

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 3rd December, 2012, containing  
Bills**

**NOTICE**

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The following Bills, for introduction in Parliament, are published for general information.

LILONGWE, 3rd December, 2012.

H. H. NJOLOMOLE  
*for: Clerk of Parliament*

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**LAND BILL, 2012**

**MEMORANDUM**

This Bill seeks to make provision for land in Malawi and for all matters relating to land. The Bill vests all land deemed necessary for national development in the Republic. It also vests all customary land, in perpetuity, in the Republic.

The Bill also maintains the two categories of land, namely "public land" and "private land". Public land constitutes "Government land" and "unallocated customary land used for the benefit of the community as a whole". Private land constitutes "leasehold land", "freehold land" and "customary estates". The Bill also repeals the Land Act (Cap 57:01).

The Bill is divided into seven parts.

Part I of this Bill contains preliminary provisions and includes definitions.

Part II of the Bill provides for general matters in regulating land. It provides for the protection of authorized officers, occupation of land by non-citizens and the power to dispose of public land. This part also provides for the appointment of authorized officers.

Part III makes provision for public land. It provides for the vesting of all public land and customary land in the Republic, procedure on acquisition of customary land for public utility and the conversion of customary land to registered land.

Part IV provides for private land. Among other issues, it provides for the procedure on the acquisition and sale of private land not only to citizens of Malawi but also to people who are not citizens.

Part V provides for the users of land. It provides for the Minister's power to

**B. No. 37**

**LAND BILL, 2012**

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## SCHEDULE

## A BILL

*entitled*

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

ENACTED by the Parliament of Malawi as follows—,

## PART I—PRELIMINARY

1. This Act may be cited as the Land Act, 2012 and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*. Short title and commencement

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

“authorized officer” means an officer duly authorized by the Minister, a local government authority or a Traditional Authority for the purposes of this Act or any part thereof;

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

“customary land” means all land used for the benefit of the community as a whole and includes unallocated land within the boundaries of a Traditional Land Management Area;

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

“freehold” means an estate in land, inherited or held for life;

“Government land” means land acquired and privately owned by the Government and dedicated to a specified national or public use or made available for private uses at the discretion of Government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cap. 69:02

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

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

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

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

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

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

“Traditional Land Management Area” means an area demarcated and registered as falling within the jurisdiction of a Traditional Authority.

#### PART II—GENERAL

3. No suit, prosecution or other legal proceeding shall lie against any authorized officer, or against any person acting under his authority, for anything done in good faith or omitted or intended to be done under the powers conferred by this Act.

Protection of authorized officer

4.—(1) A person who is not a citizen of Malawi shall not be allocated or granted freehold land unless it is for investment purposes in accordance with the Investment and Export Promotion Act, 2012, and that such investor has formed a partnership or a joint venture with a Malawian.

Occupation of land by non-citizens Act No. 11 of 2012

(2) Land designated for investment purposes under subsection (1) shall be identified, gazetted and allocated to the Malawi Investment and Trade Centre Limited which shall create derivative rights to investors

(3) Freehold land acquired by a person who is not a citizen of Malawi prior to the enactment of this Act shall be converted to leasehold interest unless the person currently in possession of such

land shall have acquired Malawian citizenship in accordance with the Malawi Citizenship Act within a period of seven years after commencement of this Act.

Cap. 15:01

(4) For the purposes of this section, the “Malawi Investment and Trade Centre Limited” means the Company incorporated by that name under the Companies Act on 2nd December, 2010.

Cap. 46:03

Powers of corporations to hold land

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

Cap. 46:03

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

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

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

Minister or local government authority's power to dispose of public land

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

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

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

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

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

7. Notwithstanding section 6 and any other written law, the Minister shall not make or execute grants, leases or other disposition of public land comprising a state residence or an official residence of the President or a Vice President, or a Minister or Deputy Minister of the Government, or of the Speaker of the National Assembly, in favour of the President, a Vice President, a Minister or Deputy Minister, or the Speaker, and no President, Vice President, Minister or Deputy Minister, or Speaker, shall acquire any such land as a personal possession.

Prohibition against disposal of state and official residences

8.—(1) If any moneys due to the Government in respect of any rent payable under any lease or right to occupancy of land or any other agreement relating to the occupation or use of land made under this Act or any other law remain unpaid at the end of a period of ninety days after the same became due and payable, the amount so remaining unpaid shall, at the end of such period, be increased by a penalty equal to one-tenth of the sum so remaining unpaid, and the penalty imposed under this section shall be deemed to be part of such moneys and shall be recoverable by the Government in the same manner as such moneys are recoverable.

Financial penalty for delay in payment of rent

(2) The imposition of a penalty under this section shall not affect the powers conferred upon the Minister or a local government authority by section 21 of this Act to enforce a forfeiture of a lease and to re-enter upon land on the breach, or non-observance by a lessee of any of the covenants or conditions contained or implied in the lease.

(3) The exercise by the Minister or a local government authority of the powers conferred by section 21 of this Act, to enforce a forfeiture of a lease and re-enter upon land shall not affect the right of the Government to recover rent or any moneys due to the Government under subsection (1).

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

9. The Minister or a local government authority, as the case may be, may appoint such authorized officers for the administration of this Act as he or it shall think fit, which officers shall be known by such styles or titles as the Minister or the local government authority may direct, and shall undertake such duties and exercise such powers as are specified in this Act or in any regulations made hereunder or by laws made by the local government authority, as the case may be.

Minister or local government authority may appoint duly authorized officers



## PART III—PUBLIC LAND

Vesting of  
public land

10. All public land is vested in perpetuity in the Republic.

Use and  
occupation of  
Government  
land

11. No right of entry into any Government land shall be implied in favour of any person and the use and occupation of all Government land other than Government land reserved for the use and occupation of the President, shall be controlled by the Minister.

Vesting of  
customary land

12. All customary land is vested in perpetuity in the Republic.

Acquisition  
of customary  
land for  
public utility

13.—(1) Where it appears to the Minister or local government authority, that any unallocated customary land is needed for public utility, the Minister or local government authority, as the case may be, shall serve notice upon the Traditional Authority within whose Traditional Land Management Area, the customary land is situated but this subsection shall not apply to any customary land required for use as a public road or for the widening or diversion thereof, for such land shall be acquired for that purpose in accordance with the Public Roads Act.

Cap. 69:02

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

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

(4) Every notice under this section shall—

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

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

(5) For the purposes of this section “public utility” means the utility which is for the direct or indirect benefit of the community as a whole, or a part of the community within a Traditional Land Management Area.

14. A person who, by reason of—

(a) any acquisition made under section 13 (1); or

(b) the temporary use and occupation of customary land under section 13 (2) or (3),

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

Compensation to individuals for loss, damage or disturbance

15. Whenever it appears to the Minister or a local government authority that any public land is surplus to the requirements of the Government, the Minister or the local government authority shall so declare by notice published in the Gazette, and thereupon such land shall become customary land.

Land no longer needed for public purposes

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

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

17. A person who uses or occupies any public land and is not entitled to such use or occupation by virtue of a valid grant, lease or other disposition made by the Minister or a local government authority, under any law for the time being in force at the date of such grant, lease or disposition, commits an offence and upon conviction shall be liable to a fine of two hundred thousand Kwacha (K200,000) and to imprisonment for twelve (12) months, and, in the case of a continuing offence, to a further fine of one thousand Kwacha (K1,000) in respect of every day during which the offence continues.

Unlawful use of public land an offence, etc.

#### PART IV—PRIVATE LAND

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

Minister or local government authority may accept surrenders

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

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

Implied  
covenants  
in leases

**20.**—(1) In every lease granted under this Act there shall be implied such covenants with the Minister or a local government authority by or on behalf of the lessee as may be prescribed to the extent that such covenants shall continue in full force and effect, save where earlier satisfied, throughout the term granted, but any such implied covenant may, in the Minister's or the local government authority's discretion, be expressly exempt from any such lease by the terms thereof, or may be expressly modified or varied thereby to such extent as the Minister or the local government authority may direct.

(2) In every lease granted under this Act there shall be implied such covenant with the Minister or the local government authority by or on behalf of the lessee that the lessee shall not undertake any development of the leased land without first obtaining a grant of development permission from the Planning Committee for the area within which the leased land is situated or, where there is no Planning Committee, the Commissioner for Physical Planning where such grant is required under the Physical Planning Act, 2012.

Act No. . . . of  
2012

Minister's  
or local  
government  
authority's  
power of  
re-entry

**21.** Where—

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

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

(c) the lessee, becomes bankrupt or makes any assignment for the benefit of his creditors or enters into an agreement or makes any arrangement with his creditors or enters into an agreement or makes any arrangement with his creditors for the liquidation of his debts by composition or otherwise, or shall suffer any execution to be levied on his effects, or, in the case of a lessee being a company, goes into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory,

then and in any of the said cases, the Minister or a local government authority may, without prejudice to any other right which he or it may have in law or in equity, determine the lease by notice in writing to the lessee or by re-entry on any part of the demised premises in the name of the whole.

Exceptions  
and  
reservations

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

(a) all mines, royal and base minerals, mineral substances of every description, mineral oil deposits, quarries, gravel, stone, flints, chalk, sand, clay and other valuable earth upon, in or under any part of the demised premises with liberty to the Minister and any duly authorized officer to enter, search for, dig, win, take, dress, make merchantable and carry away the same at his pleasure and to sink necessary pits and shafts, erect buildings and fix machinery and works, but doing no wilful damage and making to the lessee reasonable compensation for any actual damage which he may sustain and a *pro rata* abatement of rent being allowed in respect of the extent of the surface so occupied or interfered with, but the lessee may, in accordance with the Mines and Minerals Act, take from the demised premises for his own use any limestone and other materials suitable for building, road metalling or agricultural purposes so long as such limestone and other materials or any products manufactured therefrom are not sold for profit;

Cap. 61:01

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

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

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

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

Cap. 61:01

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

Revision  
of rent

(2) Notwithstanding anything to the contrary contained in any lease subsisting at the commencement of this Act, in respect of all leases, whether made before, on or after the commencement of this section, the Minister or a local government authority may, at any time, by order or by-laws published in the *Gazette*, revise the rents

thereby reserved, and after such first revision of those rents the Minister may further in like manner revise those rents, however where an authority, other than the Minister or a local government authority grants a lease, there shall be no need to publish such revision of rent in the *Gazette*.

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

(4) Any rent payable for the purposes of any lease pursuant to this section shall be calculated in accordance with the formula provided in the First Schedule.

Matters to be taken into account

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

Procedure on alteration of rent

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

(2) If the rental shall be increased on such revision, and if, within six months of the date of the notice, the lessee does not notify the Minister or the local government authority in writing that he objects to the revised rental and intends to terminate his lease in accordance with section 26, the revised rental shall become payable as from the date specified.

Surrender in lieu of revision of rent

26.—(1) If a lessee notifies the Minister or the local government authority of his intention to terminate his lease under section 25, he may surrender his lease to the Minister or the local government authority at any time before the date specified as the date on which the revised rental shall become payable.

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

Compensation for improvements on surrender

27. If a lessee surrenders his lease in accordance with section 26, he shall upon registration of the surrender in the Land Registry be entitled to such compensation in respect of any improvements effected by him upon the demised premises during the term, and such compensation shall be based on the unexhausted value of the improvements thereon.

28. The acceptance by the Minister or a local government authority of any rent reserved by a lease, or any part thereof, shall not constitute or be construed as a waiver of any previous breach by the lessee of any of the covenants or conditions contained or implied in the lease and on his part to be performed and observed.

Acceptance of rent not to waive breach of covenant

29. An authorized officer may distrain for any rent due in respect of any land granted, leased or otherwise disposed of under this Act or the existing laws, or any amendment thereto.

Authorized officer may distrain

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

Service of notices

31. The prescribed fees shall be payable in respect of such matters as may be prescribed, however in any special case, the Minister or a local government authority may reduce any such fee.

Fees

32.—(1) Any person who intends to offer for sale or otherwise to convey, lease, transfer or assign any private land shall, not less than thirty days before he makes such offer or otherwise conveys, leases, transfers or assigns, give notice in writing to the Minister or a local government authority of his intention.

Prior written notification to Minister or local government authority of intention to sell, etc., private land

(2) In subsection (1) "sale" includes any manner of selling or letting by bids.

(3) A person who acts, or attempts to act, in contravention of the provisions of subsection (1) commits an offence and upon conviction shall be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for a term of twelve (12) months.

(4) Nothing in this section shall apply to—

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

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

(c) any sale pursuant to any order of court or by any officer in the public service acting in his official capacity and pursuant to any written law; or

(d) any mortgage or other hypothecation by way of security for repayment of money lent in good faith or for the due performance of the terms and conditions of any contract entered into in good

faith, except that this paragraph shall not apply to any mortgage or hypothecation given for the purpose of the evasion or avoidance of the provisions of this section.

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

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

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

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

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

**34.**—(1) Without prejudice to the requirements of section 33 or any other provision of this Act, no person shall sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless—

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

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

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

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

Freehold land held by non-resident who are not citizens of Malawi

**35.** Where private land under freehold title is held by a person who is not a citizen of Malawi and who is not ordinarily resident in Malawi for a continuous period of more than two years and during that period such person has not shown or effected his intention to develop the land or dispose of it or to use or own the land jointly

with a citizen or a permanent resident of Malawi, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law—

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

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

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

(ii) consult with the Minister responsible for the Physical Planning Act, 2012 for the exercise of the powers under that Act.

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

#### PART V—USE OF LAND

37.—(1) Subject to this Act, the Minister may, from time to time, by order published in the *Gazette*, or by regulations made under section 43, or by directions or instructions made or given by him in writing in any individual case, make provision for regulating, managing and controlling the use of all land other than public land or private land situate within a City, Municipality or Township, but, before exercising any powers granted under this subsection, the Minister shall consult with and have regard to the views of the Minister for the time being responsible for the administration of the Physical Planning Act, 2012.

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

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

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

Gifts of private land between persons who are not citizens of Malawi

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

Act No. . . . of 2012



(*a*) in the case of a natural person, to a fine of one hundred thousand Kwacha (K100,000) and imprisonment for six (6) months and for any continuing offence to imprisonment of twelve (12) months; and

(*b*) in the case of a legal person, to a fine of one hundred thousand Kwacha (K100,000) or the reasonable estimate of the cost of restoring the land, and, for any continuing offence, the directors, manager or any person concerned in the management of its affairs shall be liable to imprisonment of twelve (12) months.

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

Powers of  
entry on land

**38.** Any authorized officer may at any reasonable time enter upon any land to which section 37 (1) applies for the purpose of ensuring that this Part is being complied with.

Obstruction  
and penalties

**39.** If any person obstructs or impedes another person lawfully exercising any powers or performing any functions or duties conferred or imposed upon him or under this Part, the person obstructing or impeding that other person commits an offence and upon conviction shall be liable—

(*a*) in the case of a legal person, to a fine of one hundred thousand Kwacha (K100,000); and

(*b*) in the case of a natural person, to a fine of fifty thousand Kwacha (K50,000) and imprisonment for six (6) months.

Vesting of  
land after  
termination  
of right to  
occupy

**40.** Where, by virtue of section 37, the right of a person to occupy land is terminated by the Minister by order, then, from the date of such order, the land shall—

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

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

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

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

41.—(1) If any person trespasses or encroaches upon any public land or any private land other than a customary estate or is deemed under this Act to be in unlawful use or occupation of any such land, then the magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who has lawful title to the land, issue a summons to such first-mentioned person (hereinafter referred to as the “defendant”) requiring him to attend at the court of that magistrate to answer such complaint.

Summons in  
a Magistrate’s  
Court for  
trespass,  
encroachment  
or unlawful  
occupation

(2) Upon the hearing of the summons, the magistrate, if he is satisfied that the defendant has trespassed or encroached upon the land, or is deemed to be in an unlawful use or occupation thereof, make an order requiring the defendant, his family or other dependants, if any, to vacate the land within seven days, or such other longer period as the magistrate shall determine, and if the defendant fails to comply with such an order he may be removed from the land by any authorized officer, police officer or officer of the court authorized in that behalf and for that purpose by the magistrate.

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

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

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

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

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

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

Procedure

Cap. 3:02

## PART VII—MISCELLANEOUS

Regulations

43. Subject to this Act, the Minister may, from time to time, make regulations for any of the purposes of this Act.

Certificate of  
Minister to be  
*prima facie*  
proof

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

Proof of  
citizenship  
in relation  
to land  
transactions

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

Cap. 15:01

Delegation

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

(2) Any authorized officer deputed under subsection (1) shall, in the exercise of his powers to allocate land for leases or grant leases under section 6 or to administer any lease so granted, consult with and take into account the views of the Commissioner for Physical Planning in respect of any matter concerning the use or development of the land so leased or to be leased.

Repeal and  
savings

47.—(1) The Land Act is repealed.

(2) Any subsidiary legislation made under the Land Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

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

Saving with  
respect to  
mining  
Cap. 61:01

48. Nothing in this Act shall prejudice the grant or issue, under the Mines and Minerals Act, of any licence or permit, or the exercise of rights conferred on the holder of any such licence or permit or any claim by that Act.