

INLAND WATERS, SHIPPING

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28 of 1969
12 of 1973
2 of 1983

An Act to make provision for the survey, registration, licensing and safety of all vessels used on inland waters of Malaŵi, for the safety of passengers and cargo, for the competency of masters and crews and for matters incidental thereto, and connected therewith

(SECTIONS 1, 2, 5 (2) AND 10, PARTS V, VI, AND VII—16TH FEBRUARY, 1970; REMAINDER—1ST JUNE, 1970)

PRELIMINARY

Short title

1. This Act may be cited as the Inland Waters Shipping Act.

Interpretation

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

- “certificate of registration” means a certificate of registration issued under section 7;
- “crew” includes any person employed in a vessel other than the master;
- “fishing vessel” means a vessel, irrespective of the method of propulsion used, which is for the time being employed in fishing for the purpose of sale or trade and which does not carry passengers or goods other than in connexion with such employment;
- “harbour” means a place or area designated as a harbour by the Minister under section 37;
- “hire or reward”, in relation to the use of any vessel, means the use of such vessel on inland waters in return for payment or material advantage on one or more occasions, whether or not the vessel is used without the services of a master or crew;
- “home port” means the place at which a vessel is habitually kept when not on voyage;

- “inland waters” means such waters as may be declared to be inland waters by the Minister under section 23;
- “master” means the person having command or charge of a vessel;
- “owner” includes, in the case of a vessel which is the subject of a hire-purchase agreement, the person in possession of the vessel in terms of that agreement;
- “passenger” includes every person carried in a vessel other than the master or crew thereof;
- “registrar of vessels” means a registrar of vessels appointed by the Minister under section 6;
- “navigation mark” includes any beacon, buoy, light, notice and any other mark or aid to navigation provided for the purposes of this Act;
- “surveyor” means any person appointed by the Minister as a surveyor of vessels under section 5;
- “surveyor’s certificate” means a certificate issued by a surveyor under section 5;
- “ton” means the unit of measurement of the tonnage of a vessel ascertained in the manner prescribed;
- “vessel” includes every description of water craft used or capable of being used as a means of transportation on water.

PART I

SURVEY AND REGISTRATION OF VESSELS

3.—(1) Subject to the provisions of subsection (2), the provisions of this Part shall apply to every vessel used on inland waters which is used for hire or reward or whose measurement exceeds such tonnage or measurement as may be prescribed by the Minister.

Application
of Part I
12 of 1973

(2) There shall be exempted from the provisions of this Part—

(a) a vessel used solely for private purposes or pleasure and not for hire and reward;

(b) a canoe;

(c) a vessel the home port of which is outside Malawi; and

(d) such other vessels or classes of vessels as may be prescribed by the Minister.

4. No person shall use or permit to be used on any inland waters a vessel to which the provisions of this Part apply unless—

Vessels to be
surveyed and
registered

(a) such vessel has been surveyed and registered in accordance with the provisions of this Act; and

(b) there is in force in respect of such vessel a valid certificate of registration.

Survey of
vessels

5.—(1) Before an application for the registration of any vessel is made such vessel shall be surveyed in accordance with the provisions of this Act.

(2) For the purposes of this Act the Minister shall, by notice published in the *Gazette*, appoint a surveyor for each port of registry and an application for the survey of a vessel shall be made by the owner of the vessel in the form and manner prescribed to a surveyor at a port of registry on the inland waters on which the home port of the vessel is situated.

(3) After receipt of an application under subsection (2) the surveyor concerned shall survey the vessel for the purpose of determining—

(a) whether the vessel is seaworthy;

(b) whether the vessel is equipped in accordance with the provisions of this Act;

(c) the description, tonnage, dimensions, name and method of propulsion;

(d) the geographical limits or areas of inland waters outside which the vessel may not be used having regard to her construction, suitability for navigation and safe operation;

(e) the maximum number of passengers and the maximum quantity of cargo to be carried therein;

(f) the crew to be carried therein and standards of competency to be attained by members of such crew;

(g) such further matters as may be prescribed by the Minister.

(4) On completion of his survey under subsection (3) the surveyor shall, if he is satisfied that the vessel is seaworthy and is equipped in accordance with the provisions of this Act, issue a certificate in such form as may be prescribed, setting out the information and his opinion relating to the matters referred to in subsection (3).

(5) Where a surveyor, in the course of a survey under subsection (3), finds a vessel to be unseaworthy or to lack equipment required under this Act, he shall make a full list in writing of all such defects and shall give a copy thereof to the owner of the vessel and shall notify him of the date by which the vessel may be produced for further examination, and after all such defects are subsequently remedied to the satisfaction of the surveyor concerned, he shall issue a certificate in accordance with the provisions of subsection (4).

(6) A surveyor's certificate shall be valid for such period as may be prescribed.

6.—(1) For the purposes of this Act the Minister shall, by notice published in the *Gazette*, appoint ports of registry and shall appoint a registrar of vessels for each such port. Ports of registry

(2) Every registrar of vessels shall, in respect of the port of registry for which he is appointed, maintain in the form and manner prescribed a register of vessels registered at that port.

7.—(1) An application for registration of a vessel shall be made by the owner in the form and manner prescribed to a registrar of vessels at a port of registry on the inland waters on which the home port of the vessel is situated and, unless otherwise prescribed, such application shall be accompanied by a valid surveyor's certificate. Registration of vessels

(2) No person shall be registered as the owner of a vessel until he has made a declaration as to his ownership of the vessel in question and, in respect of vessels of such class as may be prescribed, has included in such declaration a statement of the name and address of any person or persons who will have command or charge of such vessel as master.

(3) As soon as the requirements of this Act preliminary to registration have been complied with, the registrar of vessels to whom application for registration has been made shall enter in the register of vessels for his port—

(a) where applicable, the details comprised in the surveyor's certificate;

(b) the name and address of the registered owner;

(c) where applicable, the name and address of the master, and shall issue to the owner a certificate of registration setting out the particulars respecting the vessel in the register of vessels and such other particulars as may be prescribed.

(4) A registrar of vessels shall not register a vessel which has been brought to inland waters from outside Malawi unless he is satisfied by such proof as he may require that the provisions of the Customs and Excise Act, applicable to the vessel have been complied with. Cap. 42:01

8.—(1) Unless otherwise provided under this Act, every certificate of registration shall remain in force and be deemed to be a valid certificate of registration for such period as may be prescribed. Duration and renewal of certificates of registration

(2) Application for renewal of a certificate of registration shall be made by the owner of the vessel in the form and manner prescribed at any time not earlier than one month before such certificate expires, and shall in all cases be accompanied by a valid surveyor's certificate.

(3) Where the owner of a vessel has made application for renewal of a certificate of registration in accordance with the provisions of subsection (2), the certificate of registration shall be treated as remaining in force and be deemed to be a valid certificate of registration until the owner is notified in writing of the result of his application.

Amend-
ments in
certificates of
registration
and register

9.—(1) Subject to the provisions of subsection (2), where any particular concerning a vessel in respect of which a certificate of registration is in force is so altered as not to correspond with the particulars concerning such vessel contained in the register of vessels under section 7 (3), the owner shall, not later than twenty-one days after such alteration, submit the certificate of registration to the registrar of vessels by whom it was issued and notify him of the reasons for such submission and such registrar shall make all necessary amendments in the certificate and in the register of vessels. A registrar may, in his discretion, issue a new certificate of registration instead of amending a certificate under this subsection and may cancel a certificate and delete the relevant entries in the register when he is satisfied that a vessel is permanently removed from or is permanently incapacitated for use on inland waters.

(2) Where an amendment in a certificate of registration or a register is required by reason of—

(a) an alteration in the dimensions, superstructure or tonnage of the vessel, or a permanent alteration in the method of propulsion of the vessel, or the addition of a superstructure to the vessel; or

(b) the use for hire or reward of a vessel which was not used for that purpose when the certificate of registration was last issued or renewed,

the registrar of vessels concerned shall not make any such amendment unless the certificate of registration submitted to him under subsection (1) is accompanied by a valid surveyor's certificate issued, as the case may be, after the completion of the alteration described in paragraph (a) or within such period as may be prescribed before the use of the vessel for hire or reward.

(3) Where an owner fails to comply with the provisions of subsection (1) the certificate of registration in question shall, unless the registrar of vessels concerned otherwise directs, be no longer deemed to be a valid certificate of registration.

(4) Subject to the provisions of this section, the registration of a vessel may be transferred from one port of registry to another on written application by the owner to the registrar of vessels at the existing port of registry. Every such application shall be accompanied by the certificate of registration for the vessel in question.

(5) Upon receiving an application under subsection (4) the registrar concerned shall transmit notice thereof to the registrar of vessels at the intended port of registry together with the certificate of registration and a copy of all particulars relating to the vessel as noted in the register under his control. On the receipt of such documents the registrar of vessels at the intended port of registry shall, subject to the provisions of subsection (6), enter in his register of vessels all the particulars relevant to the vessel in question and shall issue a new certificate of registration and thereafter the vessel shall be considered for the purposes of this Act as being registered at the new port of registry.

(6) Where, in the case of an application to transfer the registration of a vessel under subsections (4) and (5), the intended port of registry is not on the same inland waters as the existing port of registry, the registrar of vessels at the intended port of registry may, before complying with the provisions of subsection (5), have regard to the suitability of the vessel for safe navigation on the inland waters on which the intended port of registry is situated and may require a surveyor to survey the vessel and report to him as to such suitability. If a surveyor so required reports that any alteration in the construction, condition or equipment of the vessel is necessary to make it safe for navigation on the inland waters on which the intended port of registry is situated, the registrar of vessels at such port shall not register a vessel under subsection (5) until a surveyor is satisfied that such alteration has been made.

(7) Where the registration of a vessel is transferred to a new port of registry under subsections (4) and (5), the new certificate of registration issued under subsection (5) shall, unless otherwise provided under this Act, remain in force and be deemed to be a valid certificate of registration until the date of expiry of the certificate which it replaces, so however, that if it has been issued after a survey required under subsection (6), its period of validity shall commence on the date on which it is issued.

10.—(1) The Minister may prescribe classes of vessels described by tonnage, dimensions or, either additionally or alternatively, the purpose for which they are used, which shall not be used upon inland waters unless under the command or in the charge of a competent master and may prescribe the numbers and standards of competency of persons to be carried as crew in a vessel of any such class.

Masters and
crews of
vessels

(2) For the purposes of this section a master or member of a crew shall be deemed to be competent when he has attained such standards of competency as may be prescribed or the Minister is otherwise satisfied as to his competency.

PART II

LICENSING OF VESSELS

Licensing
authority

11. A licensing authority for the purposes of this Act shall be such public officer or public officers as the Minister may, by notice published in the *Gazette*, appoint.

Licensing of
vessels used
for water
transport
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12.—(1) Subject to subsection (2), no person shall, except under and in accordance with the terms of a licence issued under this Act, use any vessel upon inland waters for the carriage of—

(a) any goods or any person for hire or reward; or

(b) any goods for or in connexion with any trade or business:

Provided that fishing gear and fresh fish carried on board a fishing vessel shall not be considered to be goods for the purposes of this subsection.

(2) The Minister may, by notice published in the *Gazette*, exempt any vessel or class of vessels from the provisions of this section.

Using vessel
in contra-
vention of
section 12

13. Any person who uses a vessel in contravention of the provisions of section 12 shall be guilty of an offence and liable to a fine of K400.

Duration of
licence

14.—(1) Every licence shall, unless revoked, continue in force for one year from the date on which it is expressed to take effect:

Provided that if on the date of the expiration of a licence proceedings are pending before the licensing authority on an application for the grant of a new licence in substitution for an existing licence held by the applicant, the existing licence shall continue in force until such application is disposed of.

(2) With a view to enabling any vessel to be used temporarily—

(a) for the purpose of a seasonal business;

(b) for the purpose of the execution of a particular piece of work; or

(c) for any other purpose of limited duration,
a short-term licence may be granted for a period not exceeding three months.

Licence not
transferable

15. No licence shall be transferable except with the licensing authority's written consent endorsed on such licence.

Form of
licence

16. Licences shall be in such form as may be prescribed and a separate licence shall be issued in respect of each vessel.

PART III

APPLICATION FOR AND GRANTING OF LICENCES

17. Every person applying for a licence to use any vessel for the carriage of passengers or goods shall submit in writing to a licensing authority particulars regarding the following matters—

Procedure on application for licence

- (a) the type of vessel to be used;
- (b) the construction and motive power of such vessels;
- (c) the total number of crew to be carried in such vessel;
- (d) the number of passengers such vessel is intended to carry;
- (e) the places between which such vessel is intended to be navigated (including places, if any, outside Malaŵi) and the services to be provided thereby;

(f) such other particulars as the licensing authority may require in relation to the application.

18.—(1) A licensing authority shall publish in the *Gazette* notice of every application for a licence and such notice shall specify the time within which, and the manner in which, objections may be made to the grant of the application.

Objection to application for licence

(2) When considering an application the licensing authority shall have regard to any objections to the application which may be made by persons who are already providing transport facilities for the carriage of goods or passengers between the same places which the applicant intends to serve.

19.—(1) A licensing authority shall have full power in its discretion either to grant or to refuse any application for a licence or to issue any licence subject to such conditions as the licensing authority may think fit to attach.

Discretion of the licensing authority to grant or refuse licences

(2) In exercising its discretion as aforesaid the licensing authority shall have regard to the following matters—

- (a) the extent to which the proposed service is necessary or desirable in the public interest;
- (b) the extent to which it is necessary in the public interest to prevent uneconomic competition with other transport services;
- (c) the extent to which the route or routes in respect of which the application is made are already served;
- (d) the desirability of encouraging the provision of adequate and efficient services;
- (e) the desirability of eliminating and preventing the growth of unnecessary or unremunerative services;
- (f) the co-ordination of all forms of passenger and goods transport;
- (g) the interest or interests of those requiring as well as those providing facilities for transport;

(h) the applicant's reliability, financial stability and the facilities at his disposal for carrying out the proposed services;

(i) the condition of the vessel in respect of which the application is made and the fitness of such vessel for the purpose for which the applicant intends to use it.

PART IV

CONDITIONS, VARIATION, REVOCATION AND SUSPENSION OF LICENCES: APPEALS

Conditions
of licences

20.—(1) It shall be a condition of every licence issued under this Act—

(a) that the vessel in respect of which it is issued is maintained in a fit and serviceable condition;

(b) that the provisions of any law for the time being in force relating to limits of weight, laden and unladen, the loading of vessels and the number of passengers to be carried are complied with in relation to such vessel.

(2) Without prejudice to the generality of the provisions of section 19 (1) a licensing authority may, in its discretion, attach to a licence all or any of the following conditions—

(a) a condition that the vessel in respect of which it is issued shall or shall not be used in a specified area or over specified routes;

(b) a condition that certain classes or descriptions of goods shall or shall not be carried;

(c) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods and passengers;

(d) a condition specifying the maximum laden weight of such vessel;

(e) a condition that passengers may or may not be carried;

(f) a condition specifying the maximum number of passengers which may be carried.

(3) If the applicant has stated in his application for a licence that the vessel to which the application relates is only to be used within Malaŵi waters, it shall be a condition of the licence issued upon such application that the vessel shall not be used outside Malaŵi waters.

(4) The licensing authority may, from time to time, cancel or vary any of the conditions of a licence.

(5) Any person who fails to comply with any condition of the licence held by him shall be guilty of an offence and liable to a fine of K200.

21.—(1) A licence may be revoked or suspended by the licensing authority on the ground that any of the conditions of the licence have not been complied with.

Power to
revoke or
suspend
licences

(2) In any case where a licence is revoked or suspended the licensing authority shall, if requested by the licence holder, state in writing the grounds for the revocation or suspension.

22. Any person who—

(a) being an applicant for a licence, is aggrieved by the decision of a licensing authority on the application; or

Provision for
appeals in
connexion
with licences

(b) having duly made an objection to any such application as aforesaid, being an objection to which the licensing authority is bound to have regard, is aggrieved by the decision of the licensing authority thereon; or

(c) being the holder of a licence, is aggrieved by the revocation or suspension thereof, or by the variation of any of the conditions thereof,

may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

PART V

INLAND WATERS AND INTERNATIONAL ARRANGEMENTS

23. The Minister may, by notice published in the *Gazette*, declare any lake or river or area of water or part thereof to be inland waters for the purposes of this Act.

Declaration
of inland
waters

24.—(1) The Minister may, under such conditions as he may deem necessary, conclude agreements with the government of any country which borders on any lake or river of which a part has been declared to be inland waters and in any such agreement may make arrangements

Agreements
with certain
other
countries

(a) for the recognition and effect in such country of documents issued for the purposes of this Act, and for the recognition and effect in Malawi of documents issued in such country in relation to vessels, masters or crews;

(b) for the use on inland waters of vessels registered in such country and the use on the waters of such country of vessels registered under this Act;

(c) generally for the safety of passengers and crews aboard and the navigation of vessels used on inland waters and on the waters of such country.

(2) Every agreement concluded under subsection (1) shall be published in the *Gazette*.

25. Where the Minister is satisfied that the enforcement of any provision of this Act in regard to vessels of any country would be inconsistent with the obligations of Malawi under any treaty, convention or agreement entered into with that country he

Power to
suspend
provisions
inconsistent
with treaties

may, by order published in the *Gazette*, suspend the operation of that provision with regard to vessels of that country so far as he may deem necessary to enable the aforementioned obligations to be fulfilled.

PART VI

SURVEYORS AND INQUIRIES

Powers of
inspection
and unsafe
vessels

26.—(1) A surveyor or any other person or member of a class of persons generally or specially authorized thereto by the Minister may at any time go on board and inspect any vessel used on inland waters and if such surveyor or person certifies in writing that the vessel is unsafe he may, if in his opinion the case so requires, direct the master of such vessel forthwith to put in to the nearest suitable berth or anchorage or, if the vessel is berthed or at anchor, to remain berthed or at anchor, and if he so directs no person shall, other than for the purpose of so putting in to a berth or anchorage, use such vessel in navigation upon inland waters until a surveyor has certified in writing that such vessel is no longer unsafe or unless the vessel is so used in accordance with such other directions as the surveyor or authorized person may deem necessary for the purposes of safety.

(2) For the purposes of this section a vessel shall be unsafe if the surveyor or other person authorized in accordance with subsection (1) is satisfied that the vessel, by reason of her defective condition or equipment or lack of equipment or by reason of undermanning (which expression includes the incompetence of the master or crew) or of overloading or improper loading, is unfit to navigate upon that part of the inland waters where the vessel is found without danger to human life, having regard to the nature of the service for which such vessel is intended to be employed.

(3) Any master or person who contravenes a direction given under subsection (1) shall be guilty of an offence.

General
powers of
surveyors
and police
officers

27.—(1) Any police officer, and any surveyor exercising the powers conferred or carrying out the duties imposed upon him under this Act, may—

(a) go on board any vessel at all reasonable times and inspect the vessel or any part thereof or any of the machinery, boats, equipment or articles on board or any certificates of competency of the master or any member of the crew;

(b) enter any dock, boathouse or other premises where a vessel or any machinery, boats, equipment or part of a vessel may be;

(c) examine and make extracts from and copies of—

(i) any document issued in accordance with or recognized for the purposes of this Act; or

(ii) any log, record or other document relating to the construction or operation of a vessel;

(d) require from any person an explanation of any entry in any log, record or document referred to in paragraph (c) and seize any such log, record or document as in his opinion may afford evidence of an offence under this Act;

(e) in the exercise of the powers conferred by paragraph (a) or paragraph (b) take with him one or more assistants or police officers.

(2) The powers conferred under subsection (1) may be exercised also by a person appointed to make inquiries or as a member of a board of inquiry under section 30 (2) or section 30 (3).

28.—(1) Subject to the provisions of subsections (2) and (3), where any vessel is sunk, stranded or abandoned on any inland waters in such a manner as in the opinion of a surveyor to be or to be likely to become an obstruction or danger to navigation it shall be lawful but not obligatory for a surveyor—

Removal of
wreck by
surveyor

(a) to take possession of and raise, remove or destroy the whole or any part of the vessel, her equipment, stores, fuel, cargo or ballast; and

(b) to light or buoy any such vessel or part until the raising, removal or destruction thereof; and

(c) with the consent of the Minister and in such manner as the Minister may direct to sell the vessel, her equipment, stores, fuel, cargo, ballast or part so raised or removed together with any other property recovered in the exercise of his powers under this section and out of the proceeds of the sale to reimburse himself for the expenses incurred by him in relation thereto and the surveyor shall hold the surplus, if any, of the proceeds for the persons entitled thereto:

Provided that—

(i) except in the case of property which is of a perishable nature or which would deteriorate in value by delay, a sale shall not be made under this section until at least four weeks' notice of the intended sale has been given by notice published in the *Gazette* and by advertisement in a newspaper circulating in Malawi;

(ii) at any time before any property is sold under this section the owner thereof shall be entitled to have it delivered to him on payment to the surveyor of the fair market value thereof, to be ascertained by agreement between the surveyor and such owner or failing agreement by some person nominated for the purpose by the Minister and the sum paid to the surveyor as the value of any property under this provision shall for the purposes of this section be deemed to be the proceeds of the sale of that property.

Cap. 42:01 (2) Where any vessel, equipment, stores, fuel, cargo, ballast or other property recovered by a surveyor in the exercise of his powers under subsection (1) constitutes uncustomed goods as defined in section 2 of the Customs and Excise Act the surveyor concerned shall deliver such goods to an officer for disposal in accordance with the provisions of that Act.

Cap. 42:01 (3) If the total proceeds of any sale of the vessel or of her equipment, stores, fuel, cargo, ballast or any other property, whether the goods are sold under the provisions of the Customs and Excise Act relating to uncustomed goods or by the surveyor under this section, are insufficient to pay the costs of their removal and of any such sale, including the payment of salvage claims, if any, arising out of such removal and of any sums due under that Act, the excess of such costs over and above the amount realized by any such sale shall be a debt due to the Government from the person who was the owner of such vessel at the time when the vessel was sunk, stranded or abandoned and may be sued for and recovered by civil action in a competent court.

Duties of
surveyors in
relation to
surveys

29. In surveying a vessel for the purposes of this Act a surveyor shall have regard, as may be appropriate to the vessel being surveyed, to the standards and requirements relating to the survey of passenger ships, fire appliances and life-saving appliances laid down from time to time in instructions issued to surveyors of ships by the authority which issues such instructions in Malawi and shall in relation to matters not otherwise prescribed, apply such of those standards and ensure compliance with such of those requirements as may in his opinion be necessary for the seaworthiness of the vessel, her proper equipment and the safety of passengers and cargo carried aboard the vessel on the inland waters on which she is to be used.

Inquiries as
to shipping
casualties

30.—(1) The Minister may direct that an investigation shall be made into any shipping casualty in accordance with the provisions of this section and for the purposes of this Act a shipping casualty shall be deemed to occur—

(a) whenever a vessel has been lost, abandoned, stranded or damaged on any inland waters;

(b) whenever any vessel causes loss or material damage to any other vessel on inland waters;

(c) whenever any vessel causes loss or material damage to any other vessel and any such vessel is in the course of a voyage to or from a place on inland waters and is found on inland waters;

(d) whenever loss of life occurs by reason of any casualty happening to or on board any vessel which is on inland waters or is in the course of a voyage to or from a place on inland waters and is found on inland waters;

(e) whenever any such loss, abandonment, stranding, damage or casualty occurs on waters of which any inland waters form a part and any competent witness thereof arrives or is found at any place in Malawi.

(2) When a shipping casualty occurs the Minister may appoint a surveyor or any other person to make inquiries as to the causes and circumstances of the shipping casualty and to report thereon to him. Any person so appointed shall have access to and authority to examine any vessel involved in a shipping casualty, the place where the casualty occurred and any documents, material, equipment or components which may be pertinent to his inquiries.

(3) Where it appears to the Minister that it is expedient to hold a formal inquiry into the competency of a master or member of a crew or into the causes and circumstances of a shipping casualty he may appoint a board of inquiry to conduct such inquiry. The board of inquiry shall consist of—

(a) a chairman who—

(i) is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in Malawi; or

(ii) is and has for not less than ten years been qualified to practise as a legal practitioner; and

(b) one or more members having knowledge and experience of navigation or engineering or such other special knowledge or experience as the Minister may deem relevant to the circumstances to be investigated.

(4) The powers, rights and privileges of a board of inquiry and the members thereof shall be the same as those conferred upon a Commission and a Commissioner by the Commissions of Inquiry Act, and the provisions of that Act shall, with necessary modifications, apply in relation thereto and to a person summoned to give evidence or giving evidence at a board of inquiry. Cap. 18:01

(5) Any person whose conduct is or is likely to become the subject of inquiry under this Act shall be given not less than fourteen days' notice of the date when the inquiry is due to commence sent by registered post to his last known address. Any

such person and any other person who is in any way implicated or concerned in the matter under inquiry may appear at the inquiry in person or be represented by a legal practitioner, and any other person who may consider it desirable that he should so appear or be so represented may, by leave of the board of inquiry, appear or be represented in the manner aforesaid.

(6) The Minister may appoint a secretary and such other persons as he may deem necessary to assist with the work of a board of inquiry and there may be paid to its chairman, members, secretary and any other such persons such remuneration and allowances as the Minister, acting on the advice of the Minister for the time being responsible for finance, may determine.

(7) A board of inquiry may order that the expenses of holding the inquiry and any expenses incidental thereto, or any part of those expenses, shall be paid by any person if it finds that a shipping casualty was caused by the default or negligence of that person or of any person in his employ.

(8) Any sum ordered to be paid by any person under subsection (7) shall be a debt due to the Government and may be sued for and recovered by civil action in a competent court.

PART VII

GENERAL PROVISIONS

Arrest and
seizure

31. A police officer having reasonable grounds for believing that any person has committed an offence against this Act and that such person will not attend the court in answer to any process which may be issued against him may arrest such person without a warrant, and may seize any vessel or object which may afford evidence of the commission of the offence.

Duty to give
information

32.—(1) Where any surveyor, registrar of vessels, police officer or any other person or member of a class of persons generally or specially authorized by the Minister to exercise the powers conferred by this section, has reason to suspect that an offence under this Act has been committed by any person on board a vessel, it shall be lawful for him or for any other surveyor, registrar of vessels, police officer or person so authorized to require the owner of the vessel to give all information in his possession as to the name, address, description and whereabouts of the master or any other person on board the vessel at the time of the alleged offence. Any owner failing to give such information shall be guilty of an offence unless he shows to the satisfaction of the court that—

(a) he did not have the information and could not with reasonable diligence have obtained it; or

(b) in the case of passengers carried for hire or reward, he did not have the information.

(2) It shall also be lawful for a surveyor, registrar of vessels, police officer or other person authorized under subsection (1) to require any other person to give such information as aforesaid, or any other information which it is in his power to give and which may lead to the identification of the master of and any other person on board the vessel, and if the person required to give such information fails to do so he shall be guilty of an offence unless he shows to the satisfaction of the court that—

(a) he did not have the information and could not with reasonable diligence have obtained it; or

(b) in the case of passengers carried for hire or reward, he did not have the information.

33.—(1) No person shall wilfully or negligently—

Damage to
navigation
marks

(a) injure any navigation mark; or

(b) remove, alter or destroy any navigation mark; or

(c) ride by, make fast to or run foul of a navigation mark.

(2) The provisions of subsection (1) (b) and (c) shall not apply to any person authorized by the Minister to maintain, repair or remove a navigation mark.

(3) The expenses incurred in repairing or replacing any navigation mark which has been injured, removed, altered or destroyed in contravention of subsection (1), shall be a debt due to Government and may be sued for and recovered by civil action in a competent court.

34.—(1) In all proceedings for an offence against the provisions of this Act or for the recovery of damages for injury done by any vessel registered under such provisions, entries in a register of vessels relating to the vessel in question shall be conclusive evidence that any person registered at any date as the owner of such vessel was at that date the owner thereof:

Certain
provisions as
to legal
proceedings
12 of 1973

Provided that—

(a) the provisions of this subsection shall not have effect so as to prevent any proceedings or action being taken or instituted against any person not registered as the owner of such vessel who is beneficially interested therein;

(b) the provisions of this subsection shall not affect the rights of any person registered under the provisions of this Act as the owner of a vessel against any person not so registered who is beneficially interested in such vessel;

(c) the registration of any vessel shall not confer, take away or affect any title to or interest in such vessel.

(2) For the purposes of proceedings in any court or in any investigation conducted under this Act a copy or extract from any register of vessels or other record of which a registrar of vessels is in charge, duly certified as true by the registrar of vessels concerned, shall be receivable in evidence on its mere production by any person and shall be of like value and effect as the original register of vessels.

(3) A certificate purporting to have been signed by a person describing himself as a registrar of vessels stating that any provision of this Act as to registration of a vessel or as to the competency of a master or member of a crew has or has not been complied with shall, on its mere production by any person in any court or in the course of any investigation conducted under this Act, be received as *prima facie* evidence of the facts therein stated.

12 of 1973 (4) In any proceedings against any person for any contravention of any provision of this Act relating to the use of any vessel for hire or reward, or to the use thereof for carriage of goods or persons for hire or reward, the onus of proving that the use of such vessel, or the use thereof for the carriage of goods or persons, as the case may be, was not for hire or reward, or was otherwise lawful, shall be upon the party charged.

Ensign to be prescribed 35. The Minister may prescribe an ensign of such colours and design as he may direct which may be worn by such vessels, in such manner and for such purposes as may be prescribed.

Offences and penalties 36.—(1) A person who—

(a) for the purpose of obtaining, whether for himself or for any other person, the issue of a document under this Act makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true, or knowingly makes use of a declaration, statement or document containing the same;

(b) fraudulently imitates, alters, mutilates, destroys or uses, or fraudulently sells, supplies, lends or allows to be used by any other person any document issued for the purposes of this Act or deemed to have been issued thereunder;

(c) wilfully obstructs, hinders or resists any other person in the exercise of his powers or the carrying out of his duties under the provisions of this Act;

(d) on being required to do so fails or refuses to produce to a surveyor, registrar of vessels, police officer or other person authorized to demand it, any document issued under this Act;

(e) sends or, while in charge or command, takes, upon inland waters any vessel of a class prescribed under section 10 which is

not provided with a competent master or the number of persons as crew, or duly competent as crew, as prescribed under that section;

(f) sends or takes or is a party to sending or taking a vessel upon inland waters in such an unseaworthy state that the life of any person is likely thereby to be endangered;

(g) contravenes or fails to comply with any provision of this Act or any direction or instruction given under this Act, shall be guilty of an offence.

(2) If the master or a member of the crew of a vessel which is registered or should be registered under this Act by wilful breach of duty or by neglect of duty or by reason of drunkenness—

(a) does any act tending to the immediate loss, destruction or serious damage of the vessel or tending immediately to endanger the life or limb of a person belonging to or on board the vessel; or

(b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the vessel from immediate loss, destruction or serious damage or for preserving any person belonging to or on board the vessel from immediate danger to life or limb,

he shall be guilty of an offence.

(3) Any person guilty of an offence under this Act not otherwise provided for shall be liable—

(a) for an offence under subsection (1) (c), (1) (f), (2) or under section 26—

(i) for a first offence to a fine of K400 and to imprisonment for one year; and

(ii) for a second or subsequent offence to a fine of K600 and to imprisonment for two years;

(b) for an offence not referred to in paragraph (a)—

(i) for a first offence, to a fine of K100 and to imprisonment for one month; and

(ii) for a second or subsequent offence to a fine of K200 and to imprisonment for two months.

37.—(1) The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act. Regulations
2 of 1983

(2) Without derogation from the generality of the provisions of subsection (1), such regulations, may provide for—

(a) the measurement of the dimensions and tonnage of vessels and, for this purpose, the supply of information by builders of vessels;

(b) giving effect to any arrangements made under any agreement concluded under section 24;

(c) the acceptance by a registrar of vessels in lieu of a surveyor's certificate of any certificate to the same or a similar effect issued in any country outside Malawi;

(d) the allocation of identity marks to vessels and the form and manner in which such marks and other particulars shall be displayed on vessels and on life-saving appliances carried in vessels;

(e) the number of passengers and crew and the quantity of cargo to be carried in vessels, including provisions for stowing of cargo and precautions to be observed in the carriage of such goods as the Minister may deem to be dangerous goods;

(f) the supply of life-saving appliances in vessels and the quantity, quality, description and method of use of such appliances;

(g) the measures to be observed in the construction and equipment of vessels for the safety of persons and cargo carried therein;

(h) the establishment and functions of a central registry of vessels and the manner in which information is to be supplied to such central registry by registrars of vessels and by owners of vessels;

(i) the production to surveyors, registrars of vessels and such other persons as the Minister may authorize thereto of surveyors' certificates, certificates of registration, certificates as to competency and licences, or the display thereof;

(j) the replacement of certificates or licences which have been lost or destroyed and the renewal of certificates or licences;

(k) the standards of competency of masters and members of crews, examinations to ascertain whether persons have attained such standards and the granting and cancellation of certificates issued in proof of the attainment of such standards;

(l) the measures to be observed for the prevention of collisions and generally for the safety of navigation, including provisions as to the use of lights and signals by sound, flags or otherwise, and provisions as to aids to safe navigation by way of navigation marks, the conveying of instructions and the observation of such instructions;

(m) the application to aircraft which are designed to manoeuvre on water and which are on the surface of inland waters and to persons in charge of such aircraft of any or all of the regulations made under paragraph (l);

(mm) the application to any structure, in or on inland waters and used for exploration or production operations under the Petroleum (Exploration and Production) Act, 1983, and to persons in charge of such structures, of any or all of the regulations made under paragraph (f) or (l);

(n) the reporting of accidents to vessels on inland waters or to persons on board such vessels;

(o) the geographical limits or areas of inland waters outside which vessels or classes of vessels may not be used, having regard to their construction, suitability for navigation and safe operation;

(p) the fees to be paid and the manner of payment of fees for—

(i) the issue, amendment, renewal, variation or replacement of any document issued for the purposes of this Act;

(ii) the survey of a vessel;

(iii) examinations for masters and members of crews;

(q) the forms to be used and the particulars to be furnished for any of the purposes of this Act;

(r) the procedure on application for and the determination of questions in connexion with the grant, variation, suspension and revocation of licences and certificates;

(s) records to be kept and the returns to be made for the purposes of this Act.

(3) The Minister may, by notice published in the *Gazette*, designate places or areas of inland waters or land as harbours and the Minister may make regulations for the management, control and safety of any such harbours and of vessels and persons and cargo within them, the powers of persons to effect such control and the payment of fees for services within such harbours.

(4) In exercise of the powers conferred by this section the Minister may—

(a) make different provisions with respect to—

(i) different classes of vessels;

(ii) different inland waters;

(iii) different harbours;

(b) empower a surveyor to exempt any vessel from any requirement of regulations made under this section to the extent that the surveyor is satisfied that compliance therewith would be unreasonable or impracticable in the circumstances and that the safety of the vessel or passengers or cargo carried therein would not be endangered by such exemption.

38.—(1) A vessel, other than a vessel referred to in subsection (1), used on any waters declared to be inland waters under this Act which was licensed under the Water Transport Ordinance and which becomes due to be surveyed and registered under this Act shall be exempted from the requirements of this Act as to survey and registration until the expiry of any licence issued in respect of such vessel under that Ordinance.

Transitional
provisions
Cap. 142
(1957
Revised
Edition)

LAWS OF MALAWI

14

Cap. 71:01

Inland Waters Shipping

(2) A certificate of competency issued or recognized for any purpose under any written law repealed by this Act shall continue to be of force and effect or to be recognized for the purposes for which it was issued or recognized under that written law until it is cancelled or otherwise ceases to be of force and effect under this Act or the legislation of any other country in which it was issued.

12 of 1973

39. The provisions of Part I of this Act relating to the survey and registration of vessels, other than section 9 (3), shall apply to the Government.

Act not to
affect
Fisheries Act
Cap. 66:05

40. Nothing in this Act shall be considered as exempting the owner or user of a vessel from compliance with the provisions of the Fisheries Act or of subsidiary legislation made thereunder.