

Malawi

Petroleum (Exploration and Production) Act Chapter 61:02

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Malawi

Petroleum (Exploration and Production) Act

Chapter 61:02

Commenced on 30 March 1983

[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 make provision with respect to searching for and producing petroleum, and to provide for matters connected therewith and incidental thereto

1. Short title

This Act may be cited as the Petroleum (Exploration and Production) Act.

2. Vesting of petroleum, etc.

- (1) The entire property in, and control over petroleum in land in Malawi is vested in the Life President on behalf of the people of Malawi; but without prejudice to the exercise of any right under or pursuant to this Act.
- (2) Subject to [section 68](#), no person shall, carry on in Malawi exploration or production operations, except under, and in accordance with, a licence.
- (3) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction—
 - (a) in the case of an individual, to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both; or
 - (b) in the case of a body corporate, to a fine of fifty thousand Kwacha.

3. Interpretation

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

"**authorized officer**" means a person designated as such under [section 6\(2\)](#);

"**block**" means a block constituted as provided in the Regulations and includes part of a block so constituted;

"**body corporate**" means a company or a corporation;

"**Commissioner**" means the Commissioner for Petroleum Exploration and Production appointed pursuant to [section 5](#);

"**company**" means a corporate body incorporated under the Companies Act;

[Cap. 46:03]

"**conditions**" includes terms, limitations and stipulations;

"**corporation**" means a corporate body incorporated in or outside Malawi, whether by Act or otherwise, but does not include a company;

"**discovery block**", in relation to an exploration area, has the meaning assigned by [section 25 \(5\)](#);

"**drilling**" means the perforation of the earth's surface, otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations

for preventing the collapse of the sides of the hole or preventing the hole from becoming filled by extraneous materials (including water), and the fitting of wellheads, coring and logging, and any operations incidental to the foregoing;

"**explore**" means intentionally to search for petroleum and includes the evaluation of any discovery of petroleum;

"**exploration area**" means the area constituted by a block that is or by the blocks that are subject to a petroleum exploration licence;

"**exploration operations**" means operations carried on in the course of exploring for petroleum;

"**good oilfield practices**" means all those things that are generally accepted as good, safe and efficient in the carrying on of exploration for petroleum or, as the case may be, operations for the production of petroleum;

"**holder**", in relation to a licence, means the person to whom the licence is granted and includes every person to whom the licence is lawfully assigned;

"**in default**" means in breach of any provision of this Act or of any condition of a licence, or of any provision of a relevant agreement of a kind referred to in [section 10](#);

"**land**" includes land beneath water;

"**lawful occupier**" in relation to customary land, includes such persons, or such class of persons, as may be prescribed;

"**licence**" means a petroleum exploration licence or a petroleum production licence, or both, as the context requires;

"**licensee**" means the holder of a licence;

"**monument**" has the meaning assigned by the Monuments Act;

[Cap. 29:01]

"**natural gas**" means gas obtained from a well and consisting primarily of hydrocarbons;

"**petroleum**" means—

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal or shale;

"**petroleum exploration licence**" means a licence granted under [section 16](#);

"**petroleum production licence**" means a licence granted under [section 28](#);

"**petroleum reservoir**" means a naturally occurring discrete accumulation of petroleum;

"**private land**" has the meaning assigned by the Land Act;

[Cap. 57:01]

"**production area**" means the area constituted by a block that is or by the blocks that are subject to a petroleum production licence;

"**production operations**" means operations carried on for or in connexion with the production of petroleum;

"**public land**" has the meaning assigned by the Land Act;

[Cap. 57:01]

"**the Regulations**" means regulations made under [section 78](#);

"**relic**" has the meaning assigned by the Monuments Act;

[Cap. 29:01]

"**this Act**" includes the Regulations;

"**well**" means a hole, made by drilling in connexion with exploration or production operations, but does not include a seismic shot hole.

- (2) In this Act, a reference to a year of the term of a licence is a reference to a period, of one year commencing on the date from and including which the licence has effect and ending on any anniversary of that date.
- (3) In this Act, a reference to the conditions of a licence is a reference to the conditions of the licence as modified from time to time.

4. Service of documents

- (1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act, may be served or given—
 - (a) in the case of an individual (other than the Minister or the Commissioner), by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;
 - (b) in the case of the Minister or the Commissioner, in the manner prescribed;
 - (c) in the case of a body corporate—
 - (i) by leaving it at the registered or principal office of the body corporate with some individual apparently employed by the body corporate and apparently not less than sixteen years of age;
 - (ii) by sending it by post to the body corporate at the registered or principal office of the body corporate; or
 - (iii) by delivering it to some individual in the employment or acting on behalf of the body corporate who is authorized by the body corporate, or agrees, to accept service of or to receive the document or any document.
- (2) For the purposes of subsection (1) (c), the principal office of a body corporate incorporated outside Malawi is its principal office within Malawi.
- (3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.
- (4) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

Part II – Administration

5. Commissioner for Petroleum Exploration and Production

The Minister may appoint a person to be the Commissioner for petroleum Exploration and Production, and such other persons to be officers as he may consider necessary for the administration of this Act.

6. Performance of Commissioner's functions, etc.

- (1) Anything required or permitted by or under this Act to be done by the Commissioner may be done by any officer who is authorized, either specially or generally, in that behalf in writing by the Commissioner, and for the purpose of doing so that officer is deemed to be the Commissioner.
- (2) The Commissioner may designate any public officer to be an authorized officer for the purposes of this Act.

7. Information not to be disclosed

- (1) Subject to, subsection (2), information furnished, and information in a report submitted pursuant to the Regulations by a licensee shall not, for as long as the licence has effect, be disclosed, except with the consent of the licensee.
- (2) Nothing in subsection (1) operates to prevent the disclosure of information when the disclosure is made—
 - (a) for or in connexion with the administration of this Act;
 - (b) for the purpose of any legal proceedings; or
 - (c) to any consultant to the Government, or to any public officer, who is approved by the Commissioner as a proper person to receive the information.
- (3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

8. Public officers holding certain shares to notify Minister

- (1) In this section, "public officer" means a public officer engaged in the administration of this Act.
- (2) Where a public officer, either directly or indirectly, holds any shares in a body corporate which is the holder of a licence, he shall, without delay, notify the Minister in writing of that fact giving in the notice particulars of the shares held by him.
- (3) For the purposes of this section, the holding by the wife or husband (not herself or himself being a public officer) of public officer of any shares of the kind referred to in subsection (1) is deemed to be a holding by the public officer of the shares.
- (4) This section applies with respect to shares—
 - (a) acquired by the holder whether before or after the appointment to public office;
 - (b) held whether before or after the commencement of this Act.

9. Indemnity of public officers

A public officer does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

Part III – Licences

Division 1 – General

10. Agreements with respect to the grant of licences

- (1) With the consent of the Life President, the Minister, on behalf of the Republic of Malawi, may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely—
 - (a) the grant to that person, or to any person (including any body corporate to be formed) identified in the agreement, of a licence on the conditions (if any) specified in the agreement;
 - (b) conditions or the conditions to be included in the licence as granted or renewed; or
 - (c) any matter incidental to or connected with the foregoing.
- (2) There may be included in an agreement under subsection (1) provision with respect to a contract of insurance or other form of security required to be kept in force under [section 61](#).

11. Applications

- (1) An application under this Act—
 - (a) shall be made in accordance with the Regulations;
 - (b) shall be made in or to the effect of a form approved by the Minister;
 - (c) shall be made to the Minister or, if it is so provided in the Regulations, to the Commissioner; and
 - (d) may be withdrawn by the applicant giving to the Minister or, in the case of an application made to the Commissioner, to the Commissioner a notice of withdrawal.
- (2) An application shall be accompanied by the fee (if any) prescribed in respect of the application.
- (3) The Minister shall, by written notice served on an applicant for the grant of a licence, require the applicant to do either or both of the following, namely—
 - (a) publish details of his application at a time or times, and in a manner, specified in the notice;
 - (b) give details of his application to the persons, and in a manner, specified in the notice.
- (4) The Minister shall cause an applicant for the grant or renewal of a licence to be notified in writing of his decision on the application giving, where he is prepared to grant or renew the licence, details of the conditions on which it will be granted or renewed—
 - (a) and if the applicant notifies the Minister, in writing, within sixty days (or such further period as the Minister may allow) of being so notified, that he accepts those conditions, the licence shall be issued on those conditions;
 - (b) but if the applicant fails so to notify the Minister, the application lapses.

12. Power of Minister to obtain information concerning applications, etc.

- (1) The Minister may, by written notice served on the applicant for the grant of a licence, require the applicant to furnish him, within such reasonable time as is specified in the notice—
 - (a) with such further information relevant to the application as may be described in the notice; and

- (b) if the applicant, or any of the applicants, is a body corporate, with such information as may be described in the notice to enable him to ascertain to what extent the controlling power in the direction of the affairs of the body corporate is a corporation incorporated outside Malawi, or an individual or individuals resident outside Malawi.
- (2) To enable him to dispose of an application for the grant of a licence, the Minister—
- (a) may cause such investigations, negotiations or consultations to be carried on as he considers necessary; and
 - (b) may, by written notice served on the applicant for the grant of the licence, require the applicant to furnish him, within such reasonable time as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application, as the Minister specifies in the notice.

13. Restriction on persons to whom licence may be granted

No licence—

- (a) shall be granted to an individual unless he is a citizen of Malawi or has been ordinarily resident in Malawi during the period of four years immediately preceding the date on which his application for the grant of a licence is made;
- (b) being a petroleum exploration licence, shall be granted to a body corporate unless the body corporate is—
 - (i) a company;
 - (ii) a corporation incorporated in Malawi; or
 - (iii) a corporation (not being a corporation of a kind referred to in subparagraph (ii)) approved by the Minister; or
- (c) being a petroleum production licence, shall be granted to a body corporate unless the body corporate is—
 - (i) a company; or
 - (ii) a corporation incorporated in Malawi.

14. Form of licence

A licence shall be in accordance with such form as the Minister approves.

15. Restriction on exercise of rights by holder of licence

When the doing of any act is prohibited or regulated by a written law (other than this Act), nothing in this Act shall be construed,—

- (a) where the doing of the act is so prohibited, as authorizing a licensee to do the act; or
- (b) where the doing of the act is so regulated, as authorizing a licensee to do the act—
 - (i) otherwise than in accordance with the written law and any authority referred to in subparagraph (ii); and
 - (ii) without first obtaining any authority (howsoever described) required under the written law for the doing of the act.

Division 2 – Petroleum exploration licence

16. Disposal of application for petroleum exploration licence

- (1) Subject to the provisions of this Act, on application in writing duly made, the Minister may grant on such conditions as he may determine, or refuse to grant, a petroleum exploration licence in respect of any block or blocks.
- (2) A petroleum exploration licence shall not be granted in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted.

17. Content of petroleum exploration licence

- (1) A petroleum exploration licence—
 - (a) shall—
 - (i) state the date of the grant of the licence;
 - (ii) identify the block or blocks to which the licence relates; and
 - (iii) state the conditions on which the licence is granted; and
 - (b) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (3) or otherwise.
- (2) There may be included in a petroleum exploration licence provision with respect to the exercise by Republic, or a person identified in the licence, of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any venture for the production of petroleum which may be carried on in any block or blocks to which the licence relates when granted.
- (3) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on exploration operations, he may specify in a petroleum exploration licence a period (not exceeding one year) as the preparation period.

18. Rights conferred by petroleum exploration licence

A petroleum exploration licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, the exclusive right to explore for petroleum, and to carry on such operations and execute such works as are necessary for that purpose, in the exploration area.

19. Application for renewal of petroleum licence

Subject to this Act, a licensee may apply for the renewal of a petroleum exploration licence in accordance with the Regulations.

20. Grantor refusal of renewal of petroleum exploration licence

- (1) Subject to subsection (2), on application duly made pursuant to [section 19](#) for the renewal of a petroleum exploration licence, the Minister shall grant a renewal of the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act.
- (2) Subject to subsection (3), the Minister shall refuse to grant a renewal of a petroleum exploration licence if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

- (3) The Minister shall not refuse to grant the renewal of a petroleum exploration licence on application being duly made under [section 19](#) unless—
- (a) he has given to the applicant written notice of his intention to do so—
 - (i) giving in the notice particulars of the ground for the intended refusal; and
 - (ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and
 - (b) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.

21. Term of petroleum exploration licence

- (1) A petroleum exploration licence, unless sooner determined, shall, by virtue of this subsection continue in force—
- (a) for any preparation period specified in the licence pursuant to [section 17](#) (3);
 - (b) for the period stipulated in the licence, not exceeding four years, next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;
 - (c) for the renewal period, not exceeding three years, following the date upon which any renewal of the licence is granted pursuant to [section 20](#); and
 - (d) for any period added pursuant to [section 42](#) (3) to the term of the licence.
- (2) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of—
- (a) a renewal of the licence; or
 - (b) a petroleum production licence relates, until—
 - (c) the application is finally dealt with—
 - (i) by the renewal of or refusal to renew the licence; or
 - (ii) as the case may be, by the grant of or refusal to grant the petroleum production licence; or
 - (d) the application lapses.
- (3) Where a petroleum exploration licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any discovery block or blocks in the exploration area until a notice is given pursuant to [section 25](#) (1), or until the lapse of the period of thirty days referred to in [section 25](#) (1), whichever first occurs.
- (4) Where a notice given pursuant to [section 25](#) (1) states that a discovery is, in the opinion of the licensee, of potential commercial interest and the petroleum exploration licence relating to the discovery would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of the discovery block or blocks in the exploration area—
- (a) for the period specified in [section 25](#) (2); and
 - (b) for any extension of that period allowed by the Minister pursuant to [section 25](#) (3).

22. Duties of licensee

- (1) Subject to subsections (3) and (4), a licensee shall in, or in relation to, the exploration area, meet the requirements, with respect to work and expenditure,—
 - (a) stipulated in the licence; and
 - (b) of each programme submitted pursuant to subsection (2).
- (2) A licensee shall, not later than one month before the anniversary in any year of the grant of a petroleum exploration licence, submit to the Minister in detail an adequate programme with respect to work and expenditure to be carried out or made in the year of the term of the licence immediately following the anniversary concerned.
- (3) The Minister may, on application made to him in writing by a licensee, by instrument in writing limit, reduce, vary, or suspend any obligation arising pursuant to subsection (1), either conditionally or unconditionally.
- (4) A licensee may, for good cause, amend the details of any programme of work and expenditure which he is required under subsection (1) to carry out, but—
 - (a) the licensee shall forthwith give notice in writing to the Minister of any such amendment, giving in the notice details of and the reason for the amendment; and
 - (b) no such amendment shall have effect so as to reduce the minimum requirements of the overall programme of work and expenditure to be carried out or made in the term of the licence.
- (5) Where a licensee fails to carry out any part of the work programme stipulated in his petroleum exploration licence, or in a work programme submitted pursuant to subsection (2), then without prejudice to my other right which may be invoked in respect of that failure the relevant provisions of the licence (if any) apply for the purpose of determining the liquidated damages payable to the Republic.
- (6) The requirement in subsection (2) with respect to an adequate programme with respect to work and expenditure is deemed to have been met in any case where the programme submitted pursuant to that subsection satisfies the requirements (if any) with respect to work and expenditure contained in a relevant agreement of a kind referred to in [section 10](#).

23. Relinquishment of part of exploration area

The First Schedule applies with respect to the relinquishment of any part of an exploration area.

Division 3 - Discovery of petroleum

24. Discovery of petroleum to be notified

- (1) Where any significant discovery of petroleum is made in an exploration area, the licensee—
 - (a) shall forthwith inform the Minister of the discovery;
 - (b) shall, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery;
 - (c) shall promptly run tests in respect of the discovery and thereafter forthwith submit to the Minister evaluated test results in respect of the discovery; and
 - (d) shall, subject to subsection (3), take promptly all steps that are reasonable, in the circumstances relating to the discovery, to ascertain the quantity of the petroleum—
 - (i) in the petroleum reservoir to which the discovery related; or

- (ii) if part only of that reservoir is within the exploration area, in that part.
- (2) Where petroleum is discovered in an exploration area, the Minister may, from time to time, by notice in writing served on the licensee, direct the licensee—
- (a) to furnish to him, within the period specified in the notice, particulars in writing of—
 - (i) the chemical composition and physical properties of the petroleum;
 - (ii) the stratigraphical position and depth of the discovery; and
 - (iii) any other matters relating to the discovery that are specified by the Minister in the notice; and
 - (b) to do, within the period specified in the notice, such things as the Minister thinks necessary, and specifies in the notice, to ascertain the chemical composition and physical properties of the petroleum.
- (3) The Minister may by instrument in writing exempt, wholly or partly, from the requirement of subsection (1) (d), the licensee, either unconditionally or subject to such conditions as are specified in the instrument of exemption.

25. Discovery of petroleum of potential commercial interest

- (1) Where petroleum is discovered in an exploration area and the licensee has, pursuant to [section 24](#) (1) (c), submitted to the Minister evaluated test results in respect of the discovery the licensee shall, within thirty days of the date of submission of such evaluated results, serve on the Minister a notice in writing stating that the discovery is or, as the case may be, is not, in the opinion of the licensee, of potential commercial interest.
- (2) Where a notice served under subsection (1) states that the discovery is, in the opinion of the licensee, of potential commercial interest the licensee may, unless the licence is sooner determined, within a period of two years after the date on which such notice is served, apply under [section 27](#) (1) for the grant of a petroleum production licence with respect to the discovery block or blocks in the exploration area.
- (3) If the licensee fails within the period specified in subsection (2), or within such further period as the Minister allows, to apply for a petroleum production licence with respect to the discovery block or blocks in the exploration area, the Minister may, if the petroleum exploration licence is then in force in respect of that discovery block or blocks, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect.
- (4) Where a notice served under subsection (1) states that the discovery is not, in the opinion of the licensee, of potential commercial interest—
- (a) the Minister may, subject to subsection (6), if the petroleum exploration licence is then in force in respect of the discovery block or blocks in the exploration area, within a period of twelve months from the date on which such notice is so served, by notice in writing served on the licensee direct that the licence shall cease to have effect with respect to that block or those blocks and the licence shall so cease to have effect; and
 - (b) during that period of twelve months, and any subsequent period if the Minister does not pursuant to paragraph (a) direct that the licence shall cease to have effect in respect of that block or those blocks, [section 24](#) (2) shall not apply in respect of the discovery.
- (5) For the purposes of this section, "discovery block", in relation to an exploration area, means a block in the exploration area comprising the geological feature, as outlined by the relevant geological or geophysical data, in which the discovery of petroleum is located.
- (6) The Minister shall not give a direction under subsection (4) (a) unless he forms the opinion, as a result of evidence available to him, that the discovery is of potential commercial interest.

26. Investigations

- (1) Where the licensee, pursuant to [section 25](#) (1), has served a notice stating that a discovery of petroleum is, in the opinion of the licensee, of potential commercial interest the Minister may, by written notice served on the licensee, direct that the licensee carry out, within a period of not less than two years specified in the notice, such prescribed investigations and studies as the Minister thinks appropriate for the purpose of assessing the feasibility of the construction, establishment and operation of an industry for the production of petroleum in the discovery block or blocks concerned.
- (2) The licensee shall furnish to the Minister, within the period specified in the notice under subsection (1), such reports, analyses and data resulting from the investigations and studies carried out under this section as the Minister, by written notice served on the licensee, may require.

Division 4 - Petroleum production licence

27. Application for petroleum production licence

- (1) A licensee whose petroleum exploration licence is in force may, within the period specified in [section 25](#) (2) or within such further period as the Minister may allow under [section 25](#) (3), apply pursuant to this subsection for the grant of a petroleum production licence with respect to any discovery blocks in the exploration area, or with respect to any part thereof, which the licensee satisfies the Minister contain a petroleum reservoir or part of a petroleum reservoir.
- (2) A person may apply pursuant to this subsection for the grant of a petroleum production licence in respect of a block or blocks, or part thereof, which he satisfies the Minister contains or, as the case may be, contain a petroleum reservoir or part of a petroleum reservoir, notwithstanding that he does not hold a petroleum exploration licence in respect of the block or blocks or does not hold any petroleum exploration licence.

28. Disposal of application for petroleum production licence

- (1) Subject to [section 29](#),—
 - (a) on application duly made pursuant to [section 27](#) (1) the Minister shall grant the petroleum production licence applied for, on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act; and
 - (b) on application duly made pursuant to [section 27](#) (2) the Minister may grant on such conditions as he may determine, or refuse to grant, the petroleum production licence applied for.
- (2) For the purpose of determining the conditions to be included in a licence to be granted pursuant to subsection (1) (a), the Minister shall give effect to any relevant agreement of a kind referred to in [section 10](#).

29. Restriction on grant of petroleum production licence

- (1) A petroleum production licence shall not be granted to an applicant—
 - (a) unless—
 - (i) the proposals of the applicant take proper account of environmental and safety factors;
 - (ii) the proposals of the applicant would ensure the most efficient, beneficial and timely use of the petroleum resources concerned;

- (iii) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective production operations;
 - (iv) the applicant would be able and willing to comply with the conditions on which a licence would be granted;
 - (v) the applicant's proposals for the employment and training of citizens of Malawi are satisfactory; and
 - (vi) any relevant option given pursuant to [section 17 \(2\)](#) has been properly exercised and given effect to, or arrangements satisfactory to the Minister have been made for that purpose;
- (b) if the applicant is in default, unless the Minister considers that special circumstances exist which justify the grant of the licence notwithstanding the default.
- (2) The Minister shall not refuse an application for the grant of a petroleum production licence on application being duly made pursuant to [section 27 \(1\)](#) unless—
- (a) he has given to the applicant written notice of his intention to do so—
 - (i) giving in the notice particulars of the ground for the intended refusal; and
 - (ii) stating in the notice a date before which the applicant may take appropriate action or make representations in relation to that ground; and
 - (b) the applicant has not, before that date, remedied the default or, in a written notice given to the Minister, made representations which, in the opinion of the Minister, remove the ground for the intended refusal.
- (3) A petroleum production licence shall not be granted to an applicant pursuant to [section 25 \(2\)](#) in respect of a block which is, at the time the application for the grant of the licence is made, comprised in a licence already granted to a person other than the applicant.

30. Content of petroleum production licence

- (1) A petroleum production licence—
- (a) shall—
 - (i) state the date of the grant of the licence;
 - (ii) identify the block or blocks to which the licence relates;
 - (iii) state the conditions on which the licence is granted; and
 - (iv) give effect to subsection (3);
 - (b) may contain such other matter as the Minister may determine for the purposes of subsection (2) or (4) or otherwise.
- (2) Where the Minister is satisfied that an initial period is required to make the necessary preparations to carry on production operations he may specify in a petroleum production licence such period as he thinks fit as the preparation period.
- (3) There shall be included in a petroleum production licence provision with respect to the duty, and the extent thereof, of the licensee to supply petroleum or petroleum products to meet the requirements of Malawi.
- (4) There may be included in a petroleum production licence conditions with respect to the refining, disposal or sale of petroleum which may be recovered in the production area.

31. Rights conferred by petroleum production licence

A petroleum production licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, exclusive rights—

- (a) to carry on exploration and production operations in the production area;
- (b) to sell or otherwise dispose of petroleum recovered; and
- (c) to carry on such operations and execute such works in the production area as are necessary for or in connexion with any matter referred to in paragraphs (a) and (b).

32. Application for renewal of petroleum production licence

Subject to the Regulations, a licensee may apply for the renewal of a petroleum production licence in accordance with the Regulations.

33. Grant or refusal of renewal of petroleum production licence

- (1) Subject to subsection (2), on application duly made pursuant to [section 32](#) for the renewal of a petroleum production licence, the Minister may grant a renewal of the licence on such conditions as he deems fit or refuse to grant a renewal.
- (2) The Minister shall refuse to grant a renewal of a petroleum production licence, if the licensee is in default unless the Minister considers that special circumstances exist which justify the granting of the renewal notwithstanding the default.

34. Term of petroleum production licence

- (1) A petroleum production licence, unless sooner determined, shall, by virtue of this subsection, continue in force—
 - (a) for any preparation period specified in the licence pursuant to [section 30](#) (2);
 - (b) for the period of twenty-five years next after the date of the grant of the licence or, if there is a preparation period, next after the expiration of that period;
 - (c) for any period for which the licence is renewed pursuant to [section 33](#) (1); and
 - (d) for any period added pursuant to [section 42](#) (3) to the term of the licence.
- (2) Where a petroleum production licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, continue in force in respect of any block subject to the licence to which an application, duly made, for the grant of a renewal of the licence relates until—
 - (a) the application is finally dealt with by the grant of or refusal to grant the renewal; or
 - (b) the application lapses.

Division 5 - Miscellaneous

35. Directions

- (1) The Minister may, by notice in writing served on a licensee, give to the licensee a direction, consistent with good oilfield practices, as to any matter with respect to which regulations may be made under [section 78](#).
- (2) A licensee who fails or neglects to comply with a direction given under subsection (1) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

- (3) In proceedings on a prosecution for an offence under subsection (1), it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the direction.

36. Compliance with directions

Where a licensee fails or neglects to comply with a direction given to him under and in accordance with [section 35](#) the Minister may cause to be done all or any of the things required by the direction to be done, and the costs and expenses incurred in doing so are a debt due to the Republic and may be recovered in a court in Malawi.

37. Unit development

- (1) In this section, "unit development", in relation to a petroleum reservoir, means the co-ordination of operations for the recovery of petroleum being carried on or to be carried on in a production area in which there is part of the reservoir, with other operations for the recovery of petroleum being carried on or to be carried on in any other area in which there is part of the same reservoir.
- (2) A holder of a petroleum production licence may, from time to time, enter into an agreement in writing with the Republic or a licensee for or in relation to the unit development of a petroleum reservoir.
- (3) The Minister may, of his own motion, or on application made to him in writing by a holder of a petroleum production licence in whose production area there is a part of a petroleum reservoir, for the purpose of securing the more effective recovery of petroleum from that petroleum reservoir, direct in writing any holder of a licence whose production area includes part of that petroleum reservoir to enter into an agreement in writing, with the person or persons, (including the Republic), and within the period specified by the Minister in the direction for or in relation to the unit development of that petroleum reservoir, and to lodge the agreement with the Minister forthwith for approval.
- (4) Where—
 - (a) a holder of a licence who is directed under subsection (3) to enter into an agreement for or in relation to the unit development of a petroleum reservoir does not enter into such agreement within the specified period; or
 - (b) a holder of a licence enters into such an agreement but the agreement is not lodged with the Minister in accordance with subsection (3),

the Minister may, by notice in writing served on the holder, direct him to submit to the Minister, within the period specified in the notice, a scheme for or in relation to the unit development of the petroleum reservoir, and the holder shall do so.

38. Directions as to recovery of petroleum

- (1) Where Petroleum is not being recovered in a production area and the Minister is satisfied that there is recoverable petroleum in that area, he may, by notice in writing served on the holder of the petroleum production licence, direct the holder to take all necessary and practicable steps to recover that petroleum.
- (2) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (1), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the Minister thinks necessary for or in relation to the recovery of petroleum in the production area.
- (3) Where petroleum is being recovered in a production area, the Minister may, by notice in writing served on the holder of the petroleum production license direct the holder to take all necessary and practicable steps to increase (to an extent not exceeding the capacity of existing production

facilities) or reduce the rate at which the petroleum is being recovered to such rate as the Minister specifies in the notice.

- (4) Where the Minister is not satisfied with the steps taken or being taken by the holder of a licence to whom a direction has been given under subsection (3), the Minister may, by notice in writing served on the holder, give to the holder such directions, specified in the notice, as the Minister thinks necessary for or in relation to the increase or reduction of the rate at which petroleum is being recovered in the production area.
- (5) Nothing in this section, or in any direction given under this section, shall be construed as requiring the holder of a petroleum production licence to do anything which, is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.

39. Penalty for late payments

- (1) Where the liability of a person under this Act or a licence to pay an amount is not discharged at or before the time when the amount is payable, there is payable by that person an additional amount calculated at the rate of one-third of one per cent per day, upon so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.
- (2) The Minister may, in a particular case, for reasons that in his opinion are sufficient, remit the whole or part of an amount payable under this section.

40. Information to be furnished, etc.

- (1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available data relating to exploration or production operations or petroleum obtained or the value thereof he may, by notice in writing, require that person—
 - (a) to furnish to him that information or data within the period and in the manner specified in the notice;
 - (b) to attend before him or a person identified in the notice, at such time and place as is specified in the notice, and there to answer questions relating to those operations or petroleum obtained or the value thereof; or
 - (c) to furnish to a person identified in the notice, at such time and place as is specified in the notice, data in his custody or power relating to those operations or petroleum obtained or the value thereof.
- (2) A person is not excused from furnishing information or data or answering a question when required to do so under this section on the ground that the information or data so furnished, or the answer to the question, might tend to incriminate him or make him liable to any penalty, but the information or data so furnished or his answer to the question shall not be admissible in evidence against him in any proceedings other than proceedings for an offence against this section.
- (3) Where any data is furnished, pursuant to a requirement under subsection (1) (c), the person to whom it is furnished may make copies or take extracts from the data.
- (4) Any person who—
 - (a) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he is capable of complying with it;
 - (b) in purported compliance with a requirement referred to in subsection (1) (a), knowingly or recklessly furnishes information or data that is false or misleading in a material particular; or
 - (c) when attending before the Minister or any other person under a requirement referred to in subsection (1) (b) or furnishing any data to any person under a requirement referred to in

subsection (1) (c), knowingly or recklessly makes a statement or produces any data that is false or misleading in a material particular,

is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

- (5) In this section, "data" includes books, documents, tapes, diagrams, profiles and charts.

Division 6 - Cancellation and *force majeure*

41. Cancellation

- (1) Subject to this section and [section 42](#), where licensee is in default the Minister may, by notice in writing served on the licensee, cancel his licence.
- (2) The Minister shall not, under subsection (1), cancel a licence on the ground of any default unless—
- (a) the Minister has, by notice in writing served on the licensee, given not less than thirty days notice of the Minister's intention so to cancel the licence on that ground;
 - (b) the Minister has, in the notice, specified a date before which the licensee may, in writing, submit any matter which he wishes the Minister to consider; and
 - (c) the Minister has taken into account—
 - (i) any action taken by the licensee to remove that ground or to prevent the recurrence of similar grounds; and
 - (ii) any matters submitted to the Minister by the licensee pursuant to paragraph (b).
- (3) The Minister shall not, under subsection (1), cancel a licence on the ground that the licensee has failed to pay any amount payable by him under this Act or his licence if, before the date specified in a notice referred to in subsection (2) (b), the licensee pays the amount concerned, together with any amount which may be payable pursuant to [section 39](#).
- (4) The Minister may, by notice in writing served on a licensee, cancel the licence—
- (a) if the licensee (being an individual) is—
 - (i) adjudged bankrupt; or
 - (ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or
 - (b) if, in the case of a licensee that is a body corporate, an order is made or a resolution is passed winding up the affairs of the body corporate, unless the winding up is for the purpose of amalgamation and the Minister has consented to the amalgamation, or is for the purpose of reconstruction and the Minister has been given written notice of the reconstruction.
- (5) Where two or more persons constitute a licensee the Minister shall not, under subsection (4), cancel the licence on the occurrence, in relation to one or some only of the persons constituting the licensee, of an event entitling the Minister under that subsection to cancel the licence, if the Minister is satisfied that any other person or persons constituting the licensee is or are willing and would be able to carry out the duties and obligations of the licensee.
- (6) The Minister shall, on the written application of a licensee made not earlier than five years after the licence has effect, cancel a petroleum production licence either wholly or in relation to any block or blocks on such conditions, if any, as the Minister determines and specifies in the instrument of cancellation.
- (7) On the cancellation of a licence, the rights of the licensee thereunder cease but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former licensee may be commenced or continued against him.

42. *Force majeure*

- (1) Any failure on the part of a licensee to fulfil any of the conditions of his licence or to meet any requirement of this Act or a relevant agreement of a kind referred to in [section 10](#) shall be deemed not to be a breach of the licence, this Act or the agreement, in so far as the failure results from an act of war, hostility, insurrection or an exceptional, inevitable and irresistible natural phenomenon, or from any other cause prescribed in the licence or relevant agreement as constituting *force majeure*.
- (2) Where a licensee fails to fulfil any of the conditions of his licence because of the occurrence of circumstances of a kind referred to in subsection (1), he shall forthwith notify the Minister giving particulars of the failure and its cause.
- (3) Where a licensee is prevented from exercising any of his rights under his licence for any period because of the occurrence of circumstances of a kind referred to in subsection (1), then that period, as agreed by the Minister, shall be added to the term of his licence, but the Minister may refuse to agree to the addition of any period to the term of a licence if in his opinion the licensee could, by taking any reasonable steps which were open to him, have exercised those rights during that period, notwithstanding any such occurrence.
- (4) This section does not apply with respect to any requirement to meet an obligation under a licence or this Act to make any payment of royalty, annual charges, rent or fees.

Part IV – Financial

43. **Royalty on petroleum recovered under licence**

- (1) Subject to this Act, the holder of a petroleum production licence shall, in accordance with his licence and this Act, pay royalty in respect of petroleum recovered by him in the production area.
- (2) Where provision is made in a petroleum production licence for the payment of royalty in kind, the word "pay" and cognate expressions in [section 42](#) (4) and this Part shall be construed accordingly.

44. **Prohibition on disposal of petroleum**

If the holder of a petroleum production licence fails to pay any royalty payable by him on or before the due date, or any extension thereof allowed by the Minister, the Minister may, by order served on the holder of the licence, prohibit the removal of, or any dealings in or with, any petroleum from the production area concerned, or from any other production area held by that holder, or from both, until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Minister for the payment of the royalty; and the holder shall comply with the order.

45. **Remission of royalty, etc.**

The Minister may, on written application made to him by a licensee and after consultation with the Minister responsible for finance,—

- (a) remit, in whole or part, any royalty payable; or
- (b) defer payment of any royalty,

on such conditions (if any) as he may determine and specifies in the instrument of exemption.

46. **Security for compliance and recovery of royalty**

- (1) The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that the holder of a licence complies with this Act and his licence, or either, and in particular may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

- (2) Subject to subsection (4), royalty payable pursuant to [section 43](#) is a debt due to the Republic and may be recovered in a court.
- (3) A certificate of the Minister certifying that a specified amount of royalty is payable by a person specified in the certificate shall, in any proceedings instituted against that person for the recovery of any royalty, be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.
- (4) This section does not apply in any case where the royalty concerned is payable in kind.

Part V – Protection of the environment and work practices

Division 1 – General

47. Protection of natural resources to be taken into account

- (1) In deciding whether or not to grant a licence and on the conditions to be included in a licence the Minister shall take into account the need to conserve and protect the natural resources in or on the land over which the licence is sought and in or on adjoining and neighbouring lands.
- (2) The Minister may, pursuant to [section 12](#) (2), require environmental impact studies to be carried out.

48. Work practices for holder of licence

- (1) The holder of a licence shall—
 - (a) carry out exploration and production operations in the exploration or production area in a proper, safe and workmanlike manner and in accordance with good oilfield practices; and
 - (b) take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in those operations in and about the exploration or production area.
- (2) In particular, and without limiting the generality of subsection (1), the holder of a licence shall—
 - (a) control the flow and prevent the waste or escape in the exploration or production area of petroleum, gas (not being petroleum), or water;
 - (b) prevent the escape in the exploration or production area of any mixture of water or drilling fluid and petroleum or any other matter;
 - (c) prevent damage to petroleum bearing strata in any area in respect of which the licence is not in force;
 - (d) keep separate in the manner prescribed—
 - (i) each petroleum reservoir discovered in the exploration or production area; and
 - (ii) such of the sources of water (if any) discovered in the exploration or production area as the Commissioner, by notice in writing served on the holder, directs;
 - (e) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or production area except when required by, and in accordance with, good oilfield practices;
 - (f) prevent the pollution of any aquifer, estuary, harbour, lake, reservoir, river, spring, stream, water-well, and all other areas of water by the escape of petroleum, drilling fluid, chemical additive, gas (not being petroleum), or any waste product or effluent; and

- (g) furnish to the Commissioner, prior to the drilling of any well, a detailed report on the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed, in the drilling of the well.
- (3) Where the consent in writing of the Commissioner has been obtained, nothing in this section operates to prevent the holder of a licence from flaring natural gas in accordance with the terms of the instrument of consent.
- (4) Nothing in this section operates to prevent the holder of a licence from flaring natural gas where, in an emergency, flaring is required to safeguard the health and safety of persons in the exploration or production area or to prevent damage to the property of any person in the exploration or production area.
- (5) The holder of a licence shall furnish to the Commissioner reasonable notice of his intention to abandon any well, and the closure or plugging of any well shall be carried out only with the prior consent in writing of the Commissioner and in the manner approved by the Commissioner.
- (6) A holder of a licence who contravenes a requirement of this section is guilty of an offence and liable on conviction to a fine of fifty thousand Kwacha.
- (7) In proceedings on a prosecution for an offence under this section, it is a sufficient defence if the accused person proves that he promptly took all reasonable steps to comply with the requirement of this section.

49. Maintenance, etc., of property

- (1) A holder of a licence shall—
 - (a) maintain in good condition and repair all structures, equipment and other property in the area subject to the licence and used in connexion with the operations in which he is engaged;
 - (b) remove from that area all structures, equipment and other property that are not either used or to be used in connexion with those operations; and
 - (c) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structure, equipment or other property of the possible hazards resulting therefrom.
- (2) Subsection (1) does not apply in relation to any structure, equipment or other property that was not brought into the area subject to a licence by or with the authority of the holder of the licence.
- (3) A holder of a licence who contravenes subsection (1) (a), (b) or (c) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

50. Drilling near boundaries

- (1) A holder of a licence shall not drill a well any part of which is less than one thousand metres from a boundary of the area subject to the licence except with the consent in writing of the Commissioner and in accordance with such conditions, if any, as are specified in the instrument of consent.
- (2) Where a holder of a licence does not comply with subsection (1), the Commissioner may, by notice in writing served on the holder, direct him to do one or more of the following within the period specified in the notice, namely—
 - (a) plug the well;
 - (b) close off the well;
 - (c) comply with such directions relating to the drilling or maintenance of the well as are specified in the notice.
- (3) A person who fails or neglects to comply with a direction given under subsection (2) is guilty of an offence and liable on conviction to a fine of ten thousand Kwacha.

51. Removal of property, etc., by holder of licence

- (1) Where a licence has been cancelled or has expired, or has eased by relinquishment to include any area, the Minister may, by notice in writing served on the person who is or was the holder of the licence, direct that person, within the period specified in the notice—
 - (a) to remove or cause to be removed from any area that was, but is no longer, subject to the licence all property brought into that area by any person engaged or concerned in the operations authorized by the licence, or to make arrangements that are satisfactory to the Minister with respect to that property;
 - (b) to plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations; and
 - (c) to make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area.
- (2) Nothing in this section, or in any direction given under this section by the Minister, shall be construed as requiring any person who is or was the holder of a licence to do anything which is not in accordance with good oilfield practices or to refrain from doing anything which is in accordance with good oilfield practices.
- (3) A person to whom a direction under subsection (1) is given who refuses or fails to comply with the direction within the period specified in the notice concerned is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

52. Removal disposal and sale of property

- (1) Where a direction under [section 51](#) has not been complied with, the Minister may—
 - (a) do or cause to be done all or any of the things required by the direction to be done;
 - (b) remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the area that was, but is no longer, subject to the licence;
 - (c) dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (b); and
 - (d) if he has served a copy of the notice by which the direction was given on a person whom he believed to be an owner of the property or part of the property, sell or cause to be sold by public auction, or otherwise as he thinks fit, all or any of the property referred to in paragraph (b) that belongs, or that he believes to belong, to that person.
- (2) The Minister may deduct from the proceeds of a sale of property under subsection (1) that belongs, or that he believes to belong, to a particular person—
 - (a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property;
 - (b) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under [section 51](#) to be done by the person; and
 - (c) all or any part of any fees or amounts due and payable under this Act by the person.

53. Costs and expenses of removal, disposal and sale of property

- (1) The costs and expenses incurred by the Minister under [section 52](#),—
 - (a) if incurred in relation to the removal, disposal or sale of property, are a debt due by the owner of the property to the Republic;

- (b) if incurred in relation to the doing of anything required by a direction under [section 51](#) to be done by a person who is or was the holder of a licence, are a debt due by that person to the Republic,
and to the extent to which they are not recovered under [section 52](#) (2) are recoverable in a court as a debt due to the Republic.
- (2) Subject to subsection (1), no action lies in respect of the removal, disposal or sale of property under [section 52](#).

Division 2 – Civil liability for pollution

54. Definition

In this Division, in addition to the definition in [section 3](#), "production operations" includes the sinking of a well in the course of exploring for petroleum.

55. Liability for petroleum pollution

- (1) Where any petroleum is discharged as a result of any occurrence taking place during production operations, the licensee carrying on those operations is liable, except as otherwise provided by this Act,—
 - (a) to reimburse any person (including the Republic) that suffers damage caused directly by contamination following the discharge;
 - (b) for the cost of any measures reasonably taken after the discharge for the purpose of preventing or reducing any such damage;
 - (c) to reimburse any person (including the Republic) that suffers damage caused directly by any measures so taken.
- (2) For the purposes of this Act where more than one discharge results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one discharge, but any measures taken subsequent to the first of them are deemed to have been taken after the discharge.
- (3) In Unsection "damage" includes, loss, and includes damage suffered as a result of injury to soil or water in their physical aspects, together with natural vegetation associated therewith, and injury to or destruction—
 - (a) of fish (as defined in section 3 of the Fisheries Act) in any water;
[Cap. 66:05]
 - (b) of aquatic or terrestrial mammals; and
 - (c) of reptiles and avifauna.
- (4) The extent of the liability incurred under this section in respect of any discharge of petroleum may be limited (whether as to amount or otherwise) by the Regulations.

56. Exemption from liability under section 55

- (1) A licensee does not incur any liability under [section 55](#) in respect of any discharge of petroleum if he proves that the discharge—
 - (a) resulted from an act of war, hostility, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
 - (b) was due wholly to anything done or left undone by another person, not being a servant or agent of the licensee, with intent to do damage.

- (2) If a licensee proves that damage caused by contamination resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the licensee shall be exonerated wholly or partly from his liability to that person.

57. Other liability not affected

Section 55 is without prejudice to any liability which arises apart from that section.

58. Limitation

No action to enforce a claim in respect of a liability incurred under section 55 shall be entertained by a court unless the action is commenced not later than two years after the occurrence or, as the case may be, the first of the occurrences resulting in the discharge giving rise to the liability.

59. Liability for cost of preventive measures where section 55 does not apply

Where—

- (a) after a discharge of petroleum during production operations measures are taken for the purpose of preventing or reducing damage which may be caused by contamination resulting from the discharge; and
- (b) any person incurs, or might but for the measures taken have incurred, a liability, otherwise than under section 55, for any such damage,

then, notwithstanding that subsection 1 (b) of that section does not apply, he is liable for the cost of the measures whether or not the person taking them does so for the protection of his interest or in the performance of a duty.

60. Saving of recourse action

Nothing in this Act prejudices any claim, or the enforcement of any claim, which a person incurring any liability under this Act may have against another person in respect of that liability.

61. Compulsory insurance against liability for pollution

- (1) No licensee shall carry on production operations unless there is in force in respect of any liability that the licensee may incur under section 55 as a result of those operations a contract of insurance or other security satisfactory to the Minister, in an amount determined by the Minister.
- (2) A licensee who does not comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha for each day during which the offence continues.

62. Rights of third parties against insurers

- (1) Where it is alleged that a licensee has incurred any liability under section 55 as a result of any discharge of petroleum occurring while there is in force in respect of that liability such a contract of insurance or other security as is referred to in section 61, proceedings to enforce a obtain respect of the liability may be brought against the person who provided the insurance or other security (in subsection (2) referred to as "the insurer").
- (2) In any proceedings brought against the insurer by virtue of this section it is a defence (in addition to any defence affecting the licensee's liability) to prove that the discharge or escape was due to the wilful misconduct of the licensee himself.

Part VI – Restrictions and surface rights

63. Restriction on exercise of rights in relation to certain land

- (1) The holder of a licence shall not exercise any of his rights under the licence or under this Act—
- (a) except with the written consent of the President in respect of—
- (i) any land set apart for any prescribed public purpose;
 - (ii) any land dedicated as a place of burial or which is a place of religious significance; or
 - (iii) any monument or relic which is protected under section 7 of the Monuments Act;
[Cap. 29:01]
- (b) except with the written consent of the lawful occupier thereof in respect of—
- (i) any land which is the site of, or which is within two hundred metres (or such greater distance as may be prescribed) of, any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) any land within fifty metres (or such greater distance as may be prescribed) of land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of, or upon which there are growing, agricultural crops (including orchards or fuel-wood plantations);
 - (iii) any land from which, during the year immediately preceding, agricultural crops have been reaped; or
 - (iv) any land which is the site of, or within one hundred metres (or such greater distance as may be prescribed) of, any cattle dip, tank, dam, or other body of water, not being public water as defined in the Water Resources Act,
[Cap. 72:03]
- but where any consent so required is, in the opinion of the Minister, being unreasonably withheld, the Minister may, on such conditions (if any) as he may impose, direct in writing that the need for the consent shall be dispensed with and, in that event, this paragraph shall not have effect in so far as it requires the consent of the lawful occupier concerned to be given;
- (c) in respect of any land reserved for the purposes of any railway track, or which is within fifty metres (or such greater distance as may be prescribed) of the boundaries of any land so reserved, except with the written consent of the responsible railway administration;
- (d) in respect of any land within, or within two hundred metres (or such greater distance as may be prescribed) of the boundaries of, any township, except with the written consent of the local authority having control over the township;
- (e) in respect of any land comprising a street or road reserve as defined in the Public Roads Act or aerodrome, except with the written consent of the Minister or other authority having control thereof;
[Cap. 69:02]
- (f) in respect of any controlled area under section 22 of the Water Resources Act, except with the written consent of the Minister responsible for water resources; or
[Cap. 72:03]

- (g) in respect of a mining area (as defined in section 2 of the Mines and Minerals Act), except with the written consent of the holder of the mining licence concerned.

[Cap. 61:01]

- (2) Any dispute as to whether or not subsection (1) (b) applies in respect of any land or as to whether any person is a lawful occupier of that land shall be decided by the Minister whose decision is final.
- (3) Any consent under subsection (1) (a), (c), (d), (e) and (f) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

64. Right to graze stock, etc.

- (1) The lawful occupier of any land in an exploration area or a production area retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with exploration or production operations in any such area.
- (2) The lawful occupier of land in a production area shall not erect any building or structure in the area without the consent of the holder of the petroleum production licence; but if the Minister considers that the consent is being unreasonably withheld he may give his consent to the lawful occupier doing so and, in that event, the lawful occupier may do so.
- (3) The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier of the land subject to the licence or on which rights under the licence are exercised, consistent with the reasonable and proper conduct of operations pursuant to the licence.
- (4) Without limiting the generality of subsection (3), a person carrying on operations under a licence shall not, except where that person gives to the Minister prior notice in writing of the expected nature and duration of the interference, take action which in any way will interfere with—
 - (a) fishing; or
 - (b) navigation,being lawfully carried on.

65. Compensation for disturbance of rights, etc.

Where, in the course of exploration or production operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops trees, buildings stock or works thereon is caused, the holder of the licence, by virtue of which the operations are carried on, is liable to pay to any lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

66. Notice of intention to commence exploration or production operations

Subject to such exceptions as may be prescribed, the holder of a licence, before commencing exploration or production operation in any private land, shall give to any lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

Part VII – General

67. Control of company not to be given without consent of Minister

- (1) A company which is the holder of a licence shall not, without the prior consent in writing of the Minister—
 - (a) register the transfer of any equity share or shares in the company to any particular person or his nominee; or
 - (b) enter into an agreement, arrangement, or understanding, whether or not having legal or equitable force, with any particular person,if the effect of doing so would be to give to the particular person or, in the case mentioned in paragraph (b), the particular person or any other person, control of the company.
- (2) On application duly made to him in writing for his consent under this section, the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company but otherwise shall refuse to give his consent; and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.
- (3) For the purposes of this section—
 - (a) a person is deemed to have control of a company—
 - (i) if the person or his nominee holds, or the person and his nominee hold a total of, twenty per cent or more of the issued equity shares in the company;
 - (ii) if the person is entitled to appoint, or prevent the appointment of, half, or more than half, of the directors of the company; or
 - (iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of issued equity shares in the company;
 - (b) "equity shares", in relation to a company, means shares in the company having voting rights in all circumstances at a general meeting of the company, and includes preference shares, other than preference shares which do not have such voting rights;
 - (c) "preference shares" means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights;
 - (d) the reference in paragraph (a) (iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

68. Scientific investigation

- (1) In this section, "reconnaissance operations", means the search for petroleum by geophysical surveys and photogeological surveys or other remote sensing techniques and surface geology in connexion therewith.
- (2) Subject to subsection (3), the Minister may, by instrument in writing, consent to the carrying on by any person of reconnaissance operations and such other operations as may be specified in the instrument in the course of a scientific investigation with respect to the geology or petroleum resources of Malawi.

- (3) The Minister shall not issue an instrument under subsection (2) to a person unless the person, if required by the Minister—
 - (a) discloses to the Minister the sources of the finance for the scientific investigation;
 - (b) accepts as a condition of consent that the results of the investigation will be made freely available to the Government.
- (4) An instrument of consent under this section is subject to such conditions (if any) as are specified in the instrument.
- (5) An instrument of consent under this section authorizes the person to whom it is issued to carry on the reconnaissance and other operations specified in the instrument—
 - (a) in the area; and
 - (b) subject to the conditions (if any),
specified in the instrument, in the course of scientific investigation.
- (6) A person so authorized shall not, pursuant to subsection (5), enter on any land or place referred to in [section 63](#) without obtaining the consent required under that section in relation to the land or place.
- (7) [Section 15](#) applies in relation to a person to whom an instrument of consent is issued under subsection (2) as it applies in relation to a licence.

69. Discovery of mineral to be notified

- (1) When a significant discovery of any mineral (as defined in section 4 of the Mines and Minerals Act) is made in an exploration area or a production area, within a period of thirty days after the date of the discovery, furnish to the Minister particulars in writing of the discovery.
[Cap. 61:01]
- (2) A licensee who fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand Kwacha.

70. Powers of Commissioner and authorized officers

- (1) For the purposes of this Act, the Commissioner or an authorized officer, at all reasonable times, may—
 - (a) enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connexion with exploration or production operations;
 - (b) inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connexion with any of the operations referred to in paragraph (a);
 - (c) take or remove, for the purpose of analysis or testing or for use in evidence in connexion with proceedings for an offence against this Act, samples of minerals or other substances from any area where any of the operations referred to in paragraph (d) are being carried on;
 - (d) inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);
 - (e) with respect to the health and safety of persons employed by a licensee in or in connexion with any of the operations referred to in paragraph (a) issue directions to and impose restrictions on the licensee, or any persons so employed, by instrument in writing;

- (f) order, by instrument in writing,—
- (i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connexion with any of the operations referred to in paragraph (a); or
 - (ii) the discontinuance of the use of any machinery or equipment, which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed;
- (g) make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed, or orders made, under this Act, are being complied with.
- (2) Before exercising any of his powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorized officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.
- (3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorized officer made under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Minister, who shall, as soon as practicable, hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.
- (4) On appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make a new decision, direction or order in substitution therefor, and that decision, direction or order is final.
- (5) In exercising his powers under subsection (1), the Commissioner or an authorized officer may be accompanied by any person who the Commissioner or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, analysed, tested or examined.
- (6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorized officer with all reasonable facilities and assistance, (including the provision of necessary means of transport) for the effective exercise of the Commissioner's or authorized officer's powers under this section.
- (7) Any person who—
- (a) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorized officer in the exercise of his powers under this section; or
 - (b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Commissioner or an authorized officer engaged in carrying out his duties and functions under this Act,
- is guilty of an offence and liable on conviction to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both.

71. Removal of petroleum

- (1) Petroleum shall not be removed from any land from which it has been recovered, or disposed of, in any manner, except—
- (a) subject to subsection (2), by a licensee for the purpose of sampling or analysis;
 - (b) by a licensee in accordance with the terms of the licence concerned; or

- (c) as otherwise permitted by this Act.
- (2) A licensee shall not, pursuant to subsection (1) (a), remove from any land samples of petroleum without the written consent of the Commissioner.
- (3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction—
 - (a) in the case of an individual, to a fine of five hundred Kwacha or to imprisonment for a term of six months, or to both; or
 - (b) in the case of a body corporate, to a fine of five thousand Kwacha.

72. Acquisition of land

Where the President considers that any land is required to secure the development or utilization of the petroleum resources of Malawi he may direct that the land be acquired under the Land Acquisition Act.

[Cap. 58:04]

73. Identity of person exercising certain rights to be established

A person exercising any right under a petroleum exploration licence on any land shall, if required to do so by any lawful occupier of the land, produce evidence that he is the holder, or an agent or employee of the holder, of a licence; and if he fails to do so he may be treated as a trespasser.

74. Obstruction of licensee

Any person who, without a reasonable excuse, obstructs or hinders a licensee from doing any act which that holder is authorized to do by this Act is guilty of an offence and liable on conviction to a fine of one thousand Kwacha or to imprisonment for a term of two years, or to both.

75. Offence committed by body corporate

When, an offence which, has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

76. Miscellaneous offences

Any person who—

- (a) in, or in connexion with, any application under this Act, or in response to any invitation or requirement of the Minister or the Commissioner under this Act, knowingly or recklessly gives information which is false or misleading in a material particular;
- (b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;
- (c) places or deposits, or is accessory to the placing or depositing of, any petroleum or substance in any place with the intention of misleading any other person as to the possibility of a petroleum reservoir existing in that place;
- (d) tampers with samples of minerals, rock or petroleum taken in the course of exploration or production operations by adding to or taking from any such sample any substance, or by in any way modifying the physical or chemical properties of any such sample, with the intention of misleading any person as to the existence, extent or content of a petroleum reservoir,

is guilty of an offence and liable on conviction—

- (e) in the case of an individual, to imprisonment for a term of two years; or
- (f) in the case of a body corporate, to a fine of twenty thousand Kwacha.

77. Licensee to indemnify Republic

A licensee shall, at all times, keep the Republic indemnified against all actions, claims and demands that may be brought or made against the Republic by reason of anything done by the licensee, or the servants or agents of the licensee, in the exercise or purported exercise of the rights of the licensee under this Act or his licence.

Part VIII – Regulations

78. Regulations

- (1) The Minister may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed or for giving effect to this Act, including in particular provision for or with respect to—
 - (a) exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;
 - (b) the recovery of petroleum and the carrying on of operations, and the execution of works, for that purpose;
 - (c) conserving, and preventing the waste of, the natural resources, whether petroleum or otherwise;
 - (d) the form and content of, and conditions with respect to, applications for licences or renewal of licences;
 - (e) the construction, erection, maintenance, operation or use of installations or equipment;
 - (f) the control of the flow and the prevention of the escape of petroleum or water, and the prevention of the escape of water or drilling fluid or a mixture of water or drilling fluid or any of the matter;
 - (g) the prevention of pollution and measures to be taken for the purpose of preventing or reducing damage from pollution;
 - (h) the removal of structures, equipment and other property brought into Malawi in connexion with exploration for, or the recovery or conveyance of, petroleum that are not used or intended to be used in connexion with that exploration, recovery or conveyance;
 - (i) the maintenance of pressure in, or the repressurizing of, a petroleum reservoir and the recycling of petroleum;
 - (j) the secondary or tertiary recovery of petroleum from a petroleum reservoir and the methods to be used in such recovery;
 - (k) the underground disposal of petroleum, water and other substances produced in association with exploration for or the production of petroleum;
 - (l) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;
 - (m) the methods to be used for the measurement of petroleum, water and other substances from a well;

- (n) safety standards and the health, safety and welfare of persons employed in or in connexion with exploration for, or the production or conveyance of, petroleum;
 - (o) taking, preserving and furnishing to the Minister cores, cuttings and samples from wells and samples of petroleum and water;
 - (p) the registration of instruments and the effect of the registration of, or failure to register, instruments;
 - (q) the transfer of licences or interests in licences;
 - (r) the taking of logs or directional surveys or making other down-hole investigations;
 - (s) annual charges;
 - (t) fees;
 - (u) the amount of any royalty to be paid and the manner of payment of any royalty.
- (2) The power under this section to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified cases or class of cases; and
 - (b) so as to make, as respects the cases in relation to which it is exercised,—
 - (i) the same provision for all those cases, a different provision for different cases or classes of cases, or different provisions as respects the same case or class of cases for different purposes of this Act; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this section may, notwithstanding section 21 (e) of the General Interpretation Act, make provision for such penalty not exceeding two thousand Kwacha or such term of imprisonment not exceeding six months, or both such fine and imprisonment, as the Minister thinks fit to impose for offences thereunder.

[Cap. 1:01]

Part IX – Miscellaneous

79. Minister to act subject to the directions of the Life President

The Minister, in the exercise of his functions under this Act, shall act subject to the general or special directions of the Life President.

Schedule

Relinquishment (Section 23)

1. Relinquishment

- (1) A licensee may, at any time when a petroleum exploration licence is in force and by giving to the Minister not less than six months previous notice in writing of the intention to do so, relinquish any block or blocks in the exploration area identified in the notice.
- (2) Any relinquishment pursuant to subparagraph (1) is without prejudice to any obligation incurred by the licensee in respect of the area relinquished prior to the date of the relinquishment.

- (3) An area relinquished pursuant to subparagraph (1) shall, unless the Minister otherwise determines, be such as to ensure that the remaining exploration area constitutes a single area or not more than three discrete areas.
- (4) Where, pursuant to this paragraph, any area is relinquished then the exploration licence concerned ceases to have effect with respect to that area.

2. Relinquishment on grant of petroleum production licence

Any part of an exploration area over which a petroleum production licence is granted to the licensee shall cease to be part of the exploration area.

3. Relinquishment for purposes of renewal of petroleum exploration licence

- (1) Subject to any relevant agreement of a kind referred to in [section 10](#), the number of blocks in respect of which an application for a renewal of a petroleum exploration licence may be made shall not exceed the number which is one-half in total of the number of blocks in respect of which the licence was issued or first renewed, as the case may be.
- (2) For the purpose of determining the number of blocks in respect of which a petroleum exploration licence was granted or first renewed, there shall not be taken into account any block excluded from the exploration area pursuant to [section 25](#) (3) or (4) and any discovery block subsisting in the exploration area at the date on which the application for the renewal is made.