeiture under the customs laws, they shall be forfeited;
- (b) if the claimant does so satisfy the court, such goods, conveyance or security shall be released to the claimant subject to payment of any duty payable and to such conditions as may be imposed:

Provided that a court shall not release such goods, conveyance or security to any claimant unless it is satisfied that the claimant is the owner thereof or, by reason of any interest therein is entitled to the possession thereof. If the court is not so satisfied, such goods, conveyance or security shall be forfeited as if no claim thereto had been made.

### 161. Innocent owners to be heard before forfeiture

- (1) Notwithstanding the provisions of sections 159 (1) and 160, where a conveyance is liable to forfeiture under section 145 (2) such conveyance shall not be forfeited—
  - (a) unless and until the owner of the conveyance (if he can with reasonable diligence be found) has been given an opportunity of being heard; and
  - (b) if the said owner satisfies the court that the offence in respect of which the conveyance was rendered liable to forfeiture was committed without his knowledge or consent, and that he was unable to prevent it.
- (2) Notwithstanding the provisions of sections 159 (1) and 160, goods (other than prohibited goods), or a conveyance liable to forfeiture shall not be forfeited if the owner thereof satisfies the court that the offence in respect of which they were rendered liable to forfeiture was committed without his knowledge or consent and that he was unable to prevent it, or if such goods or conveyance were acquired by him after the commission of the said offence, that they were acquired for their true value and without knowledge that they were liable to forfeiture.
- (3) For the purpose of subsections (1) and (2) “owner” shall not include the lessor or seller under a hire purchase agreement or an instalment sale agreement, or a principal acting through an authorized agent.

## Part XX – Settlement of cases by the Controller

### 162. Settlement by agreement

- (1) Where any person in writing admits that he has committed an offence against the customs laws and agrees to pay any duty payable and a specified sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted for the offence, the Controller may, without delegation, settle the case on such terms, or the Controller may order any goods liable to forfeiture in connection therewith to be forfeited.
- (2) If criminal proceedings have been instituted against a person for an offence under the customs laws, the powers of settlement conferred by subsection (1) shall not be exercised without the prior approval of the Director of Public Prosecutions.

### 163. Orders of settlement

Where the Controller makes an order of settlement under this Part, then—

- (a) such order shall be put into writing;
- (b) such order shall specify the offence which the person committed and the penalty imposed by the Controller including the details and value of any goods forfeited;
- (c) a copy of such order shall be given to the offender if he so requests;
- (d) the offender shall not be liable thereafter to prosecution in respect of such offence and if any such prosecution is brought it shall be a good defence for the offender to prove that the offence with which he is charged has been settled in accordance with this Part;
- (e) such order shall be final and not subject to appeal;
- (f) such order may be enforced in the same manner as an order of a court of competent jurisdiction;
- (g) the settlement shall not be treated as a conviction of an offence.

## Part XXI – General

### 164. Declarations and signing of documents

- (1) Where in the customs laws any declaration is authorized or required to be made, then such declaration may, in addition to the provisions of any other written law, be made before the proper officer.
- (2) Where in the customs laws any document is authorized or required to be signed in the presence of any particular officer, then if such document is signed in the presence of a witness who is approved by, and whose signature is known to, that particular officer, such document shall be deemed for the purposes of the customs laws to have been signed in the presence of that particular officer.

### 165. Invalid declaration

- (1) A declaration, other than a declaration in respect of a provisional entry under [section 34](#), which contains any omission, inconsistency, error or misrepresentation shall be invalid whether or not such declaration has been accepted by an officer or the goods declared therein entered:  
  
Provided that such invalidity shall not affect the use of such declaration as evidence of the commission of any offence under the customs laws.
- (2) An invalid declaration shall be validated by the person making such declaration in such manner and within such period as may be prescribed.
- (3) Any goods while invalidly declared shall be deemed to be uncustomed goods.

### 166. Translation of foreign documents

Where any document written in a language other than English is presented to any officer for any purpose connected with the customs laws, such officer may require a translation into English to be made, at the expense of the owner or person presenting such document, by such person as the Controller may approve.

### 167. Persons carrying on business to keep proper records

Every person carrying on any business which involves handling or dealing with goods shall keep or cause to be kept within Malawi, in the English language, reasonable and proper records and accounts in indelible writing or in electronic data of all his transactions, to the satisfaction of the Controller. Every such person shall, if so required at any time within a period of two years after the date of the importation or purchase of any goods, produce any bills of lading, rail notes, invoices and all other documents and books containing any particulars regarding those goods, and shall allow such documents and books at all reasonable times within such period to be open for inspection by an officer in the course of his duty.

*[11 of 2003]*

### 168. Operations in respect of goods subject to customs control

Subject to such conditions as he may impose and to the giving of such security as he may think appropriate, the proper officer, in respect of any goods subject to customs control, may permit—

- (a) such goods to be packed, skipped, bulked, sorted, separated, put into lots, repacked or altered, in a customs area;
- (b) such arrangements to be made as may be necessary for the preservation of such goods or for the sale, exportation or other disposal thereof in accordance with the customs laws;
- (c) the removal of such goods from a customs area, without entry or the payment of duty, for such purposes and for such period and in such quantities as he may think fit.

### 169. Transfer of ownership

The owner of any goods subject to customs control may transfer the ownership to any other person who may lawfully own such goods, but the proper officer may refuse to recognize any such transfer of ownership unless notice thereof has been given to him, prior to the transfer, by the owner.

### 170. Wrecked, abandoned, etc. conveyances

- (1) Where any conveyance, subject to customs control, is lost, stranded, wrecked or abandoned or is compelled to land or stop within Malawi due to accident, stress of weather or other unavoidable cause, the owner, or the master or person in charge of such conveyance shall—
  - (a) with all reasonable speed report such occurrence to the nearest officer, police officer or administrative officer; and
  - (b) produce any relevant book or document and answer fully and truthfully any relevant question as may be required or put to him by an officer.
- (2) Neither the owner nor the master or person in charge shall cause or permit any goods to be removed further from the vicinity of such conveyance than is necessary for the health or safety of persons or the safety of the conveyance or goods, without the consent of the officer to whom report is made under subsection (1) and shall not, save for reasons of health or safety or in order to make such report, cause or permit any person to leave the vicinity of such conveyance without the consent of such officer.

### 171. Uncustomed flotsam, jetsam and wrecks

- (1) Any person who finds or has in his possession any uncustomed flotsam or jetsam or any uncustomed portions of a lost, stranded, wrecked or abandoned conveyance or the cargo, stores or baggage thereof shall with all reasonable speed give notice thereof to the nearest officer, police officer or administrative officer and shall, if so required, cause or permit such goods to be delivered to such officer, police officer or administrative officer.
- (2) No person shall, without the permission of the proper officer, remove or alter in quantity or quality any goods subject to the provisions of subsection (1) unless it is necessary for the preservation or safe keeping of such goods.

### 172. Power of Controller in special case

Notwithstanding any provisions of the customs laws to the contrary, the Controller may, in order to meet the exigencies of any special case—

- (a) permit any goods to be loaded on to, or unloaded and removed from, any conveyance at such times and places, and under such conditions, as he may either generally or in any particular case direct;
- (b) permit any goods to be entered, and the report or clearance of any conveyance to be made, in such form and manner, and by such person, as he may either generally or in any particular case direct.

### 173. Rewards

The Controller may, with the approval of the Minister, offer and order such rewards as he may think fit to be paid to any officer or other person for services rendered in connexion with the detection of smuggling or any other offence against the customs laws, or in connexion with any seizure made under the customs laws.

#### 174. Handling etc. of goods, at risk and expense of owner

Except as otherwise specifically provided in the customs laws, all handling, storage and transportation of goods for the purposes of the customs laws shall be performed at the risk and expense of the owner of such goods:

Provided that an action shall lie against the Controller for any loss or damage to goods or additional expense caused by the gross negligence or wilful misconduct of an officer acting or purporting to act in his official capacity.

#### 175. Regulations

The Minister may make regulations prescribing all matters which by this Act are required to be or may be prescribed (except as otherwise provided under [section 83](#)) or which, in his opinion, are necessary or convenient for the better carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing any regulations made under this section may provide for fees or other charges in respect of any act done or service rendered by any officer.

### Schedule A (Section 111)

#### Value of imported goods

1. (a) The value of any imported goods shall be taken to be the normal price, that is to say, the price which they would fetch at the time when the duty becomes payable, or in the case of warehoused goods, at the time of their entry for warehousing, on a sale in the open market between a buyer and a seller independent of each other.
- (b) the normal price of any imported goods shall be determined on the following assumptions—
  - (i) that the goods are delivered to the buyer at the port or place of introduction into Malawi;
  - (ii) that the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the port or place of introduction, which are hence included in the normal price;
  - (iii) that the buyer bears all duties or taxes applicable in Malawi, which are hence not included in the normal price.
2. (a) A sale in the open market between a buyer and a seller independent of each other pre-supposes—
  - (i) that the price is the sole consideration;
  - (ii) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise between the seller or any person associated in business with him and the buyer or any person associated in business with him, other than the relationship created by the sale itself;
  - (iii) that no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue, either directly or indirectly, to the seller or any person associated in business with him.
- (b) Two persons shall be deemed to be associated in business with one another, if, whether directly or indirectly, either of them has an interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.
3. When the goods to be valued—
  - (i) are manufactured in accordance with any patented invention or are goods to which any protected design has been applied; or

- (ii) are imported under a foreign trade mark; or
  - (iii) are imported for sale, other disposal or use under a foreign trade mark,
- the normal price shall be determined on the assumption that it includes the value of the right to use the patent, design or trade mark in respect of the goods.
4. For the purposes of paragraph 3, the expression “trade mark” includes a trade name and style, and a trade mark shall be treated as a foreign trade mark if it is the mark of—
- (i) any person by whom the goods to be valued have been grown, produced, manufactured, offered for sale or otherwise dealt with outside Malawi; or
  - (ii) any person associated in business with any person referred to in (i) above; or
  - (iii) any person whose rights in the trade mark are restricted by an agreement with any person referred to in (i) or (ii) above.
5. In order to arrive at the assumed costs, charges and expenses as set out in paragraph 1(b)(ii), the Controller may accept such deduction from the actual cost of the delivery of the goods to any other place in Malawi as he may consider equitable.
6. When the Controller is satisfied that documentary evidence relating to the clearance of goods through a foreign port of arrival in Africa cannot reasonably be expected to be available at the time of duty payment, he may, at the request of the importer, determine the costs, charges and expenses set out in paragraph 1 (b) (ii) and such determination in any particular case shall not be voided if the actual costs, charges and expenses are subsequently discovered to be greater or lesser.

*[10 of 2014]*

## **Schedule B (Section 114)**

### **Customs valuation for goods exported from Malawi**

1. In this Schedule, unless the context otherwise requires—
- “goods of like kind and quality” means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- “transaction value” means the value of export goods within the meaning of subsection (1) of section 114 of this Act.
2. For the purposes of this Schedule, persons shall be deemed to be related only if—
- (a) they are officers or directors of one another's businesses;
  - (b) they are legally recognized partners in business;
  - (c) they are employer and employee;
  - (d) a person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
  - (e) one of them directly or indirectly controls the other;
  - (f) both of them are directly or indirectly controlled by a third person;
  - (g) together they directly or indirectly control a third person; or
  - (h) they are members of the same family.
3. Subject to paragraph 7, the value of export goods shall be the transaction value.

4. The transaction value shall be accepted even where the buyer and seller are related, provided that their relationship shall not influence the price.
5. If the value cannot be determined under the paragraphs 1 and 2, the value shall be determined by proceeding sequentially through paragraphs 3 to 5.
6. The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with paragraph 2.
7. In determining the value of export goods under paragraph 1, the proper officer shall make such adjustments as it appears reasonable to him or her, taking into consideration the relevant factors, including the difference in—
  - (i) the dates of exportation;
  - (ii) commercial levels and quantity levels;
  - (iii) composition, quality and design between the goods to be assessed and the goods with which they are being compared; and
  - (iv) domestic freight and insurance charges depending on the place of exportation.
8. If the value cannot be determined under paragraph 3, it shall be based on a computed value, which shall include the following—
  - (a) cost of production, manufacture or processing of export goods;
  - (b) charges, if any, for the design or brand; or
  - (c) an amount towards profit.
9.
  - (1) Subject to the provisions of paragraph 2, where the value of the export goods cannot be determined under the provisions of paragraphs 3 and 4, the value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule: Provided that local market price of the export goods may not be the only basis for determining the value of export goods.
  - (2) An exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.
10. When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he or she may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with subparagraph (1) of paragraph 2.
11. At the request of an exporter, the proper officer shall provide the exporter, in writing, the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under subparagraph (1).

*[10 of 2014]*