

Malawi

## Liquor Act

### Chapter 50:07

Legislation as at 31 December 2014

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# Liquor Act (Chapter 50:07)

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# Malawi

## Liquor Act

### Chapter 50:07

Commenced on 1 November 1979

*[This is the version of this document at 31 December 2014.]*

*[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 to amend and consolidate the law relating to the manufacture and sale of intoxicating liquor, to repeal the Intoxicating Liquor Act and the Traditional Beer Act and to provide for matters connected therewith and incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Liquor Act.

#### 2. Interpretation

In this Act unless the context otherwise requires—

“**area**” means licensing area;

“**area of a local authority**” means any Local Government Area under the Local Government (Urban Areas) Act, or the area of jurisdiction of any District Council under the Local Government (District Councils) Act, as the case may be;

*[Cap. 22:01]*

*[Cap. 22:02]*

“**auctioneer’s temporary licence**” has the meaning ascribed to that term by [section 25](#);

“**beer**” includes ale, stout, lager, and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which on analysis of a sample thereof at any time is found to contain more than two *per centum* of proof spirits, but does not include opaque beer or traditional beer;

“**beer-hall**” means any premises within the area of any local authority which are maintained and operated by such local authority and in which the said local authority sells or permits the sale of opaque beer for consumption on or off the premises;

“**Board**” means a Local Licensing Board established pursuant to [section 5](#);

“**brewer**” means any person who by a process of fermentation brews beer from any cereal, tuber or root, or from hops, or from any concentrate, extract, product or combination thereof;

“**canteen**” means any premises in which the sale of liquor to—

- (a) members of the Malawi Army, or any specified class of members of the Malawi Army, or their guests, is carried on under the authority of the Minister responsible for Army matters; or
- (b) members of the Malawi Police Force, or any specified class of members of the Malawi Police Force, or their guests, is carried on under the authority of the Minister responsible for Police matters; or

- (c) members of the University of Malawi, or any specified class of members of the University of Malawi, or their guests, is carried on under the authority of the Minister responsible for Education;

“**cider**” includes perry;

“**commercial brewer**” means any brewer who brews beer, cider or other such liquor, other than opaque beer, by an industrial process for ultimate sale to any use by members of the public;

“**commercial brewer’s licence**” bears the meaning ascribed to that term by [section 18](#);

“**company**” means a company incorporated under the Companies Act;

[Cap. 46:03]

“**denatured or methylated spirits**” means spirits mixed with some other substance in such manner and quantity as to render the mixture unfit for use as a beverage in the opinion of the Controller of Customs and Excise;

“**distiller**” means any person who, by a process of distillation, distils spirits for ultimate sale to and use by members of the public;

“**distiller’s licence**” bears the meaning ascribed to that term by [section 17](#);

“**health officer**” bears the meaning ascribed to that term by section 4 of the Public Health Act;

[Cap. 34:01]

“**intoxicating liquor**” means any spirits, wine, beer, cider or other potable liquor intended for human consumption, which, on analysis of a sample thereof at any time, is found to contain more than two *per centum* by volume of proof spirits;

“**licence**” means a licence issued pursuant to this Act;

“**licensed premises**” means any premises, or part of any premises, which are specified in a licence issued under this Act as the place where the licensee is authorized to exercise his rights thereunder; and includes any lands adjacent to such premises which, whether held by the licensee under the same title or grant or otherwise, are ordinarily used by the said licensee in and about the said exercise of his said rights and are included within the description on the licence.

It further shall be deemed to include, to the extent in this Act provided, any passenger vessel or part of any passenger vessel, any railway restaurant car or part of any railway restaurant car, or any aircraft or part of any aircraft, specified in such licence as the place wherein the licensee may exercise his rights under the said licence, or which is a unit, or part of a unit, of any fleet of any such passenger vessels, railway restaurant cars or aircraft, as the case may be, so specified;

“**licensing area**” bears the meaning ascribed to such term by [section 3](#);

“**licensing authority**” means, in relation to any area—

- (a) the licensing officer designated for such area under [section 4](#); or
- (b) where a Local Licensing Board has been established for such area under [section 5](#), the said Local Licensing Board;

“**licensing officer**” means, in relation to any area, the person designated by the Minister as such for such area pursuant to [section 4](#), and includes any person so designated as acting licensing officer for such area;

“**liquor**” means intoxicating liquor;

“**major shareholder**” means, in relation to any company, any person who is registered on the Register of Shareholders of such company as the holder of ten or more *per centum* of the issued equity shares of the company whose voting rights are not suspended; or who has the right to exercise the voting rights of ten or more *per centum* of such issued equity shares; or who, being the holder of a debenture or of debenture shares of the company with voting rights, has the rights to exercise ten or more *per centum* of

the combined voting rights of all such equity shares, voting debentures and voting debenture shares issued by the said company;

**“manufacturer’s licence”** means any licence under which the principal right exercisable by the licensee thereunder is the manufacture of liquor by an industrial process, for ultimate sale to and use by the public;

**“medical officer of health”** bears the meaning ascribed to that term by section 4 of the Public Health Act;

[Cap. 34:01]

**“mess”** means any canteen;

**“methyated spirits”** see “denatured or methyated spirits”;

**“off-licence”** means any class or grade of retail sales licence issued under this Act which is exercisable on stated licensed premises and which authorizes the licensee thereunder to sell liquor by retail sale for consumption off the said relevant licensed premises only;

**“officer in charge of police”** bears the meaning ascribed to that term by section 2 of the Police Act;

[Cap. 13:01]

**“on-licence”** means any class or grade of retail sales licence, issued under this Act, which is exercisable on stated licensed premises and which, *inter alia*, authorizes the licensee thereunder to sell liquor by retail sale for consumption on the said relevant licensed premises;

**“opaque beer”** means liquor brewed by an industrial brewing process, which, if brewed by traditional methods, would be traditional beer;

**“opaque beer brewer’s licence”** bears the meaning ascribed to that term by [section 20](#);

**“permitted hours”** means the prescribed hours appropriate to the relevant licence or permit, as the case may be, together with any lawful extensions thereof;

**“premises”** means any land with buildings thereon, and includes the curtilage of such buildings, and, for the purposes of any grade “TAV”, “TRY” or “TPV” travel and transit licence issued under this Act, shall be deemed to include any passenger vessel or part of any passenger vessel, any railway restaurant car or part of any railway restaurant car, any aircraft or part of any aircraft, respectively, as specified in such licence as the place wherein the licensee may exercise his rights under such licence, or which is a unit or part of a unit of any fleet of any such passenger vessels, railway restaurant cars or aircraft, as the case may be, so specified;

**“premises permit”** means a permit to manufacture and sell traditional beer and to sell opaque beer as prescribed by [section 65](#);

**“prescribed hours”** means the days of the week and the hours of the day during which a licensee or permit holder is authorized to sell liquor in the exercise of his licence or permit under this Act;

**“proof spirits”** means spirits any volume of which at fifty-one degrees Fahrenheit (10.555° Celsius) weighs twelve thirteenths of an equal volume of distilled water at the same temperature;

**“prostitution”** includes soliciting or procuring for prostitution or unnatural immoral purposes;

**“removal of licence”** bears the meaning ascribed to such term by [section 55](#) (1);

**“retail permit”** means a permit to manufacture and sell traditional beer and to sell opaque beer as prescribed by [section 64](#);

**“retail sales licence”** means any class of sales licence which authorizes the licensee thereunder to sell liquor by way of retail sale;



**“retail sale”** means the sale of liquor at any one time to any one person in quantities not exceeding the following—

- (a) in the case of spirits and wines, two Imperial gallons, or if bottled or in small containers, one dozen reputed quart bottles or quart containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;
- (b) in the case of beer, cider, perry, opaque beer, traditional beer, or other such liquor, six Imperial gallons, or if bottled or in small containers, four dozen reputed one-half pint bottles or one-half pint containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;

**“sales licence”** means any licence under which the principal right exercisable by a holder thereof is the sale of liquor;

**“sell”** includes to supply and to keep for sale;

**“spirits”** means spirits of any description manufactured by a process of distillation, and includes all liquors mixed with spirits, and all liquid mixtures, compounds or preparations made with spirits;

**“supply”** includes to transfer or to deliver, whether on a sale or otherwise;

**“temporary sales licence”** means any auctioneer’s temporary licence or any occasional licence;

**“traditional beer”** means any liquor brewed by a process of fermentation, by traditional methods, from one or more of the following ingredients, that is to say, millet, barley, sorghum, maize, cassava, or any prescribed cereal, tuber or root, or from any concentrate, extract or product of any such ingredient or from any combination of any such ingredients, concentrates, extracts or products, but shall not include any liquor brewed from any other ingredient, or any distilled liquor;

**“transfer of licence”** bears the meaning ascribed to such term by [section 48](#);

**“travel and transit licence”** bears the meaning ascribed to such term by [section 24](#);

**“Tribunal”** means the Licensing Appeals Tribunal established pursuant to [section 56](#);

**“wholesale sale”** means the sale of liquor in unopened containers at any one time to any one person in quantities exceeding the following—

- (a) in the case of spirits or wines, two Imperial gallons, or if bottled or in small containers, one dozen reputed quart bottles or quart containers, or the equivalent total content in smaller or larger bottles or other containers as the case may be;
- (b) in the case of beer, cider, perry, opaque beer, or traditional beer or other such liquor, six Imperial gallons, or if bottled or in small containers, four dozen reputed one-half pint bottles or one-half pint containers, or the equivalent total content in smaller or larger bottles or other containers, as the case may be;

**“wine-makers’ licence”** bears the meaning ascribed to such term by [section 19](#);

**“young person”** means any person who is, or who appears to be, under the age of eighteen years.

## Part II – Administration

### 3. Licensing areas

- (1) Subject to subsection (2), each area of a local authority shall be a licensing area, hereinafter called an “area”, for the purposes of this Act.
- (2) The Minister may, for the better administration of this Act, by notice published in the *Gazette*, include in any area any adjoining area, or any part of any adjoining area or any licensed premises within any such adjoining area, and such area, part or premises, as the case may be, so included by

such notice, shall, for all of the purposes of this Act, be deemed to be a part of and within the first-mentioned area.

#### 4. Licensing officers – licensing authorities

- (1) There shall be a licensing officer for each area for the purposes of this Act, who shall be an officer in the public service designated as such licensing officer by the Minister.
- (2) Save as provided by [section 5](#), each licensing officer shall be the licensing authority for the area for which he is designated.
- (3) Within the area for which he is licensing officers each licensing officer shall be responsible to the Minister for the carrying out of the provisions of this Act in such area and shall, subject to the provisions of this Act and to the general or special directions of the Minister, exercise such functions and perform such duties as are conferred upon him by this Act.

#### 5. Establishment of Local Licensing Boards

- (1) The Minister may, by notice published in the *Gazette*, establish for any area a Local Licensing Board (hereinafter called the “Board”).
- (2) Each Board shall consist of—
  - (a) the licensing officer for such area or, in his absence, such other person as may be designated by the Minister as acting licensing officer for such area, who shall be chairman;
  - (b) a health officer for the area, appointed to the Board by the Minister after consultation with the appropriate health authority;
  - (c) the officer in charge of police within the area, or such other police officer as may be designated in his stead by the Chief Commissioner;
  - (d) not less than two or more than six other members appointed by the Minister.
- (3) Notwithstanding the provisions of paragraph (d) of subsection (2), the Minister may, at any time, appoint to any Board such additional members as he deems essential to it in the exercise of its powers and functions.
- (4) Each Board shall be the licensing authority for the area for which it is established pursuant to subsection (1).

#### 6. Non-eligibility for appointment to a Board

- (1) The following persons shall not be eligible for appointment to a Board—
  - (a) any holder of, or applicant for, any licence for the sale of liquor;
  - (b) any distiller or commercial brewer;
  - (c) any person engaged in the making of wine or spirits for sale;
  - (d) any opaque beer brewer;
  - (e) any partner, agent, director, manager, employee or spouse of any person described in paragraph (a), (b), (c) or (d),
  - (f) any executive director, officer, member of the executive committee or council, or agent of any body of persons whose objects include the sale, promotion of the sale or prevention of the sale of liquor, or any person who is, or who, within the preceding three years, was an officer or director or executive committee or council member of any body of persons having as a primary object the promotion or suppression of the liquor trade:

Provided that this paragraph shall not relate to any trade association of persons who are engaged in the business of the manufacture or sale of liquor in Malawi.

For the purpose of this paragraph the term “body of persons” means any partnership, society, club, group or association of persons corporate or unincorporate.

- (2) The provisions of paragraph (e) or (f) of subsection (1) shall not apply to a legal practitioner who, from time to time, represents in his professional capacity, any person described in paragraph (a), (b), (c) or (d) of the said subsection.
- (3) Membership of a club holding a “Grade E” general retail licence under this Act shall not of itself render a person ineligible for membership of a Board.

## **7. Disqualifications for appointment to a Board**

No person shall be appointed a member of a Board who—

- (a) is a body corporate;
- (b) is an undischarged bankrupt;
- (c) for an offence under this Act, or under any Act repealed or replaced by this Act, has been sentenced to a fine of not less than ten Kwacha, or to a term of imprisonment of not less than one month save as an alternative to, or in default of, the payment of a fine;
- (d) within six years last past, for an offence, not of a political character, has been sentenced to a term of imprisonment of not less than three months, save as an alternative to, or in default of, the payment of a fine; or
- (e) has been convicted of an offence involving fraud or dishonesty.

## **8. Tenure of office of members of Board**

- (1) Subject to subsection (4), each member of a Board shall hold office for the period expressed in the instrument of his appointment, being, in any case, not more than three years.
- (2) A retiring member shall be eligible for re-appointment.
- (3) On the expiration of the period for which a member is appointed he shall continue to hold office until his successor has been appointed but in no case shall such further period exceed three months.
- (4) This section shall not apply to any member appointed or holding office under the provisions of paragraph (a), (b) or (c) of [section 5](#) (2).

## **9. Compensation of members of Board**

Every member of a Board, who is not an officer in the public service, shall be paid such remuneration and allowances as the Minister may, in his case, fix.

## **10. Vacancies on Board**

The office of a member of a Board shall be vacated—

- (a) upon his death;
- (b) if he is adjudicated bankrupt;
- (c) if he is absent from three consecutive meetings of the Board without the permission of the chairman;

- (d) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the chairman and to the Minister;
- (e) upon notice in writing given to him by the Minister;
- (f) if he becomes mentally or physically incapable of performing his duties as such;
- (g) if for an offence under this Act he has been sentenced to a fine of not less than ten Kwacha, or to imprisonment for a term of not less than one month save as an alternative to, or in default of, the payment of a fine;
- (h) if for an offence under any written law he has been sentenced to a term of imprisonment of not less than three months save as an alternative to, or in default of, the payment of a fine;
- (i) if he is convicted of an offence involving fraud or dishonesty;
- (j) if he or his spouse becomes the holder of a liquor licence, save in the capacity of legal personal representative of any deceased applicant or licence holder;
- (k) if he or his spouse becomes a partner in any business licensed under this Act;
- (l) if he or his spouse becomes a major shareholder in, or a director or manager of a company engaged in any business licensed under this Act;
- (m) if he or his spouse becomes the agent of any person engaged in any business licensed under this Act:

Provided that, subject to [section 13](#), this paragraph shall not apply to or in respect of any legal practitioner who, in his professional capacity, represents any applicant or licensee under this Act, or any other person, in respect of any application, objection, or other matter arising under this Act;

- (n) if he becomes ineligible for appointment to a Board under [section 6](#) or disqualified under [section 7](#).

## 11. Functions of Boards

- (1) Every Board, within the area for which it is established, shall—
  - (a) hear and determine every application, arising within the said area, for—
    - (i) a new liquor licence;
    - (ii) the renewal of a liquor licence;
    - (iii) the transfer of a liquor licence from the holder thereof to some other person;
    - (iv) the removal of a liquor licence from one premises to another;
    - (v) the revocation of a liquor licence;
    - (vi) the cancellation of a liquor licence at the request of the holder thereof;
  - (b) direct the licensing officer of the said area to implement its ruling on any matter heard and determined by it under paragraph (a);
  - (c) advise and make recommendations to the Minister on matters concerning the manufacture, sale and control of liquor within the said area;
  - (d) exercise such other functions and duties as may be assigned to it, from time to time, under this Act or any other written law or by the Minister.

## 12. Meetings of Boards

- (1) Each Board shall meet at such places within the area for which it is established, and at such times as the Minister may, from time to time, direct, and, in the absence of any such direction, at such places within such area and at such times as the chairman may determine.
- (2) All meetings shall be convened by notice in writing given by the chairman to the members.
- (3) A Board shall not transact any business in the absence of the chairman or such other person as may have been designated by the Minister as acting licensing officer.
- (4) Each Board shall conduct its proceedings in such manner as may be directed by the Minister, or, in the absence of such direction, in such manner as the Board deems meet.
- (5) The chairman and one-half of all the other members for the time being of a Board shall constitute a quorum of such Board.
- (6) At all meetings of a Board the chairman shall have a deliberative vote and in the event of an equality of votes he shall also have a casting vote.

## 13. Member's interest in licence or application to be disclosed

- (1) If any member of a Board or if, to such member's knowledge, his spouse—
  - (a) holds or acquires any pecuniary interest, whether as shareholder, debenture holder, partner, mortgagee or otherwise, in any business or premises in respect of which a liquor licence is held or applied for; or
  - (b) is possessed of any right, title or interest, legal or equitable, in or to any premises in respect of which a liquor licence is held or applied for; or
  - (c) is employed as agent, director, manager or otherwise by any holder of or applicant for a liquor licence; or
  - (d) is a legal practitioner engaged, in relation to any matter pending before the Board, by or on behalf of the holder of or applicant for a liquor licence, or by or on behalf of any objector to the issue, renewal or transfer of any such licence, or is a partner or employee of any firm of legal practitioners so engaged,

the said member shall, as soon as is practicable after the relevant facts have come to his knowledge, disclose the nature and extent of such interest in the said licence, application, premises or matter to the chairman of the Board.

- (2) If the chairman determines that the interest in such licence, application, premises or matter, disclosed by such member is such that he should refrain from taking part in the Board's deliberations thereon, the said member shall absent himself from such deliberations and shall not vote thereon.
- (3) If the interest disclosed by any such member has, pursuant to the provisions of paragraphs (k) (l) or (m) of [section 10](#), resulted in the said member vacating his office as such, the Minister shall proceed in accordance with [section 5](#) to appoint a new member in his place.

## 14. Secretaries to Boards

- (1) There shall be a Secretary to each Board (hereinafter referred to as the "Board Secretary"), who shall be an officer in the public service and who shall be designated as Secretary by the Minister.
- (2) Each Board Secretary shall perform such duties and exercise such functions as are assigned to him from time to time by the Board, and shall perform and exercise the same under the direction of the licensing officer for the area.

## **Part III – Licences**

### **A. Application**

#### **15. Application of this Part**

This Part shall not apply to the manufacture or sale of traditional beer or to the sale of opaque beer by retail sale.

### **B. General**

#### **16. Classification of licences**

- (1) Any licence granted or renewed under this Act shall be either—
  - (a) a manufacturer's licence; or
  - (b) a sales licence.
- (2) Manufacturers' licences shall be classified as follows—
  - (a) a distiller's licence;
  - (b) a commercial brewer's licence;
  - (c) a wine-maker's licence;
  - (d) an opaque beer brewer's licence.
- (3) Sales licences shall be either wholesale or retail or temporary sales licences.
- (4) Wholesale sales licences shall be classified as follows—
  - (a) Wholesale licences;
  - (b) Agents licences.
- (5) Retail sales licences shall be classified as follows—
  - (a) General retail licences;
  - (b) Travel and transit licences.
- (6) Temporary sales licences shall be classified as follows—
  - (a) Auctioneers' temporary licences; and
  - (b) Occasional licences.

### **C. Manufacturers' licences**

#### **17. Distiller's licence**

A distiller's licence shall authorize the holder thereof to engage, at specified premises, in the business of distiller, and, subject to the provisions of this Act in that behalf, on such premises, from malt, grain, fruit or other vegetable matter, to distil, refine, mature or blend potable spirits for ultimate sale to and use by the public, and to sell such spirits by wholesale sale for the purpose of resale or consumption off the distiller's licensed premises.

**18. Commercial brewer's licence**

A commercial brewer's licence shall authorize the holder thereof to engage, at specified premises, in the business of brewer, and, subject to the provisions of this Act in that behalf, on such premises to manufacture and brew beer, cider or other like intoxicating beverage, other than opaque beer, for ultimate sale to and use by the public, and to sell such beverage by wholesale sale for purposes of resale or consumption off the commercial brewer's licensed premises.

**19. Wine-maker's licence**

A wine-maker's licence shall authorize the holder thereof to engage, at specified premises, in the business of wine-maker, and, subject to the provisions of this Act in that behalf, on such premises to manufacture from the grape or other prescribed fruit liquor for ultimate sale to and use by the public, and to sell such liquor by wholesale sale for purposes of resale or consumption off the wine-maker's licensed premises.

**20. Opaque beer brewer's licence**

An opaque beer brewer's licence shall authorize the holder thereof to engage at specified premises in the business of commercial brewer of opaque beer, and, subject to the provisions of this Act in that behalf, to manufacture and brew by industrial methods from traditional, or prescribed traditional, ingredients, such opaque beer for ultimate sale to and use by the public, and to sell such opaque beer by wholesale sale for the purposes of resale or consumption off the opaque beer brewer's licensed premises.

**D. Wholesale sales licences****21. Wholesale licence**

A wholesale licence shall authorize the licensee to sell liquor on the specified premises licensed thereunder, during the relevant permitted hours, by wholesale sale for purposes of resale or consumption off the wholesaler's licensed premises.

**22. Agent's licence**

An agent's licence shall authorize the licensee thereunder to engage, on any premises, or part of any premises, specified in such licence, in the business of agent to receive, on behalf of any distiller, commercial brewer, opaque beer brewer, wine-maker or wholesaler, licensed under this Act, orders for the supply of liquor, by wholesale sale, by such distiller, commercial brewer, opaque beer brewer, winemaker or wholesaler, as the case may be.

**E. Retail sales licences****23. General retail licence**

- (1) A general retail licence shall be a retail sales licence and shall authorize the licensee to sell liquor on the specified premises licensed thereunder, during the relevant permitted hours, by way of retail sale.
- (2) Every general retail licence shall be graded within the grade appropriate thereto as hereinafter provided, and shall be subject to the terms, conditions, qualifications and limitations and the fee, under this Act prescribed for such grade.
- (3) A grade "A" general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to members of the general public for consumption on or off such premises.

- (4) A grade “B” general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind in unopened containers in their original imported or manufactured state to members of the general public for consumption off such premises.

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- (5) A grade “C” general retail licence shall relate to specified hotel premises only and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, on such licensed premises—
- (a) during the relevant permitted hours, to any person for consumption on or off such premises;
  - (b) at any time, to any person lodging on the premises, for consumption on such premises by such person or any guest of such person;
  - (c) at any time, to any person consuming a meal on the premises, for the purpose of consumption of such liquor by such person at such meal.
- (6) A grade “D” general retail licence shall relate to specified restaurant premises only, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to any person consuming a meal on the premises, for the purpose of consumption of such liquor by such person at such meal.
- (7) A grade “E” general retail licence shall relate to specified club premises only, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, being the property of the club, to members of the club for consumption by such members or their guests on or off the said premises:

Provided that no grade “E” general retail licence shall authorize the sale of any liquor to any person who is not a member of the club to which such licence relates:

And further provided that no licence under this subsection, or no other licence under this Act, shall be required for the supply of liquor to the members of a club on the club premises, where the liquor is the property of the members and the cost thereof is debited equally to all the members or to all the members consuming the liquor and no extra charge is made to any individual for liquor consumed by him.

- (8) A grade “F” general retail licence shall relate only to premises, or part of any premises, which are used in the business of providing meals together with cabaret entertainment to customers for reward, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to any person consuming a meal on such premises, for the purpose of consumption of such liquor at such meal or to any person who is a member of the staff or an entertainer currently employed at such premises.
- (9) A grade “G” general retail licence shall relate only to premises, or part of any premises, which are used as a theatre, cinema or other place of public entertainment, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on the premises, to any person who is a member of the audience or staff of such theatre, cinema or other place, or one of the players or entertainers engaged or taking part in the production currently being shown therein.
- (10) A grade “H” general retail licence shall relate to specified premises and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor, not including spirits other than listed spirits, to members of the general public for consumption off such premises:

Provided that the relevant licensing authority may, with the prior approval of the Minister, endorse any grade “H” general retail licence so as to authorize the sale thereunder, for consumption on or off the premises, of such liquor as is included within the limitations of the licence, and such endorsement shall be written clearly on the face of the licence.



For the purpose of this subsection, the Minister may, from time to time, by *Gazette* notice, specify the classes or descriptions of potable spirits manufactured in Malawi (herein referred to as “listed spirits”), which may be sold by the holder of a grade “H” general retail licence.

- (11) A grade “I” general retail licence shall relate to specified premises situate within the perimeter of any National Park or Game Reserve, as the case may be, and which are ordinarily used, by way of business, as a camp, hostel, rest house or hotel for the provision of accommodation, food or drink to persons visiting such National Park or Game Reserve, and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind to members of the general public at any place within the perimeter of the said National Park or Game Reserve for consumption on or off the premises but within such National Park or Game Reserve.

#### **24. Travel and transit licence: fleet licence**

- (1) A travel and transit licence shall be a retail sales licence and shall authorize the licensee to sell liquor during the relevant prescribed hours on premises licensed thereunder and ordinarily used for or in connexion with the carriage of passengers by way of trade or business.
- (2) Every travel and transit licence shall be graded within the grade appropriate thereto as hereinafter provided, and shall be subject to the terms, conditions, qualifications and limitations and the fee under this Act prescribed for such grade.
- (3) A grade “TA” travel and transit licence shall relate only to premises consisting of or forming part of an aerodrome, airport or air terminal and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind for consumption on or off the premises to any person lawfully using such aerodrome, airport or air terminal.
- (4) A grade “TB” travel and transit licence shall relate only to premises consisting of or forming part of a bus station or bus terminus and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on or off the premises, to any person lawfully using such bus station or bus terminus.
- (5) A grade “TR” travel and transit licence shall relate only to premises consisting of or forming part of a railway station or railway terminus and shall authorize the licensee thereunder, within the terms and conditions of the licence, to sell liquor of any kind, for consumption on or off the premises, to any person lawfully using such railway station or railway terminus.
- (6) Subject to subsection (11), a grade “TAV” travel and transit licence shall relate only to premises consisting of a specified aircraft, or any specified part of such aircraft, employed for the purpose of a stated air transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the said aircraft is in use for the common carriage of persons, to sell liquor of any kind within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such aircraft.
- (6A) Subject to subsection (11), a grade “TBC” travel and transit licence shall relate only to premises consisting of a specified bus, or any specified part of such bus, employed for the purpose of a stated road transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the bus is in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such bus.

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- (7) Subject to subsection (11), a grade “TRY” travel and transit licence shall relate only to premises consisting of a specified railway restaurant car or any specified part of such railway restaurant car employed for the purposes of a stated rail transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder during any time the said restaurant car constitutes part of a train in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such train.

- (8) Subject to subsection (11), a grade “TPV” travel and transit licence shall relate only to premises consisting of a specified passenger carrying vessel, or a specified part of such passenger carrying vessel, employed for the purpose of a stated water transport service as a common carrier for the carriage of persons for reward, and shall authorize the licensee thereunder, during any time the said vessel is in use for the common carriage of persons, to sell liquor of any kind, within the terms and conditions of the licence, for consumption on or off the premises, to any person on board such vessel.
- (9) A grade “TA” travel and transit licence shall not be granted, transferred or removed except upon the written request of the owner of the relevant premises. If such owner is a company, such request shall be made by the Board of Directors or Managing Director thereof, or, if such owner is a body corporate, other than a company, it shall be made by the person responsible for the general management and administration of such body corporate:

Provided that where the relevant premises are a Government aerodrome, or part of a Government aerodrome, the above provisions of this subsection shall not apply, but in such case, no such licence shall be granted, transferred or removed without the prior approval of the Minister responsible for civil aviation matters.

- (10) A grade “TB” or grade “TR” travel and transit licence shall not be granted, transferred or removed except upon the written request of the owner of the relevant premises. If such owner is a company, such request shall be made by the Board of Directors or Managing Directors thereof, or, if such owner is a body corporate, other than a company, it shall be made by the person responsible for the general management and administration of such body corporate.
- (11) In respect of any travel and transit licences of grades “TAV”, “TBC”, “TRY” and “TPV”, as provided for by subsections (6), (6A), (7) and (8), respectively, the Minister may, by regulations made by notice published in the *Gazette*, prescribe for the issue, within any such grade, of a fleet licence to any person who, in the course of his business, operates more than three aircraft, buses, railway restaurant cars or passenger carrying vessels, as the case may be, and may prescribe the respective fees payable for the issue of any such fleet licence within each such respective grade.

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- (12) Every fleet licence issued pursuant to subsection (11) shall relate to every such aircraft, bus, railway restaurant car or passenger carrying vessel, respectively, operated by the licensee within the grade of such fleet licence, and, while being so operated by such licensee, each such aircraft, bus, railway restaurant car or passenger carrying vessel, as the case may be, shall be deemed to be licensed thereunder as if a separate licence had been issued in respect thereof, and shall be subject to all of the terms and conditions of a licence of such grade.

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- (13) Every fleet licence issued pursuant to subsection (11), shall bear the identifying letters of the grade within which it is issued, followed by the further mark “(F)”.
- (14) The licensee under any fleet licence shall notify the licensing authority in writing of any diminution of, or addition to, such fleet within forty-eight hours after such event.
- (15) The licensing authority of the City of Blantyre shall be the exclusive licensing authority in respect of the issue and control of travel and transit licences, and the premises relevant to any such licence, wherever located, shall, for the purposes of issue, renewal, transfer or removal, where appropriate, be deemed to be located in the area of the said City of Blantyre.

## F. Temporary sales licences

### 25. Auctioneer's temporary licence

- (1) An auctioneer's temporary licence shall authorize the licensee thereunder to sell by auction liquor in unopened containers, on a stated occasion, at specified premises during prescribed hours, for consumption off such premises where—
  - (a) such liquor forms part of the assets of the estate of any deceased or bankrupt person;
  - (b) such liquor forms part of the assets of any partnership, or of any member's club, which is being dissolved, and such proposed sale is for the purposes of the realization of such assets;
  - (c) such liquor forms part of the assets of any company or body corporate and is being sold for the purposes of the winding up of such company or body corporate;
  - (d) such liquor forms part of assets held in receivership and is being sold on the instructions of the receiver thereof;
  - (e) such liquor constituted property of any person which has been declared forfeit pursuant to any order of court or any written law;
  - (f) such liquor forms part of the business assets of any person, whose said business is being administered for the purpose of closure thereof or for the benefit of creditors under any agreement or order of court or written law;
  - (g) such liquor has been seized and is intended to be sold in the lawful execution of any judgment;
  - (h) such liquor is the property of some person other than the auctioneer, and is not being sold for the purpose of profit or by way of trade.
- (2) No liquor shall be sold under an auctioneer's temporary licence on any premises licensed for the consumption of liquor on such premises.
- (3) An auctioneer may, under an auctioneer's temporary licence, sell liquor by auction in any quantities.
- (4) An auctioneer's temporary licence shall not be issued to any person who is not engaged in business in Malawi as an auctioneer.
- (5) Nothing in this section shall be deemed to prevent any licensee, under any general retail licence, personally, or by any person acting on his behalf, from selling liquor, the property of the licensee, by auction on his licensed premises (not being premises on which the sale of liquor for consumption on the premises is permitted) or, with the consent of the licensing officer for the area concerned, on any other premises.

### 26. Occasional licence

An occasional licence shall authorize the licensee thereunder to sell liquor by retail sale for consumption at a specified place of public recreation or public amusement or other public assembly, for the period, not exceeding five days, during which such recreation, amusement or assembly continues, or for any lesser period specified in the licence, subject to such restrictions and conditions as to the hours during which liquor may be sold or supplied, or otherwise, as may be stated in the licence.

## G. Hours of business under sales licences

### 27. Prescribed hours

Subject to [section 28](#), the days and the hours of the day during which any licensee under a sales licence may exercise his right to sell liquor under such licence shall be as prescribed in respect of such class or grade of licence in the First Schedule.

*[First Schedule]*

### 28. Alteration and extension of prescribed hours

- (1) The Minister may, by notice published in the *Gazette*, alter the prescribed hours during which the sale of liquor may be made by any specified licensee of licensed premises, or by the licensees of licensed premises in any specified area, district or place.
- (2) A licensing authority may, upon application made by the licensee, and after consultation thereon with the officer in charge of police in the area in which the relevant licensed premises are situate, extend, by endorsement on such licence, the prescribed hours during which the sale of liquor may be made under such licence during any occasion or any period, being not more than three days, specified in the said endorsement.
- (3) The Minister, after consultation with the Minister responsible for Tourism, may, by notice published in the *Gazette*, in respect of any specified area, district or place which, in his opinion, is an area, district or place frequented from time to time, by holiday-makers or tourists, extend the relevant prescribed hours applicable to any stated class or grade of licence exercisable under this Act within such area, district or place, during any stated period.

## H. Miscellaneous provisions on licences

### 29. Duration of licences

- (1) Every licence issued pursuant to this Act, other than a temporary sales licence, shall be valid from the date of issue to the following 31st March, and may be renewed from year to year thereafter in accordance with this Act.
- (2) Every temporary sales licence shall be valid for the period specified therein and shall not be renewable.

### 30. Licensing fees: reduced licensing fee

- (1) The Minister, after consultation with the Minister responsible for Finance, may, by regulations published in the *Gazette*, prescribe the fees payable in respect of any licence issued under this Part, and, in this regard, may, by such regulations, prescribe different fees to be payable in respect of different classes of licence or in respect of different grades of licence within any such class, and may, for the purposes of this section, in like manner prescribe different categories within any such class or grade, as the case may be, and prescribe the fees to be payable in respect of any licence issued within each such prescribed category.
- (2) Where any licence, other than a temporary sales licence, is issued for a period of less than twelve months, the licensing fee payable shall be proportionately reduced:

Provided that such fee shall be computed as though the licence became operative on the first day of the month in which it was issued.

**31. Separate licences for each premises, vessel, etc.**

Every licence related to premises, other than a travel and transit fleet licence issued under [section 24](#) (11), shall relate to one premises only, and a separate licensing fee shall be payable in respect of each such licence issued.

**Part IV – Issue and renewal of licences****32. Persons absolutely disqualified**

The following persons shall not be entitled to hold a licence under this Act—

- (a) any person who is under the age of twenty-one years;
- (b) any Sheriff, Under Sheriff, or serving police officer or any other officer entrusted with the execution of the legal process of any court;
- (c) any person who has been convicted, whether under this Act or any other written law, of keeping, or permitting to be kept, as a brothel any premises for which at the time of such offence he held a licence under this Act or under any former written law regulating the manufacture or sale of liquor in Malawi;
- (d) any person who has been convicted under any written law of forging a liquor licence or of knowingly making use of a forged liquor licence;
- (e) any person who has been disqualified by any court from holding a liquor licence under this Act, or under any former written law regulating the sale of intoxicating liquor in Malawi, and such disqualification has not expired or been removed or cancelled.

**33. Persons limitedly disqualified**

Save with the prior written consent of the Minister, the following persons shall not be entitled to hold a licence under this Act—

- (a) any person whose licence has been forfeited under this Act and two years have not elapsed since the date of such forfeiture;
- (b) any person who has been convicted of an offence involving or relating to the sale of liquor without a licence and two years have not elapsed since the date upon which such conviction became final;
- (c) any person who has, within two years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;
- (d) any person who does not ordinarily reside in Malawi:

Provided that this section shall not apply to any such person who is the legal personal representative or trustee in bankruptcy of any deceased or bankrupt licensee, as the case may be, and to whom such licence is transferred under this Act or any other written law for the purposes of the administration of the estate of such deceased or bankrupt licensee.

**34. Companies, partnerships, etc., as such not eligible to hold sales licence**

- (1) No company, partnership, society, association or other body of persons, corporate or unincorporate, as such, shall be entitled to hold a sales licence as licensee under this Act:

Provided that, subject to subsection (2), nothing in this section shall be deemed to prevent the grant, transfer or renewal of any sales licence to any person in the employ of such company, partnership, society, association or body of persons, as the agent or nominee thereof who shall

hold the same for them and on their behalf, and if any such person to whom such sales licence was granted, transferred or renewed, as aforesaid, ceases to be employed in a position in which he is required to hold such licence his employer may take such steps for the transfer of such licence to, some other employee as a licensee may take under this Act for the transfer of his licence to some other person, and, for such purpose, the said employer shall be deemed to be the agent of the said licensee duly authorized to do and execute all acts and deeds as may be necessary for the transfer of the said sales licence as aforesaid:

Provided, further, that for the purposes of any interim period between the cessation of such employment of such licensee and the transfer of such sales licence to such other employee, the said company, partnership, society, association or body of persons shall cause notice in writing of such cessation to be given, as soon as is practicable, to the relevant licensing authority, informing such authority of the name and address of the person whom they have appointed to exercise the powers and duties of licensee until such time as the same is transferred to a new nominee or agent in accordance with this Act. Such notice shall be accompanied with a written acceptance of the duties and powers of the licensee under the said licence for the said interim period and shall be signed by the said appointed person; and for the duration of such interim period the said appointed person shall, for the purposes of this Act, be impressed with all of the rights, duties, obligations and liabilities of the licensee under such licence, as if he were the holder thereof under this Act.

- (2) A grade “E” general retail licence shall be applied for by, and issued to, the Secretary or any other responsible officer of the relevant club, and, notwithstanding the first and second provisos to subsection (1), no transfer of the said licence shall be required by reason of any change in the holder of the office to whom the said licence was issued, but notice of such change shall be given, in writing, by the Committee of the club to the appropriate licensing officer within thirty days after such change is made.

### 35. Notice of intention to apply for licence

- (1) Subject to subsection (3), any person who intends to apply to a licensing authority for a liquor licence under this Act shall give notice of such intention in accordance with this section.
- (2) A notice of intention under subsection (1) shall be in the prescribed form and shall state the prescribed class and grade of licence intended to be applied for, and shall, not less than fourteen days before the application for the licence is made, be published in the *Gazette* and in two issues of a newspaper in general circulation in the area where it is intended to exercise the licence.
- (3) The provisions of subsections (1) and (2) shall not apply to any person intending to apply for a grade “H” general retail licence as defined by [section 23](#) (10) or for a temporary sales licence.
- (4) Any person who intends to apply for a grade “H” general retail licence or for a temporary sales licence shall, if so required, give such notice of intention to apply therefor as may be prescribed.

### 36. Objections

- (1) Where a notice of intention to apply for a liquor licence is published pursuant to this Act, any person who wishes to object to the grant of such licence shall, not later than fourteen days after the date of the last publication of the said notice, give, in the prescribed form, to the appropriate licensing officer, the officer in charge of police in the district in which the relevant premises are located, or deemed to be located under this Act (or where the said intended relevant licence is not to relate to premises, the Chief Commissioner of Police) and to the proposed applicant named in the said notice, notice of objection to the grant of such licence.
- (2) In any area for which a Board has been established in accordance with [section 5](#), the licensing officer shall cause any notice of objection received by him pursuant to subsection (1), to be placed before the said Board at the time the application for the grant of the relevant licence is being heard and considered by such Board.

- (3) No objection to the grant of a licence under this Act shall be considered or entertained by the appropriate licensing officer or Board, as the case may be, unless the notice of objection to the issue of such licence—
- (a) states the grounds of objection; and
  - (b) has been given to the appropriate licensing officer, the officer in charge of police in the area in which the relevant premises are located or deemed to be located under this Act (or where the said licence is not to attach to premises, the Chief Commissioner of Police) and to the proposed applicant, within the time provided by subsection (1).

### 37. Application for licence

- (1) Upon the expiry of fourteen days after the last publication pursuant to [section 35](#) (2) of a notice of intention to apply for a licence, and at any time within three months thereafter, the person named as the proposed applicant in the said notice may, as hereinafter provided, apply for such licence to the appropriate licensing authority.
- (2) Every application for a licence under this section shall be made in the appropriate prescribed form and manner and shall be accompanied with the appropriate prescribed fee.
- (3) Every application for a licence under this section shall further be accompanied with such written evidence as will satisfy relevant licensing authority that all taxes upon income which are due and payable by the applicant pursuant to the Taxation Act and which are not currently under review or appeal under that Act have been paid, or, alternatively, that the said applicant has made arrangements satisfactory to the Commissioner of Taxes for the payment thereof:

*[Cap. 41:01]*

Provided that this subsection shall not apply where such application is made by any person as the nominee of any company or other body corporate:

And further provided that where such application is made by the secretary or other responsible officer of any club as the nominee thereof, the relevant income for the purposes of the written evidence required by this subsection shall be that of the said club and not that of the said secretary or other such responsible officer.

- (4) Subject to subsection (6), upon receipt of any application pursuant to subsection (2), the licensing officer shall appoint a day and place for the hearing of such application and shall, not less than fourteen days before the date of hearing, cause notice thereof to be sent, in the prescribed manner, to the applicant, to any person who has given notice of objection to the issue of such licence, and, where the licence sought is to relate to premises, to the officer in charge of the police in the area in which the premises are located or deemed to be located, as the case may be; or, where the said licence sought is not to relate to premises, to the Chief Commissioner of Police.
- (5) The licensing officer shall cause a copy of the notice referred to in subsection (4) to be posted in a prominent place outside his office for a period of not less than seven days before the date of hearing of the said application for a licence.
- (6) Where, pursuant to this section, an application is made for a licence in respect of premises situated or deemed to be situated in an area for which a Board has been established, the licensing officer shall notify the Board of the receipt of such application and the Board shall appoint a day and place for the hearing thereof and thereupon the licensing officer shall not less than fourteen days before the date of hearing, in the name of, and on behalf of, the Board, cause notice of such hearing to be sent, in the prescribed manner to the applicant, to any person who has given notice of objection to the issue of such licence, and, where the said licence sought is to relate to premises, to the officer in charge of police in the area in which the premises are located or deemed to be located, as the case may be; or, where the said licence sought is not to relate to premises, to the Chief Commissioner of Police, and shall further cause a copy of the said notice to be posted in a prominent place outside



the office of the Board for a period of not less than seven days before the said date of hearing of the said application for a licence.

- (7) Where, pursuant to this section, an application is made for a licence in respect of premises which, under any planning scheme approved under the Town and Country Planning Act, are excluded either wholly or in part from use as licensed premises, the licensing authority shall not entertain such application unless there is submitted therewith the written consent of the Minister responsible for Town and Country Planning for the use of such premises as licensed premises in the event of the granting of the said application by the said licensing authority.

*[Cap. 23:01]*

- (8) This section shall not apply to any application for a licence to which [section 41](#) applies.

### **38. Hearing of application**

- (1) The applicant, and every person who has given notice of objection to the issue of the licence sought, shall be entitled to be present at the hearing by the licensing authority of the application for such licence or to be represented thereat by a legal practitioner, and shall be entitled to be heard and to adduce evidence on his application or objection, as the case may be.
- (2) Where the licence sought is one to relate to premises the officer in charge of police for the area in which the relevant premises are located or deemed to be located, as the case may be (and, in all other cases, by leave of the licensing authority, the Chief Commissioner of Police) may be present at the hearing of the application, or represented thereat by another police officer or by a legal practitioner, and may adduce evidence and be heard in the matter of the said application.
- (3) Any person who may be affected by the grant of a licence, but who has failed to give notice of objection to its issue as provided by [section 36](#) (1), may apply to the licensing authority for leave to be present at the hearing of the application and to oppose the grant of the said licence, and the said licensing authority may, upon the said person furnishing security for the costs of the applicant in such sum as the said authority deems reasonable and subject to such other terms and conditions as the authority may impose, allow such person to be present at the said hearing or to be represented thereat by a legal practitioner and to adduce evidence and be heard thereat in opposition to the grant of the said licence.
- (4) The licensing authority may, if it thinks fit, adjourn, from time to time, the hearing of any application, to enable the applicant to answer any objection or opposition to the grant of the applied-for licence.
- (5) Where a licensing authority refuses to grant an application for a licence, or where it grants such application and attaches to such licence any conditions pursuant to [section 44](#), it shall, at the request of the applicant, inform such applicant in writing of the grounds upon which such application was refused, or upon which such conditions were attached to such licence, as the case may be.

### **39. Amendment of application**

- (1) A licensing authority may allow an applicant to amend his application for a licence, when and as often as appears to be necessary.
- (2) Leave to amend pursuant to subsection (1) may be on such terms and conditions as the said authority deems meet.
- (3) It shall be in the discretion of the licensing authority to determine what, if any, public notice shall be given of any application as amended pursuant to this section.



#### 40. Power of licensing authority to examine under oath

- (1) A licensing authority may require any applicant for a licence to attend before it at the hearing of his application and to be examined on oath concerning any matter material thereto.
- (2) A licensing authority may permit any person to attend before it at the hearing of any application for a licence and to give evidence and be examined on oath concerning any matter material thereto.

#### 41. Application for grade "H" or temporary sales licence

Application for a grade "H" general retail sales licence or for a temporary sales licence shall be in the manner and form prescribed for such application, and if no such manner or form of application is so prescribed such application shall be made in the manner and form required by the licensing authority.

#### 42. Death or bankruptcy of applicant

- (1) If, pending the determination of any application for the grant of a licence under this Act, the person, to whom such licence is, by such application, requested to be issued, dies, the licensing authority may, in its discretion, upon being satisfied that such person is dead, issue such licence to the legal personal representative of such person, without further application in that behalf.
- (2) If, pending the determination of any application for the grant of a licence under this Act, the person, to whom such licence is, by such application, requested to be issued, is adjudicated bankrupt, or a trustee is appointed to administer his property under any composition or scheme of arrangement or under any deed of arrangement with his creditors, the licensing authority may in its discretion issue such licence to the trustee in bankruptcy of the applicant, or to the trustee of the applicant appointed under such composition or scheme or to the trustees of the applicant appointed by and under such deed of arrangement, as the case may be, without further application in that behalf.

#### 43. False statements in application

Any person applying for a licence under this Act, who, knowingly, submits to any licensing authority any application which is false in any material particular shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of six months.

#### 44. Power to attach conditions to licences

Any other provision of this Act to the contrary notwithstanding, a licensing authority may attach to any licence, upon the grant thereof, such conditions, not being for the payment of money in excess of the prescribed licensing fee, as the said authority deems expedient in the public interest.

#### 45. Provisional licence for premises under construction

- (1) A licensing authority may, subject to such conditions as it deems fit to impose, grant a provisional licence related to premises intended to be constructed or in course of construction, either to a named person or to a person to be named subsequently by the applicant and approved by the licensing authority.
- (2) Sections [35](#), [36](#), [37](#) (excluding subsection (3) thereof) and [section 38](#), shall apply *mutatis mutandis* to every application for a provisional licence under subsection (1) and there shall be attached to each such application, for approval by the licensing authority, such number of copies of the plans of the proposed premises, as may be prescribed.
- (3) Upon the appropriate licensing officer being satisfied that premises to which a provisional licence relates have been substantially completed in accordance with the approved plans, and that all of the conditions attaching to such provisional licence have been substantially fulfilled, he shall certify the same by way of endorsement on the said provisional licence, and the provisional licence holder,

upon delivery of such provisional licence, so certified, and of any evidence required under [section 37](#) (3), to the relevant licensing authority and payment of the appropriate prescribed fee, shall be entitled to the issue to him or to his approved nominee, of a licence related to such premises of the class and grade designated in the said provisional licence.

- (4) For the purposes of this section the expression “premises intended to be constructed or in course of construction” includes any proposed building which is intended, upon its completion, to be annexed or added to any existing licensed premises as an extension thereof, and the expression “provisional licence” includes any provisional extension of the licence related to such existing premises so as to include within such existing licence such proposed extension of the said premises.

#### **46. Surrender of licence for cancellation**

A licence may be surrendered by the licensee to the licensing officer at any time for the purposes of cancellation and, upon such cancellation of the said licence, the licensee shall be entitled to a refund of such proportion of the licensing fee paid as may be prescribed.

#### **47. Lost or destroyed licences**

- (1) Where any licensing officer is satisfied that any licence has been lost or destroyed, he shall, upon payment of the prescribed fee, issue a duplicate of such licence to the licensee.
- (2) Where any duplicate licence is issued pursuant to subsection (1), such duplicate shall replace the said lost or destroyed licence, as the subsisting valid licence for the purposes of this Act.
- (3) Where any duplicate licence has been issued pursuant to subsection (1) in place of a licence which has been lost, and the licensee subsequently finds the said lost licence, he shall retain the said duplicate licence and shall, within one month after having found the said lost licence, return the said lost licence to the licensing officer for cancellation. Any licensee who fails to comply with this subsection shall be guilty of an offence.

### **Part V – Transfer and removal of licences related to premises**

#### **48. Transfer of licence related to premises**

For the purposes of this Act, the transfer of a licence means, in respect of any particular licensed premises, the substitution of some other person as licensee under the licence related to such premises in place of the current licensee.

#### **49. Notice of application for transfer**

- (1) Any person intending to apply for a transfer of a licence, other than a grade “H” general retail licence, shall give notice in writing of his intention to do so to—
  - (a) the licensee, where the application is not to be made by such licensee; and
  - (b) the relevant licensing authority; and
  - (c) the officer in charge of police in the area in which the relevant licensed premises are located or deemed to be located under this Act.
- (2) Notice under subsection (1) shall be in the prescribed form and shall state the name and address of the current licensee, the address of the relevant licensed premises and the name and address of the intended transferee and shall, after service thereof pursuant to subsection (1) and not less than fourteen days before the application for transfer of the licence is made, be published in the *Gazette* and in two issues of a newspaper in general circulation in the area in which the relevant licensed premises are located or deemed to be located under this Act.

- (3) Any application for the transfer of any grade “H” general retail licence shall be in the manner and form prescribed therefor.

## 50. Application for transfer

- (1) At any time within three months after the expiration of fourteen days from the date upon which notice was published pursuant to [section 49](#) (2), the person who gave such notice may make application in the prescribed form and manner to the appropriate licensing authority for the transfer of the said licence.
- (2) Every application for the transfer of a licence under this section may be made by either the transferor or transferee of the interest of the licensee in the premises licensed under the said licence, whether such transfer of interest occurs by virtue of any conveyance, grant, assignment, demise, gift, bequest or descent or otherwise, or by operation of law, and shall be accompanied with the appropriate prescribed transfer fee.
- (3) Every application for the transfer of a licence under this section shall be signed by the applicant, and, if the current licensee is not the applicant, a copy of such application shall be served upon the said current licensee at least three days before the application is forwarded to the licensing authority together with proof of such service:

Provided that, if the current licensee holds the said licence as the nominee of some other person and such other person is not the applicant, the said application shall be signed by the applicant and shall be served upon such other person but need not be served upon the current licensee.

- (4) The provisions of sections [36](#), [38](#) to [40](#), [42](#) and [43](#) shall apply *mutatis mutandis* to proceedings under this section.

## 51. Limitations on transfer of licence

- (1) A licence shall not be transferred to any person absolutely disqualified under [section 32](#) from holding such licence, or, without the prior consent of the Minister, to any person limitedly disqualified under [section 33](#).
- (2) A licence shall not be transferred to any person unless the appropriate licensing authority is satisfied that such person is a fit and proper person to hold a licence under this Act.

## 52. When transfer of licence may be granted

- (1) Subject to [section 51](#), transfer of a licence shall not be granted except in the following cases and to the following persons, that is to say—
- (a) where the licensee has died, to his legal personal representative or to any new owner, tenant or occupier of the relevant licensed premises;
  - (b) where the licensee is incapable, through illness or other infirmity, of carrying on business under the licence, to his trustee, assignee, guardian, curator, manager or other person lawfully appointed to manage and conserve his affairs during his said incapacity, or to any new owner, tenant or occupier of the relevant licensed premises;
  - (c) where the licensee is adjudged bankrupt, or a trustee is appointed in pursuance of any composition or scheme of arrangement to administer the property or manage the business of the licensee, or a trustee is appointed under a deed of arrangement for the benefit of the creditors of the licensee, to the trustee in bankruptcy of the said licensee or to such other trustee, or to any new owner, tenant or occupier of the relevant licensed premises;
  - (d) where, upon sale or otherwise, the licensee has, or his legal personal representative has, given up occupation of the relevant licensed premises, to the new owner, tenant or occupier of such premises, or to the person to whom the said legal personal representative has, upon

sale, or otherwise, in good faith conveyed, assigned or made over the interest of the said licensee in the said premises;

- (e) where the licensee, being about to quit the relevant licensed premises, has neglected or wilfully omitted to apply for a renewal of the licence, to the owner, new tenant or occupier of such premises;
  - (f) where the owner of such relevant licensed premises, or some other person on his behalf, has been granted a protection order pursuant to [section 54](#), to such owner or such other person;
  - (g) where any employer desires that a licence be transferred from one employee to another pursuant to [section 34](#), to such other employee.
- (2) In any case arising under paragraph (e) or (f) of subsection (1), the licence may be renewed and transferred as a valid and subsisting licence upon payment of the appropriate renewal and transfer fees, notwithstanding its forfeiture by the former licensee because of failure to renew the same within the prescribed time, and upon such transfer such licence shall be deemed to have been renewed within the prescribed time and not to have been forfeited by the said former licensee.

### 53. Power to carry on licensed business after death, etc., of licensee

- (1) Where a licensee dies, or is adjudged bankrupt, or a trustee is appointed in pursuance of a composition or scheme to administer the property or manage the business of a licensee, or a trustee is appointed under a deed of arrangement for the benefit of creditors of a licensee, [section 72](#) shall not prohibit the sale of liquor on the relevant licensed premises by the legal personal representative, or the trustee, as the case may be, of the said licensee, during the period of three months immediately following such death, adjudication or appointment:

Provided that this section shall not exempt from the prohibition imposed by the said [section 72](#) any sale of liquor which would not have been authorized under the licence held by such licensee in respect of the premises on which such sale is made.

- (2) Where an application is made for the transfer of a licence affected by the provisions of subsection (1) within the period of three months referred to in the said subsection, and the licensing authority adjourns consideration of the application, the said period of three months shall, if necessary, be deemed to be extended from time to time to the date of the final ruling of the said licensing authority on the said application.

### 54. Protection order

- (1) Where a person proposes to apply for the transfer to him of a licence related to premises under this Act, the licensing officer for the area in which the relevant licensed premises are located or deemed to be located, as the case may be, may, upon the application, in writing, of such person, and upon such officer being satisfied that it is just and equitable for him to exercise his powers under this subsection and that the applicant is a person to whom the transfer of the licence could be granted under this Act, grant him authority (hereinafter referred to as a protection order) to sell liquor on such licensed premises as if he were the holder of the relevant licence.
- (2) Where—
- (a) a licence related to premises is forfeited under this Act; or
  - (b) a licensee under such a licence becomes disqualified under [section 32](#) or [33](#) from holding a licence,

and the said former licensee, whose licence was so forfeited, or who so became disqualified, was, at the date of such forfeiture or disqualification, possessed of the relevant licensed premises, as tenant, agent, employee or nominee of, or under a right of occupancy from, some other person, the licensing officer for the area in which the said relevant licensed premises are located or deemed to be located, as the case may be, may grant a protection order to the person under whom the said former licensee possessed or occupied the said premises, or to such person's nominee,

or, in the event of such person not applying for such order, to the holder of any title to such premises superior to that of such aforesaid person, and such protection order may be granted notwithstanding the said forfeiture of the said licence by the said former licensee or his said disqualification from holding such licence, as the case may be.

- (3) The provisions of this Act relating to the regulation and control of licences shall, while a protection order is in force, apply to the person to whom such order has been granted, in the same manner and to the same extent as they apply to the holder of a licence under this Act.
- (4) A protection order shall remain in force for three months from the date of its issue:

Provided that where application is made by the holder of the said protection order for a transfer of the relevant licence within the said period of three months and the licensing authority adjourns consideration of such application, the said period shall, if necessary, be deemed to be extended to the date of the final ruling on the said application.

- (5) A licensing officer to whom application for a protection order is made may examine the applicant or any other person on oath in respect of any matter relevant to the application, and is hereby empowered to administer oaths for such purposes.
- (6) A protection order shall not be granted unless the applicant has, not less than forty-eight hours before making the application, given, to the officer in charge of police in the area in which the relevant licensed premises are located or deemed to be located under this Act, notice in writing of his intention to apply for such order, which notice must be signed by the applicant or his duly authorized agent and must state the name and address of the applicant and the profession, business, trade or calling followed by the applicant during the six months' period immediately preceding the giving of such notice.
- (7) Where a licensing officer grants a protection order pursuant to this section, he shall endorse a memorandum of such order on the relevant licence:

Provided that if such licence is not available to such licensing officer or to the applicant at the time of the granting of the said protection order, the said licensing officer shall issue under his hand, to such applicant, a protection order in the form prescribed.

- (8) There shall be payable, upon the grant of a protection order, the appropriate prescribed fee.

## **55. Removal of licence from one premises to another**

- (1) For the purposes of this Act, the removal of a licence means discontinuing the right to exercise such licence on the premises to which it is expressed to be related, and relating it to and making it exercisable on other premises within the same area.
- (2) A removal of a licence shall be made by way of endorsement on the existing licence.
- (3) An application for the removal of a licence shall be made to the appropriate licensing authority, in the prescribed form by the person desiring to hold such licence after removal, and the provisions of sections [35](#), [36](#), [37](#), [38](#), [39](#) and [40](#) shall apply *mutatis mutandis* to any such application.
- (4) Without prejudice to any other power of a licensing authority to grant the removal of a licence, such licensing authority shall not grant any such removal unless it is satisfied that the licensee under the licence and any person owning and having control of the business carried on the licensed premises from which it is sought to remove such licence have no objection to such removal.
- (5) There shall be payable upon the grant of a removal of a licence the appropriate prescribed fee.
- (6) A licensing authority may make a provisional grant of removal of a licence to premises about to be constructed or under construction, and the provisions of [section 45](#) shall apply *mutatis mutandis* to such provisional grant of a removal of such licence as they apply to the grant of a provisional licence.

## Part VI – Appeals

### 56. Licensing Appeals Tribunal

- (1) There is hereby established a tribunal to be known as the Licensing Appeals Tribunal (hereinafter referred to as the Tribunal), which shall have exclusive jurisdiction to hear and determine appeals from licensing authorities, brought pursuant to [section 57](#).
- (2) The Tribunal shall consist of four members, appointed by the Minister, one of whom shall be designated as chairman. In this regard, the Minister may appoint any officer in the public service to be a member of the Tribunal. The Minister shall cause notice of every appointment to the Tribunal to be published in the *Gazette*, and shall, from time to time, cause notice of the composition of such Tribunal to be so published.
- (3) The Minister shall designate an officer in the public service to be secretary to the Tribunal.
- (4) Subject to subsections (5) and (6), a member of the Tribunal shall hold office for such term not exceeding three years as the Minister may specify in the instrument of such member's appointment.
- (5) A member of the Tribunal may resign upon giving one month's notice in writing to the Minister of his intention so to do.
- (6) The Minister may terminate the membership of a member of the Tribunal at any time by giving notice of such termination to the member concerned.
- (7) Members of the Tribunal, other than those who are officers in the public service, shall be paid such remuneration and allowances as the Minister, in each individual case, may fix.
- (8) The chairman, when present, shall preside at the sittings of the Tribunal, but, in his absence, the senior member present shall preside. In this regard the senior member present shall be the longest serving member, or, where two or more members are equal in such seniority, the member whose name first appears in the notice of appointment published pursuant to subsection (2) shall be deemed to be the senior member for the purposes of this subsection.
- (9) For the purposes of the hearing of appeals, the Tribunal shall consist of the chairman and two other members only, or, in the absence of the chairman, the three other members.
- (10) The chairman, or the member presiding, as the case may be, and the secretary are hereby empowered to administer any oath required by any provision of this Act relating to the giving of evidence before the Tribunal.

### 57. Appeals

- (1) Any applicant for—
  - (i) the grant of a licence, other than a temporary sales licence; or
  - (ii) the grant of a provisional licence; or
  - (iii) the renewal, transfer or removal of a licence,or any person who has validly taken objection to such application, being aggrieved by the decision of a licensing authority thereon or by any condition attached to the grant, renewal, transfer or removal of such licence, or by any protection order made under [section 54](#), may appeal to the Licensing Appeals Tribunal.
- (2) Notice of appeal pursuant to this section shall be in the prescribed form and shall be given to the Tribunal and the relevant licensing authority within thirty days after the decision of the said licensing authority:

Provided that the chairman of the Tribunal may, in his discretion, extend the time for giving notice of appeal.

- (3) Upon the entry of any appeal under the provisions of this section, the appellant shall pay the appropriate prescribed fee and a notice of appeal shall not be deemed to have been given to the Tribunal until such fee has been received by the Tribunal.
- (4) In any appeal under this section the parties thereto shall be the applicant, any person who has validly taken objection to the original application and wishes to appear on such appeal, the officer in charge of police in the area in which the relevant premises are located or deemed to be located, as the case may be (or, in the case of any licence not related to any premises, the Chief Commissioner of Police) and the licensing authority concerned, and no other person shall be entitled to be represented at or heard on such appeal.
- (5) An appellant in any appeal under this section shall, within five days after the entry of such appeal in accordance with subsection (3), serve on all other persons, other than the licensing authority concerned, who, by virtue of subsection (4) are parties to such appeal, copies of the notice of appeal.
- (6) Any party to an appeal under this section may appear at the hearing thereof in person or by a legal practitioner.
- (7) In any appeal before the Tribunal, the licensing authority concerned may, in lieu of appearing before the Tribunal at the hearing of such appeal, send to it and to the appellant a statement of the reasons why such authority considers that the appeal should not be allowed, and such statement, if it purports to be signed by, or under the authority of, the said licensing authority, shall be considered by the Tribunal in its deliberations on such appeal.
- (8) Pending the determination of an appeal against refusal to renew a licence, such licence shall be deemed to remain in force.
- (9) The Tribunal—
  - (a) may, by notice in writing, require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend and give evidence before the Tribunal at the hearing of any appeal under this section, or to produce at such hearing any document in his possession or power which relates to any matter in issue relevant to such appeal and, if such, person, without reasonable excuse, fails to comply with any of the requirements of such notice, he shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that no person shall, under this paragraph, be required to produce any book or account, voucher or receipt which directly refers to his personal business or trading or to that of any company of which he is a director or employee, other than the company, if any, of which the appellant is the nominee for the purpose of obtaining the relevant licence;

- (b) shall have power to take evidence on oath and to make such other investigations as it may deem fit in assisting it to come to a decision regarding any matter relevant to the issue on appeal before it, and each member of the Tribunal is hereby empowered to administer oaths for the purposes of this paragraph;
  - (c) may award to any party to an appeal such costs as the Tribunal considers reasonable, and direct by what parties such costs are to be paid, and any person failing to comply with the provisions of any order made under this paragraph shall be guilty of an offence and liable to a fine of two hundred Kwacha, and the costs awarded may be recovered from the party ordered to pay such costs, by the party to whom they were awarded, by civil action:

Provided that where a licensing authority submits a statement under subsection (7) and does not appear before the Tribunal, no costs shall be awarded against such authority.
- (10) The Tribunal shall hear and determine the matter of any appeal brought before it and make such order therein as it deems fit, in addition to or in substitution for the matter appealed against, or



may refer the matter back to the licensing authority concerned with the directions of the Tribunal, which shall be binding on such authority.

- (11) No appeal shall lie to any court from a final decision of the Tribunal under this section.

## Part VII – Traditional beer

### A. Preliminary

#### 58. Application of Part VII

This Part shall apply to the brewing and sale of traditional beer and to the retail sale of opaque beer.

#### 59. Interpretation of Part VII

In this Part unless the context otherwise requires—

“**appropriate local authority**” means, in relation to any area or place—

- (a) within a Municipality, the Municipal Council constituted under the Local Government (Urban Areas) Act for such Municipality;

*[Cap. 22:01]*

- (b) within a Township, the Town Council constituted under the Local Government (Urban Areas) Act for such Township;

- (c) within a District, the District Council established under the Local Government (District Councils) Act for such District;

*[Cap. 22:02]*

“**liquor permit**” means any permit issued under this Part;

“**permit officer**” means a person appointed by a local authority to issue permits under this Part for the area of such local authority or for any stated place within such area;

“**permitted premises**” means the premises specified in a premises permit as defined by [section 65](#);

“**premises permit**” bears the meaning ascribed to that term by [section 65](#);

“**retail permit**” bears the meaning ascribed to that term by [section 64](#).

### B. Administration of Part VII

#### 60. Local authority to be permit authority

- (1) The permit authority for the issue, revocation and cancellation of any retail permit shall be the local authority for the area within which the said retail permit is to be exercised by the holder thereof.
- (2) The permit authority for the issue, revocation and cancellation of any premises permit shall be the local authority for the area in which the relevant premises are situate.

#### 61. Permit officers

- (1) Each local authority shall designate one of its officers as the permit officer for the area of such local authority.



- (2) Every permit officer shall, subject to this Act and to the general or special directions of the local authority and to the relevant by-laws thereof, be responsible for the administration of this Part within the area of such local authority, and shall, in the name of such local authority and on its behalf, be the person empowered to issue, revoke and cancel liquor permits under this Part, in accordance with this Part and with the said directions and by-laws.

## **62. Power of Minister to remove this Part from local authority jurisdiction**

The Minister may, by Order published in the *Gazette*, at any time, remove from the jurisdiction of any local authority the powers conferred upon such local authority by this Part, and may transfer such powers to the appropriate licensing officer, or licensing officers, in the area of such local authority, whereupon the powers of the said local authority under this Part shall be transferred to and vest in the said licensing officer, or officers, who shall become and be the exclusive permit authority or authorities for such area, or areas, under this Part, and shall, to the exclusion of any permit officer designated under [section 61\(1\)](#), exercise all of the powers of such local authority and such permit officer in respect of liquor permits within such area.

## **63. Classes of liquor permits**

There shall be two classes of liquor permit for the purposes of this Part, to wit—

- (a) a retail permit; and
- (b) a premises permit.

## **64. Retail permit**

- (1) Subject to subsection (3), a retail permit shall authorize the holder thereof, subject to the terms and conditions therein stated, to—
  - (a) manufacture, and sell by retail sale, traditional beer; or
  - (b) sell opaque beer by retail sale; or
  - (c) do (a) and (b) above,at the places specified and on the days permitted by such permit.
- (2) A retail permit shall be valid for a maximum period of seven days from the effective date stated therein.
- (3) Every retail permit issued under this Part by any local authority constituted under the Local Government (Urban Areas) Act shall be restricted to the sale of opaque beer only, and shall not authorize or permit the manufacture or sale of traditional beer at any place within the Local Government Area of such local authority.

[Cap. 22:01]

## **65. Premises permit**

- (1) Subject to subsection (3), a premises permit shall authorize the holder thereof, subject to the terms and conditions therein stated, to—
  - (a) manufacture, and sell by retail sale, traditional beer; or
  - (b) sell opaque beer by retail sale; or
  - (c) do (a) and (b) above,on the premises specified in the said permit.
- (2) A premises permit shall be valid until the 31st March next following its effective date.

- (3) Every premises permit issued under this Part by any local authority constituted under the Local Government (Urban Areas) Act shall be restricted to the sale of opaque beer only, and shall not authorize or permit the manufacture or sale of traditional beer at any place within the Local Government Area of such local authority.

[Cap. 22:01]

**66. \*\*\***

[repealed by 10 of 1996]

**67. Application for permit**

Every application for a permit under this Part shall be made in the manner prescribed by by-laws made by the relevant local authority and shall be accompanied with the appropriate fee so prescribed.

**68. Refusal to issue permit**

- (1) A permit officer may refuse to issue a retail permit or a premises permit to any person—
- (a) who has, within two years prior to the date of application for such permit, been convicted of an offence under this Act or under any written law repealed and replaced by this Act;
  - (b) who, in the opinion of the permit officer, is not a fit or proper person to hold such permit.
- (2) A person aggrieved by the decision of the permit officer in refusing to issue a retail permit under the provisions of subsection (1), may, within ten days after such refusal, appeal in writing to the relevant local authority, and the permit officer shall implement the decision of the local authority on any such appeal.
- (3) The decision of the local authority on any appeal under subsection (2) shall not be subject to appeal to, or question by, any court.
- (4) Where, pursuant to [section 62](#), the powers conferred upon any local authority by this Part have been removed from the jurisdiction of such local authority and transferred to the appropriate licensing officer, or licensing officers, in the area of such local authority, an appeal shall lie to the Minister from the decision of any such licensing officer in refusing to issue any such retail permit or premises permit and this section shall apply *mutatis mutandis* to every such appeal.

**69. Local authority beer-halls**

- (1) Every local authority may, within the area of such local authority, establish, maintain and operate beer-halls where opaque beer may be sold to the public by such local authority, or by holders of current valid retail permits with the permission and under the supervision and control of such local authority.
- (2) No licence under this Act, or premises permit or retail permit under this Part, shall be required to be held by any local authority which establishes, maintains or operates any beer-hall under subsection (1).
- (3) Every local authority which maintains or operates any beer-hall pursuant to subsection (1) shall appoint a manager or agent in respect of each such beer-hall so maintained or operated, and shall cause the name of such manager or agent, as the case may be, to be displayed conspicuously in a place ordinarily frequented by members of the public within such beer-hall.
- (4) Every manager or agent acting on behalf of any local authority in the management or operation of any beer-hall established, maintained or operated by such local authority under subsection (1), shall be bound by every relevant provision of this Act in his conduct of such management or operation, as if he were the holder of a premises permit in respect of such beer-hall save that he shall not be required to hold any licence or any permit under this Act in relation to such beer-hall.

- (5) Save as is otherwise provided by this section, no person shall sell opaque beer in any beer-hall unless he is the holder of a current valid retail permit approved under this Part.
- (6) No person shall sell in any beer-hall any liquor other than opaque beer pursuant to this section.

## **70. By-laws**

- (1) Any local authority may make by-laws for the better carrying out of this Part in the area of such local authority, and, without prejudice to the generality of the foregoing, such by-laws may provide for—
  - (a) the forms to be used for any register, return, application or permit;
  - (b) the fees to be paid upon any application for and issue of a permit;
  - (c) the hours of the day and the days during which any permit issued under this Part may be exercised;
  - (d) the conditions under which any permit holder may sell traditional beer or opaque beer;
  - (e) the control of the sale of traditional beer or opaque beer;
  - (f) the display of premises permits in the relevant permitted premises;
  - (g) offences in relation to the sale or offering for sale of traditional beer or opaque beer whether under a retail permit or premises permit, or otherwise, other than such offences as are expressly provided for by this Act in relation to such matters;
  - (h) the maintenance of cleanliness and hygienic conditions in the manufacture or sale of traditional beer under any liquor permit;
  - (i) the state of repair and hygienic conditions of any premises to which a current premises permit relates;
  - (j) the conduct of persons in any beer-hall, or on any premises to which a current premises permit relates, and the prescribing of offences in respect of such conduct;
  - (k) penalties for any offence committed against the said by-laws;
  - (l) any matter to be, or which may be, prescribed under this Part.
- (2) Any by-laws intended to be made by any local authority under subsection (1) shall be made in the manner prescribed, from time to time, for the making of by-laws in the written law under which such local authority is established.

## **Part VIII – Offences relating to sales, etc.**

### **71. Illegal manufacture of liquor for sale**

- (1) Save as is otherwise provided by this Act, any person, not being the holder of a manufacturer's licence under this Act, who, for purposes of sale, manufactures any liquor whether by brewing, distilling, fermenting or any other such process, shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a term of two years:

Provided that this subsection shall not apply to any person, being the holder of a valid current liquor permit issued under Part VII, who, for purposes of sale, manufactures traditional beer by traditional methods in accordance with the terms and conditions of such permit.

- (2) Any person, being the holder of a manufacturer's licence, or of a liquor permit issued under Part VII, who for purposes of sale manufactures by any process liquor of a kind other than that which he is entitled to manufacture under his said licence or permit, shall be guilty of an offence and liable to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months.

- (3) Any person, being the holder of a manufacturer's licence, or of a liquor permit issued under Part VII, who for purposes of sale manufactures liquor by any process other than that which he is entitled under his said licence or permit to use in such manufacture, shall be guilty of an offence and liable to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months.

## 72. Illegal sales

- (1) Subject to this Act any person who—
- (a) sells any liquor not being the holder of a licence or permit authorizing him to sell such liquor; or
  - (b) being the holder of a licence or permit related to any premises under this Act, sells any liquor except on the premises specified in such licence or permit; or
  - (c) being the holder of a licence or permit under this Act, sells any liquor save in accordance with the terms and conditions of the said licence or permit,
- shall be guilty of an offence and liable—
- (i) on first conviction under this section to a fine of one thousand Kwacha and to imprisonment for a term of eighteen months;
  - (ii) on a second or subsequent conviction under this section, to a fine of two thousand Kwacha and to imprisonment for a term of two years.
- (2) Upon a second or subsequent conviction of a person of an offence under subsection (1), the court may, in addition to any other penalty imposed, order such person to be disqualified from holding a licence or permit under this Act—
- (a) on a second conviction, for a period not exceeding five years;
  - (b) on a third or subsequent conviction for any period of years or for life.
- (3) Every occupier of premises on which any liquor is sold in contravention of this section shall, unless he proves that the offence was committed without his privity or consent, be deemed to have committed an offence under this section.

## 73. Sales outside permitted hours

- (1) Subject to this Act, any person, being the holder of a licence or permit authorizing him to do so who —
- (a) save during the permitted hours, personally or by his servant or agent, sells to any person on any licensed premises or permitted premises any liquor to be consumed either on or off the said licensed or permitted premises;
  - (b) save during the permitted hours, personally or by his servant or agent permits any person to consume on, or take from, any such licensed premises or permitted premises any liquor;
  - (c) save during the permitted hours, personally or by his servant or agent sells, on any licensed aircraft, railway restaurant car or passenger vessel, as the case may be, any liquor to be consumed either on or off the said aircraft, railway restaurant car or passenger vessel, as the case may be;

- (d) save during the permitted hours, consumes on, or takes from, or personally or by his servant or agent permits any person to consume on, or take from, any licensed aircraft, railway restaurant car or passenger vessel, any liquor,

shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that liquor sold during the permitted hours under any on-licence, on any licensed premises, aircraft, railway restaurant car or passenger vessel to which the said licence relates, may be consumed on such premises, aircraft, railway restaurant car or passenger vessel up to fifteen minutes after the conclusion of the said permitted hours.

- (2) Nothing in this section shall prohibit or restrict—
  - (a) the sale, or consumption by any person of liquor on any licensed premises or permitted premises where he is residing, or the sale of liquor for consumption on the premises of any hotel premises licensed under this Act, to any person lodging therein or the supply of liquor to any personal guest of any such person being in good faith entertained by such person at such person's expense, or the consumption of liquor on such premises by any person so supplied;
  - (b) the supply of liquor for consumption on any licensed premises, in a part of such premises not ordinarily used for the sale of liquor to members of the public, to any personal guest of the licensee in good faith being entertained by the licensee at the licensee's expense, or the consumption of such liquor by the person so supplied.
- (3) For the purposes of this section, the expression "permitted hours" means the prescribed hours appropriate to the relevant licence or liquor permit held by the licensee or permit holder, as the case may be, together with any lawful extension of such hours under this Act.

#### **74. Supply of liquor to young persons**

Any licensee under a sales licence issued under this Act who supplies liquor to any young person (irrespective of whether the said liquor is supplied for the personal use of such young person or of some other person) shall be liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

#### **75. Employment of young persons to sell liquor**

Any licensee under this Act who employs any young person—

- (a) to sell, or to control or supervise the sale of, liquor on behalf of the said licensee; or
- (b) to have the custody and control of any liquor on the licensed premises, on behalf of the said licensee,

shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months:

Provided that in exceptional circumstances and with the prior consent in writing of the licensing officer and subject to such terms and conditions as the licensing officer may impose, a licensee may employ a young person to perform the duties referred to in this section.

#### **76. Sale of liquor on credit by on-licensee prohibited**

- (1) Any licensee under an on-licence issued pursuant to this Act, who sells liquor for consumption on the premises otherwise than for money actually received before or at the time of such sale shall be guilty of an offence and liable to a fine of fifty Kwacha and to imprisonment for a term of three months:

Provided that if liquor is supplied to any person who is in *bona fide* occupation of a room or rooms at such licensed premises, as tenant, paying guest or lodger, for consumption in such room or

rooms, or to a person having a meal at such premises, for consumption with such meal, the provisions of this subsection shall not be deemed to have been contravened if the price of such liquor is paid before or immediately upon such person ceasing to occupy such room or rooms or during or immediately after such meal, as the case may be.

- (2) No action shall be brought upon any debt incurred in contravention of this section.

#### **77. Drunkenness on licensed premises**

- (1) Any licensee under an on-licence, or any holder of a premises permit, issued pursuant to this Act who permits drunkenness or any disorderly conduct to take place on his licensed premises, or permitted premises, as the case may be, shall be guilty of any offence.
- (2) If any licensee or premises permit holder is charged with permitting drunkenness on his licensed premises, or permitted premises, as the case may be, in contravention of subsection (1) on any stated occasion and it is proved that on such occasion any person was drunk on the said licensed premises, or permitted premises, the said licensee or permit holder, as the case may be, shall be deemed to be guilty unless he proves that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.
- (3) Any licensee under an on-licence, or any holder of a premises permit, issued pursuant to this Act, who, on his licensed premises, or permitted premises, as the case may be, sells liquor to a drunken person or who incites any drunken person to drink liquor, shall be guilty of an offence.
- (4) Any person convicted of an offence under this section shall be liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

#### **78. Prostitutes on licensed premises**

Any licensee, under an on-licence, or any holder of a premises permit, issued pursuant to this Act, who—

- (a) permits his licensed premises, or permitted premises, as the case may be, to be used as a brothel or as a place of habitual meeting or resort of reputed common prostitutes or any other persons for immoral purposes;
- (b) permits, on his licensed premises, or permitted premises, as the case may be, any reputed common prostitutes or other person to engage in soliciting members of the public for immoral purposes; or
- (c) knowingly employs any reputed common prostitute in and about any part of the said licensed premises, or permitted premises, as the case may be, ordinarily used for the sale of liquor, shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of one year.

#### **79. Supply of liquor to police officers**

Any licensee under an on-licence issued pursuant to this Act, who, without the authority of a police officer of or above the rank of inspector—

- (a) permits any police officer below the rank of inspector, while on duty, to enter or remain on his licensed premises otherwise than for the purpose of keeping or restoring order or otherwise in the execution of his duty; or
- (b) supplies any liquor or refreshment to any such police officer while on duty,

shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

## **Part IX – Control of licensed premises**

### **80. Exhibition of name of licensee**

- (1) Save as is hereinafter provided, every licensee under a sales licence related to premises other than a temporary sales licence, issued pursuant to this Act shall have his name and a description of the class and grade of licence he holds in respect of the premises painted over the door or principal public entrance to his licensed premises in legible characters, either black upon a white ground or white upon a dark ground, and shall replace the same if it be removed, obliterated or defaced.
- (2) The requirements of subsection (1) shall be met if the said name and description are legibly painted, impressed or embossed on a plate of metal or other durable material which is firmly affixed over the said door or entrance.
- (3) No person other than a licensee under this Act shall exhibit in the manner provided by subsection (1) or subsection (2), or in any other manner, on any premises, any words or letters likely to lead persons to the belief that he holds a licence under this Act, or that he sells or supplies liquor.
- (4) No licensee shall exhibit any words or letters, as provided by subsection (1) or (2), likely to lead persons to believe that he holds a sales licence of a class or grade different from that which he holds, or that he sells or supplies any liquor in a manner not authorized by his said licence.
- (5) Every licensee shall exhibit, and keep exhibited during the continuance of his licence, a copy of his said licence in a conspicuous place inside his licensed premises.
- (6) The Minister may, in respect of any class or grade of sales licence attaching to premises, exempt licensees under such class or grade from all or any of the provisions of this section.
- (7) Any person not being exempted pursuant to subsection (6) who contravenes any provision of this section shall be guilty of an offence and liable to a fine of one hundred Kwacha.

### **81. Restrictions on carrying on other business on licensed premises**

Any holder of an on-licence issued pursuant to this Act and related to premises other than an airport, bus station or railway station, who, without the written consent of the licensing officer, carries on any other business on his licensed premises, except that connected with the conduct of an hotel, restaurant, cabaret or theatre, or with the sale of light refreshments, tobacco, smokers' requisites, sweets, and similar commodities, shall be guilty of an offence and liable to a fine of fifty Kwacha.

### **82. Personal supervision by licensee under on-licence**

- (1) Unless otherwise permitted by the terms and conditions of his licence, every licensee under an on-licence shall personally supervise the conduct of the business carried on under the authority of his licence, and shall not, without the consent of the licensing officer, absent himself from the business for more than fourteen consecutive days at any one time.
- (2) Where the licensee does not intend personally to supervise the said business, the name of the responsible manager of the business shall be stated in the licence, and it shall not be lawful for the licensee to employ any other person to superintend the business carried on under the authority of such licence for more than fourteen consecutive days at any one time, save with the prior consent of the licensing officer.

### **83. Improper storage of liquor**

Any licensee under a liquor licence, other than a temporary sales licence, issued pursuant to this Act, who, on premises other than licensed premises or premises approved for the purpose by the licensing officer of the area in which such premises are situate or by the Minister, or in a warehouse approved by the

Controller of Customs for the storage of dutiable goods, stores liquor intended for sale shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

#### **84. Structural alterations to premises**

- (1) Any structural alteration to premises licensed under this Act, which gives increased facilities for the sale of liquor or for drinking, or conceals from observation any part of the said premises ordinarily used for the sale of liquor or for drinking, or which affects the communication between such part of the said licensed premises ordinarily used for the sale of liquor or for drinking and any other part thereof or any street or public place shall not be made without the consent of the appropriate licensing authority.
- (2) Where any structural alteration is made in contravention of subsection (1) the licensee shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months, and the court may direct that, within a time fixed by the court, the premises shall be restored to their original condition and that in default of such restoration within such time the licence shall be forfeited.
- (3) For the purposes of this section, the term “structural alteration” shall not include the construction of any building which is intended, upon completion, to be annexed or added to the said licensed premises as an extension thereof and in respect of which a provisional extension of such licence has been granted under [section 45](#).

#### **85. Power of licensee or permit holder to exclude drunkards, etc.**

- (1) Any licensee under a retail sales licence related to premises, or any holder of a premises permit, or the servants or agents of such licensee or permit holder, as the case may be, may refuse to admit to, or may remove from, such licensed premises or permitted premises any person who is drunk or disorderly or to whom the supply of liquor is prohibited, under this or any other written law, and may use such force as may reasonably be necessary to do so.
- (2) Any person who, being requested by the licensee, or permit holder, his servant or agent to leave licensed premises or permitted premises, as the case may be, pursuant to subsection (1), refuses so to do shall be guilty of an offence and liable to a fine of twenty Kwacha and to imprisonment for a term of two months.

#### **86. Gambling on licensed premises**

Save as is otherwise provided by any written law, any licensee under any retail sales licence related to premises who suffers or permits any gambling or gaming to be carried on such premises shall be guilty of an offence and liable to a fine of two hundred Kwacha and to imprisonment for a term of one year.

#### **87. Payment of wages on licensed premises prohibited**

Any person who, on premises licensed under any retail sales licence, pays any wages to any other person who is paid monthly, or at any lesser interval, shall be guilty of an offence and liable to a fine of one hundred Kwacha:

Provided that this section shall not apply to the payment by any licensee, on his own licensed premises, of any wages to any person employed by such licensee in connexion with the said licensed premises.

### **Part X – Prevention and detection of offences**

#### **88. Power to enter and inspect licensed premises**

- (1) Any police officer, licensing officer, medical officer of health or health officer may, at any time, either alone or accompanied by any other duly authorized person, enter upon and inspect any licensed premises, or any premises approved for the storage of liquor pursuant to [section 83](#), for the



purpose of preventing or detecting any offence under this Act, or for the purpose of observing the state of repair or sanitary condition of such premises or the general conduct of the business being transacted thereon and may require the licensee, or other person for the time being in charge of the said licensed premises, to produce for inspection the licence relating to the said premises.

- (2) Any licensee, or any other person for the time being in charge of such licensed premises or of such premises approved for the storage of liquor, as the case may be, who refuses or fails to admit to such premises or any part thereof, any person entitled to enter upon such premises under subsection (1), or refuses or fails to produce such licence on the demand of such person or who refuses, or fails to afford such person every facility in the lawful exercise of his powers under this section, or who obstructs such person in the exercise of his said powers, shall be guilty of an offence and liable to a fine of fifty Kwacha and to imprisonment for a term of six months.

## **89. Search warrant for detection of liquor manufactured, sold or kept contrary to law**

- (1) Any magistrate, if satisfied by information on oath that there is reasonable ground for believing that liquor is being unlawfully manufactured, sold or stored at any place, whether in a building or otherwise, may grant a warrant, under his hand, by virtue whereof it shall be lawful for any police officer, at any time or times within one month of the date of such warrant, to enter, if need be by force, the place designated therein, and every part of such place, and to examine the same and search for liquor therein, and to seize and remove and take before a magistrate any liquor found therein together with the vessels containing such liquor which there is reasonable ground to believe has been unlawfully manufactured or sold or is being unlawfully stored for sale or is in such place for the purpose of unlawful sale thereat or at any other place.
- (2) If the owner or occupier or person entitled to the immediate possession of the place so entered is convicted of an offence under this Act in relation to any liquor so seized pursuant to subsection (1), the court may order that all or any of the liquor so seized and the vessels containing the same be forfeited to the Government.
- (3) When any liquor is found in any place entered and searched by virtue of a warrant issued pursuant to subsection (1)—
  - (a) any person in whose possession or under whose control such liquor is found, and who is reasonably suspected of having committed an offence under this Act, may be arrested by any police officer without a warrant; and
  - (b) any person who is found at such place at such time shall be deemed, unless the contrary is proved, to have been at such place for the purpose of committing an offence under this Act, and shall be guilty of an offence and liable to a fine of ten Kwacha.
- (4) This section shall apply to liquor in process of unlawful manufacture and to ingredients, materials, equipment and implements used or intended to be used for the unlawful manufacture of liquor in like manner as it applies to liquor.

## **90. Closure of licensed premises during public unrest, etc.**

- (1) Where in any area any public unrest, disorder or civil commotion exists, or is apprehended, the District Commissioner in whose District such area lies, or the officer in charge of police in such District, may order that all or any licensed premises in such area shall be closed until further order or for such period as is specified in such order.
- (2) Such order shall be in writing and the service of a copy thereof upon any licensee concerned, or his agent, shall be sufficient notice to such licensee of the purport of such order.
- (3) Any licensee who contravenes or fails to comply with any order made pursuant to subsection (1) shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a term of one year.

## 91. Limitation on powers of police below rank of inspector

The powers conferred upon a police officer by sections 88, 89 and 90 shall not be exercised in any District by any police officer below the rank of inspector unless generally or specially authorized in that behalf by a police officer of the rank of inspector or of higher rank entitled to exercise such powers in such District and authorized to delegate the same.

## Part XI – Forfeiture and exemptions

### 92. Forfeiture of licence

- (1) Upon the conviction of any licensee of an offence under this Act, the court may order the relevant licence of such licensee to be forfeited and may direct such licensee forthwith to deliver up the said licence, together with any copies thereof in his possession, to the appropriate licensing authority for cancellation.
- (2) Where any licensee is convicted of an offence under this Act and is sentenced therefor to a term of imprisonment of not less than fourteen days without the option of a fine, the court shall order every licence held by such licensee under this Act to be forfeited and shall direct such licensee forthwith to deliver up all such licences held by him, together with any copies thereof in his possession, to the appropriate licensing authority for cancellation.
- (3) Where any liquor licence issued under this Act, is exercisable on stated premises as part of and in the course of any business carried on on such premises under any authority, licence or permit issued under any other written law, and the said authority, licence or permit to carry on such business on such premises is revoked, cancelled or forfeited, the said liquor licence issued under this Act shall forthwith be forfeited, and the licensee thereunder shall deliver up such liquor licence to the appropriate licensing authority for cancellation.

### 93. Forfeiture of liquor

- (1) Upon the conviction of any person of an offence under this Act, the court may, in addition to any other penalty imposed, order that any equipment or implements, or any ingredients, materials or liquor in respect of which the said offence was committed, together with the vessels containing the same be forfeited to the Government.
- (2) Where, upon the conviction of any person under this Act, the court is of opinion that any liquor found in the possession of the person convicted, or on the premises, or at the place, where the offence was committed, has been or was intended to be dealt with in contravention of this Act, the court may, in addition to any other penalty imposed, make an order (hereinafter referred to as a conditional order) to the effect that unless a person other than the person convicted claims, pursuant to this section, any right of ownership in the said liquor within one month of the date of publication of notice of the said conditional order pursuant to subsection (3), the prosecution may apply to the court *ex parte* for an order of forfeiture of the said liquor, together with the vessels containing the same, to the Government.
- (3) Upon the making of a conditional order pursuant to subsection (2), the licensing officer for the area in which the offence occurred shall, within ten days thereafter, cause to be published in the *Gazette*, and in at least one issue of a newspaper in general circulation in the said area, a notice of the making of such order, which said notice shall be in the form prescribed, or, if no such form be prescribed, in a form approved by the court.
- (4) Any person who claims any right in or over any liquor, which is the subject matter of a conditional order made pursuant to subsection (2), may within fifteen days after the publication of the notice thereof, pursuant to subsection (3), serve upon the prosecution and on the licensing officer for the area in which the offence referred to was committed, and lodge, with the clerk of the court, an application in writing for the discharge of the said conditional order, setting out his claim of right

in or over the said liquor, whereupon the clerk of the court shall fix a date, not less than one month after the lodgement of the said application, for a hearing thereon and shall, within seven days after such lodgement, cause notice of the hearing to be served upon the prosecution, the said licensing officer and the applicant.

- (5) In any proceedings brought pursuant to subsection (4) the burden of proof shall be on the applicant.
- (6) Where, after hearing the evidence adduced by the applicant in support of his claim and any evidence tendered in opposition thereto by the prosecution and the licensing officer, the court is satisfied that the said applicant is lawfully entitled to the possession of the said liquor, the court shall make an order discharging the said conditional order and restoring to the said applicant the said liquor together with the vessels containing the same and shall allow to the said applicant the costs of his said application.
- (7) Where, in any proceedings brought pursuant to subsection (4), the court is satisfied that the said liquor is owned jointly by the applicant and the convicted person, the court shall order to be forfeited to the Government all of the right of ownership and interest of the said convicted person in and to the said liquor and in and to the vessels containing the same, and shall by the said order declare the extent of the said convicted person's right of ownership and interest in the said liquor and the vessels containing the same so forfeited, and shall order that, in so far as the said conditional order affected the right of ownership or interest of the applicant in and over the said liquor together with the vessels containing the same, the said conditional order be discharged, and shall further order the said liquor together with the vessels containing the same to be sold and the proceeds, after deduction of the costs of such sale, to be distributed to the Government and the applicant in the ratio of their ownership and interest therein, pursuant to the said order, and shall allow to the applicant such costs of his said application as the court deems attributable to the extent of the success of his claim.
- (8) Where, in any proceedings brought pursuant to subsection (4), the court is satisfied that the applicant has failed to prove his claim of ownership or interest in the said liquor, the court shall make the said conditional order absolute and dismiss the said application with costs.

#### **94. Disposal of liquor stocks after cancellation, revocation or forfeiture of licence**

- (1) Where any licence issued under this Act is cancelled, revoked or forfeited under circumstances in which [section 92](#) does not apply or has not been invoked by any court, the appropriate licensing officer shall issue to the former licensee, or his agent or representative, a written authority empowering such licensee, or such agent or representative, to sell by public auction or by private treaty such stocks of liquor, the property of the licensee, as the said licensee held as stock in trade at the time of the cancellation, revocation or forfeiture, as the case may be, of his said licence.
- (2) Any sale of liquor under any authority issued pursuant to subsection (1) may be by wholesale or retail sale, save that no sale may be made thereunder for consumption of such liquor on the premises where it is sold.
- (3) Any authority issued pursuant to subsection (1) shall be valid for sixty days, but such authority may be extended from time to time by the said licensing officer in his absolute discretion until all of the said stock of liquor is sold.

#### **95. Exemptions**

- (1) Nothing in this Act shall apply to—
  - (a) the brewing, keeping and consumption of beer or the making, keeping and consumption of any wine by any person at his place of residence for consumption by himself, by members of his household and by his guests;
  - (b) the sale of any liquor being medicated spirits, or spirits made up in any medicine and sold in the practice of his profession by any medical practitioner or dentist or by any veterinary

surgeon, or by any registered pharmacist or any company exempted under section 16 of the Pharmacy and Poisons Act;

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- (c) the sale or supply of denatured or methylated spirits or spiritous or distilled perfumes, save to the extent expressly provided by regulations made under [section 96](#) (a);
  - (d) the sale or supply of liquor to any member of the Malawi Army or of the Malawi Police Force or of the University of Malawi or their respective guests in any mess or canteen established for the use of such respective members under the appropriate relevant Ministerial authority.
- (2) Save to the extent of any restrictions thereon prescribed by regulation in respect of sales by auction, nothing in this Act shall apply to—
- (a) the sale of liquor by any person, who is not a licensee under this Act, not being for profit, nor in the course of business, nor by way of trade;
  - (b) the sale, by the personal representative of a deceased person, of liquor forming part of the estate of such deceased person;
  - (c) the sale, by the trustee of the estate of a bankrupt, of liquor forming part of the estate of such bankrupt, or the sale by the liquidator or receiver of any body of persons, corporate or unincorporate, of liquor forming part of the assets of such body upon the liquidation or dissolution thereof;
  - (d) the sale, by private arrangement, of liquor, being the residue of a reasonable stock held for private consumption, by a person about to leave Malawi;
  - (e) the sale of liquor by order of any court:

Provided that liquor shall not be sold under this subsection except in unopened containers.

## Part XII – Regulations

### 96. Regulations

The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the prohibition, restriction or regulation of the sale or supply of denatured or methylated spirits, or spiritous or distilled perfumes, and the application of such of the provisions of this Act as he may deem necessary for the enforcement of such regulations;
- (b) the form of, and particulars to be entered in, any registers or records to be kept for the purposes of this Act;
- (c) the form of notices, applications and other documents to be used for the purposes of this Act;
- (d) penalties for breaches of any regulations made under this Act, and in this regard, such regulations may provide for a penalty of not exceeding five hundred Kwacha and imprisonment for a term of one year generally or for the breach of any specific regulation;
- (e) any matter to be, or which may be, prescribed.

## Part XIII – Miscellaneous

### 97. Control of supply of liquor to habitual drunkards

- (1) Where, upon application to a magistrate, it is shown to the satisfaction of such magistrate that any person is a habitual drunkard such magistrate may declare such person a habitual drunkard and

make an order that such person shall not be supplied with any liquor by any other person, except on the written permit of a magistrate or a medical practitioner, for such period not exceeding three years as may be specified in the order.

- (2) No order shall be made under this section except on the application of any of the following—
- (a) the alleged habitual drunkard; or
  - (b) the spouse of the alleged habitual drunkard; or
  - (c) a member of his immediate family with whom he resides.
- (3) Any person who knowingly contravenes an order made under this section shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

## **98. Sale of tobacco, etc.**

Notwithstanding the provisions of any written law for the time being in force relating to business licences, the holder of any on-licence under this Act may, on the relevant licensed premises and during the prescribed hours, carry on the business of the sale of light refreshments, tobacco, tobacco products, smokers' articles, mineral waters, chocolates, sweets and matches without a business licence.

## **99. Infringement of conditions of licence, etc.**

If there occurs any breach or infringement of—

- (a) any provision or term of any licence; or
- (b) any condition attached to any licence; or
- (c) any term or condition attached to any transfer of any licence; or
- (d) any term of or condition attached to any permit or approval granted under this Act,

the licensee or the grantee under such permit or approval, as the case may be, and every other person privy to such breach or infringement shall be guilty of an offence and liable to a fine of one hundred Kwacha and to imprisonment for a term of six months.

## **100. Offences by servants or agents**

- (1) Anything which, if done by a licensee personally, would be an offence under this Act, shall also be an offence if done by any servant or agent of the licensee, and such servant or agent shall be guilty thereof.
- (2) If an offence under this Act is committed on licensed premises, or on premises approved for the storage of liquor, by any servant or agent of the licensee, then, the licensee shall be deemed also to be guilty of such offence, unless he proves that he neither abetted nor consented to the commission of the offence and that he had taken all reasonable steps to prevent the commission thereof.
- (3) A sentence of imprisonment shall not be imposed upon any licensee for any offence under subsection (2) of this section.

## **101. Attempt and abetment**

- (1) Any person who attempts to commit an offence under this Act shall be guilty of the offence which he attempted to commit.
- (2) Any person who aids or abets another person in the commission of an offence under this Act shall himself be guilty of the offence committed by such other person.

**102. Evidence of sale or consumption of liquor and burden of proof**

- (1) In proving the sale, supply or consumption of liquor for the purpose of any proceedings for an offence under this Act, it shall not be necessary to show that any money actually passed or that any liquor was actually supplied or consumed, if the court hearing the case is satisfied on the evidence adduced that a transaction in the nature of a sale of liquor actually took place, or that any supply or consumption of liquor was about to take place.
- (2) Proof of consumption or intended consumption of liquor on licensed premises by some person other than the occupier of, or a servant employed on, the premises, shall be *prima facie* evidence that the liquor was sold by the licensee to that person.
- (3) In any proceedings under this Act relating to the sale of liquor the burden of proving that such sale was lawful shall be on the person alleging the same.

**103. Proof of licence, etc.**

In any proceedings under this Act, a certificate, purporting to be signed by the appropriate licensing officer, or in respect of any document issued under Part VII, by the permit officer of the relevant permit authority, or by the appropriate licensing officer as the relevant permit authority under [section 62](#), as the case may be, to the effect that any licence, permit, order, approval, consent or other document was issued by the relevant licensing authority, or permit authority, as the case may be, to any stated person on any state date, shall be *prima facie* evidence of the issue of such licence, permit, order, approval, consent, or other document to such stated person on the date stated.

**Schedule (Section 27)****Prescribed hours for sales licences**

A. Wholesale Sales Licences—		(sections 21 and 22)
1.	Wholesale Licence:	(section 21)
	Week days	No restrictions
	Sundays	No restrictions
	Public Holidays other than Martyr's Day	No restrictions
	Martyr's Day	No sales permitted at any time
2.	Agent's Licence:	(section 22)
	Weekdays	7.00 a.m. to 6.30 p.m.
	Sundays	No orders to be received at any time
	Public Holidays	

B. Retail Sales Licences—					(sections 23 and 24)
1.	General Retail Licence:				
	(a)	Grade “A” (section 23 (3)) (Bar business)			
		(i)	Urban Areas		
			Weekdays	8.00 a.m. to 12.00 midnight	
			Sundays	8.00 a.m. to 12.00 midnight	
			Public Holidays other than Martyr’s Day	8.00 a.m. to 12.00 midnight	
			Martyr’s Day	No sales permitted at any time. No consumption of liquor on premises at any time.	
		(ii)	All other areas:		
			Weekdays	7.00 a.m. to 12.00 midnight	
			Sundays	7.00 a.m. to 12.00 midnight	
			Public Holidays other than Martyr’s Day	7.00 a.m. to 12.00 midnight	
			Martyr’s Day	No sales permitted at any time. No consumption of liquor on premises at any time.	
	(b)	Grade “B” (section 23 (4)) (Off-licence business)			
			Weekdays	7.30 a.m. to 8.00 p.m.	
			Sundays	7.30 a.m. to 8.00 p.m.	
			Public Holidays other than Martyr’s Day	7.30 a.m. to 8.00 p.m.	
			Martyr’s Day	No sales permitted	

		(c)	Grade “C” (section 23 (5)) (Hotel)		
			Sales to persons not lodging on premises	Weekdays	Same hours as apply Grade “A” Urban Areas
				Sundays	
				Public Holidays other than Martyr’s Day	
				Martyr’s Day	
			Sales to persons lodging on premises and the guests of such persons		No restrictions
			Sales to persons consuming a meal on the premises, for consumption with meal		No restrictions
		(d)	Grade “D” (section 23 (6)) (Restaurant)		
			Sales of liquor to persons consuming meals, for consumption of such liquor with such meals		No restrictions
		(e)	Grade “E” (section 23 (7)) (Club)		
			Sales to members only		
			Weekdays		No restrictions
			Sundays		No restrictions
			Public Holidays other than Martyr’s Day		No restrictions
			Martyr’s Day		No sales permitted at any time. No consumption of liquor on premises at any time.
		(f)	Grade “F” (section 23 (8)) (Cabaret)		
			Liquor sold for consumption with meals only		
			Weekdays		Sales permitted from 5.00 p.m. up to thirty (30) minutes after conclusion of last cabaret show.



			Sundays	
			Public Holidays other than Martyr's Day	
			Marty's Day	No sales permitted
		(g)	Grade "G" (section 23 (9)) (Theatre, Cinema, etc.)	
			Weekdays	Sales permitted from thirty (30) minutes before the commencement of the performance to thirty (30) minutes after its conclusion:  If the performance is continuous, sales permitted from thirty (30) minutes before the commencement of the first performance to thirty (30) minutes after the conclusion of the last performance.
			Sundays	
			Public Holidays other than Martyr's Day	
			Martyr's Day	No sales permitted
		(h)	Grade "H" (section 23 (10)) (Limited off-licence business)	
			Weekdays	7.30 a.m. to 10.00 p.m.
			Sundays	7.30 a.m. to 9.00 p.m.
			Public Holidays other than Martyr's Day	7.30 a.m. to 9.00 p.m.
			Martyr's Day	No sales permitted
		(i)	Grade "I" (section 23 (11)) (National Park or Game Reserve)	
			Weekdays	No restrictions
			Sundays	
			Public Holidays	
			Marty's Day	No sales permitted

		2.	Travel and Transit Licence:		(section 42)
		(a)	Grade TA (section 24 (3)) (Aerodrome, Airport, Air Terminal)		
			Weekdays		At all times when aerodrome, airport or air terminal is open to the public for the purposes of its operations.
			Sundays		
			Public Holidays other than Martyr’s Day		
			Martyr’s Day		Sales permitted only to <i>bona fide</i> passengers in transit on international flights to and from such aerodrome, airport or air terminal.
		(b)	Grade “TB” (section 24 (4)) (Bus Station or Bus Terminus)		
			(i)	Urban Areas:	
				Weekdays	8.00 a.m. to 1.00 a.m. following day
				Sundays	8.00 a.m. to 12.00 midnight
				Public Holidays other than Martyr’s Day	8.00 a.m. to 1.00 a.m. following day
				Martyr’s Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.
			(ii)	All other Areas:	
				Weekdays	7.00 a.m. to 1.00 a.m. following day
				Sundays	7.00 a.m. to 12.00 midnight
				Public Holidays other than Martyr’s Day	7.00 a.m. to 1.00 a.m. following day
				Martyr’s Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.

		(c)	Grade "TR" (section 24 (5)) (Railway Station or Railway Terminus)		
			(i)	Urban Areas	
				Weekdays	8.00 a.m. to 1.00 a.m. following day
				Sundays	8.00 a.m. to 12.00 midnight
				Public Holidays other than Martyr's Day	8.00 a.m. to 1.00 a.m. following day
				Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.
			(ii)	All other Areas:	
				Weekdays	7.00 a.m. to 1.00 a.m. following day
				Sundays	7.00 a.m. to 12.00 midnight
				Public Holidays other than Martyr's Day	7.00 a.m. to 1.00 a.m. following day
				Martyr's Day	No sales permitted at any time. No consumption of liquor on premises permitted at any time.
				(A) While in flight:	
				Weekdays	No restrictions
				Sundays	
				Public Holidays	
				(B) While not in flight:	
				Weekdays	No sales permitted at any time
				Sundays	

				Public Holidays	
			(ii)	Domestic Flights:	
				(A) While in flight:	
				Weekdays	No restrictions
				Sundays	No restrictions
				Public Holidays other than Martyr’s Day	No restrictions
				Martyr’s Day	No sales permitted at any time. No consumption of liquor on aircraft permitted at any time.
				(B) While not in flight:	
				Weekdays	No sales permitted at any time
				Sundays	
				Public Holidays	
		(e)	Grade “TRY” (section 24 (7)) (Railway Restaurant Car)		
			Weekdays		No restrictions
			Sundays		
			Public Holidays other than Martyr’s Day		
			Martyr’s Day		No sales permitted at any time
		(f)	Grade “TPV” (section 24 (8)) (Passenger Vessel)		
			Weekdays		No restrictions
			Sundays		

		Public Holidays other than Martyr's Day	
		Martyr's Day	No sales permitted
C.	Temporary Sales Licences		(sections 25 and 26)
	1.	Auctioneer's Temporary Licence	(section 25)
		Weekdays	8.00 a.m. to 8.00 p.m.
		Sundays	No sales permitted
		Public Holidays	
	2.	Occasional Licence	(section 26)
		Permitted hours as stated in licence.	