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MALAWI GOVERNMENT

(Published 14th January, 2025)

Act

No. 1 of 2025

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

21st December, 2024

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An Act to amend the Energy Regulation Act

ENACTED by the Parliament of Malawi as follows —

Short title

1. This Act may be cited as the Energy Regulation (Amendment) Act, 2025.

Amendment
of s. 2 of Cap.
73:02

2. The Energy Regulation Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by deleting the definition of the word—

(a) “licence” and substituting therefor the following new definition —

““licence” means a licence issued by the Authority under this Act or any Energy Law, and includes a certificate and a permit;”;

(b) “licensee” and substituting therefor the following new definition—

““licensee” means a person holding a licence issued by the Authority under this Act or any Energy Law;”.

Amendment
of s. 4 of the
principal Act

3. Section 4 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) The Authority shall comprise—

(a) a Chairperson, a Vice-Chairperson and five other members appointed in accordance with section 5; and

(b) the following *ex-officio* members, or their designated representatives —

- (i) the Principal Secretary responsible for energy; and
- (ii) the Chief Executive of the Authority”;

(b) in subsection (2), by—

- (i) deleting the word “or” appearing at the end of paragraph (g);
- (ii) deleting the full-stop appearing at the end of paragraph (h) and substituting therefor a semicolon; and
- (iii) inserting the word “or” immediately after the semicolon in paragraph (h);

(c) by inserting, immediately after paragraph (h), the following new paragraphs (i) and (j) —

- “(i) human resource management; or
- (j) regulatory matters.”; and

(d) in subsection (5), by deleting paragraph (a) and substituting therefor the following new paragraph (a)—

“(a) is a Member of Parliament or Councillor;”.

4. Section 8 of the principal Act is amended by—

Amendment
of s. 8 of the
principal Act

(a) deleting subsection (2) and substituting therefor the following new subsection (2)—

“(2) A vacancy in the membership of the Authority shall be filled by the appointment of a new member in accordance with section 5, and the member appointed shall hold office for the unexpired period of the term of office of his or her predecessor, but a person shall not be appointed to fill a vacancy where the unexpired period is less than six months.”; and

(b) inserting, immediately after subsection (2), the following new subsection (3)—

“(3) The period served by a person appointed under subsection (2) shall not be regarded as a term for purposes of section 7 (1), unless the period is two years or more.”.

5. Section 9 of the principal Act is amended, in subsection (1) paragraph (i), by deleting the word “and” and substituting therefor the word “or”.

Amendment
of s. 9 of the
principal Act

Replacement
of s. 10 of the
principal Act

6. Section 10 of the principal Act is repealed and replaced with the following new section 10—

“Consulta-
tions on the
energy sector
policy

10.—(1) The Minister shall consult licensees and other stakeholders where he or she intends to issue or revise a policy with regard to the energy sector.

(2) A policy issued under subsection (1) shall be in writing, and shall be published in the *Gazette* and in such other manner as the Minister may determine.”.

Amendment
of s. 12 of the
principal Act

7. Section 12 of the principal Act is amended—

(a) by deleting subsection (4) and substituting therefor the following new subsection (4)—

“(4) The Authority may make rules to regulate the conduct of its proceedings and business.”;

(b) by deleting subsection (5);

(c) in subsection (6), by deleting the words “a majority of all its” and substituting therefor the word “five”;

(d) by deleting subsection (7) and substituting therefor the following new subsection (7)—

“(7) A decision of the Authority at any meeting on any matter shall be that of the majority of the members present and voting, and the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his or her deliberate vote.”;

(e) by deleting subsection (10) and substituting therefor the following new subsection (10)—

“(10) A decision of the Authority, or the performance of its functions and the exercise of its powers under this Act or the Energy Laws, shall not be invalid or be affected, only by reason of a vacancy in the membership of the Authority or of the fact that a person who is not entitled to sit as a member of the Authority sat at a meeting where the decision was made.”; and

(f) by renumbering subsections (6), (7), (8), (9), (10), (11), (12) and (13) as subsections (5), (6), (7), (8), (9), (10), (11) and (12), respectively.

Amendment
of s. 13 of the
principal Act

8. Section 13 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection (4)—

“(4) A member of the Authority who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.”.

9. Section 14 of the principal Act is amended, in subsection (2), by deleting the words “on request”.

Amendment
of s. 14 of the
principal Act

10. Section 15 of the principal Act is repealed and replaced with the following new section 15—

Replacement
of s. 15 of the
principal Act

“Committees
of the
Authority

15.—(1) The Authority may, for the better exercise of its functions and powers, establish committees of the Authority to perform functions or exercise powers of the Authority under this Act or the Energy Laws.

(2) The Authority may, at any time, dissolve or reconstitute the committees appointed under subsection (1)

(3) The Authority shall appoint a chairperson for each committee of the Authority from amongst the members appointed in accordance with section 4 (1).

(4) Notwithstanding subsection (1), the Authority may itself exercise the functions of a committee of the Authority, and may amend or rescind any decision of the committee.

(5) The chairperson of a committee of the Authority may at any reasonable time and place convene a meeting of that committee.

(6) A committee of the Authority shall act in accordance with any directions given to it in writing by the Authority.”.

11. Section 16 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection (1)—

Amendment
of s. 16 of the
principal Act

“(1) The Authority may appoint persons, who are not members of the Authority, to advise the Authority in general or on a particular matter.”.

12. The principal Act is amended by inserting, immediately after section 16, the following new section 16A—

Insertion of a
new s. 16A
into the
principal Act

"Co-opted
persons

16A. The Authority may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings or its committee meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Authority."

Repeal of
s. 17 of the
principal Act

13. Section 17 of the principal Act is repealed.

Repeal of s.
21 of the
principal Act

14. Section 21 of the principal Act is repealed.

Replacement of
s. 22 of the
principal Act

15. Section 22 of the principal Act is repealed and replaced with the following new section 22—

"Delegation
of powers and
functions

22. The Authority may delegate any of its powers or functions under this Act or the Energy Laws, to—

(a) the Chairperson;

(b) a member of the Authority; or

(c) an employee of the Authority,

to facilitate the operations of the Authority."

Amendment
of s. 23 of the
principal Act

16. Section 23 of the principal Act is amended—

(a) in paragraph (d), by deleting the word "and" appearing at the end of the paragraph;

(b) by inserting, immediately after paragraph (d), the following new paragraph (e)—

"(e) monetary administrative penalties imposed by the Authority under this Act and the Energy Laws; and"; and

(c) by renumbering paragraph (e) as paragraph (f).

Amendment
of s. 24 of the
principal Act

17. Section 24 of the principal Act is amended by—

(a) deleting subsection (2) and substituting therefor the following new subsection (2)—

"(2) A notice under subsection (1) shall state the amount of the levies, or the basis or method of calculation or determination of the amounts."; and

(b) inserting, immediately after subsection (2), the following new subsections (3) and (4)—

“(3) A licensee shall pay to the Authority the levy referred to in subsection (1) within thirty days from the date of sale or billing for the energy as the case may be, whichever shall occur first.

(4) Where a licensee fails to pay the levy referred to in subsection (1) within the period specified in subsection (3), interest on the levy at the rate of 3 per cent above the commercial bank lending rate shall be chargeable and payable to the Authority.”.

18. Section 25 of the principal Act is amended—

Amendment
of s. 25 of the
principal Act

(a) by deleting subsection (2);

(b) in subsection (3), by deleting the words “forty-five” and substituting therefor the word “thirty”;

(c) by deleting subsection (5) and substituting therefor the following new subsection (5)—

“(5) If a licensee fails to remit the levy referred to in subsection (1), or if the Authority fails to remit the levy in accordance with subsection (4), within the periods specified under subsections (3) and (4), interest on the levy at the rate of 3 per cent above the commercial bank lending rate shall be chargeable and payable to the Rural Electrification Fund.”;

(d) by inserting, immediately after subsection (6), the following new subsection (7)—

“(7) Where a licensee fails to pay any levy prescribed in the Energy Laws, within thirty days, an interest on the levy at the rate of 3 per cent above the commercial bank lending rate shall be chargeable.”; and

(e) by renumbering subsections (3), (4), (5), (6) and (7) as subsections (2), (3), (4), (5) and (6), respectively.

19. Section 26 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection (4)—

Amendment
of s. 26 of the
principal Act

“(4) The financial year of the Authority shall be the same as the financial year of the Government.”.

20. Section 27 of the principal Act is amended, in subsection (2), by deleting paragraph (d) and substituting therefor the following new paragraph (d)—

Amendment
of s. 27 of the
principal Act

“(d) information regarding the amount of levies collected and paid to various beneficiaries;”.

Amendment
of s. 28 of the
principal Act

21. Section 28 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2)—

“(2) A person who contravenes subsection (1) commits an offence.”.

Replacement
of s. 31 of the
principal Act

22. Section 31 of the principal Act is repealed and replaced with the following new section 31—

“Transfer of
licences

31.—(1) A licence, or rights or privileges thereunder, shall not be assigned or transferred, either in whole or in part, and the title thereto, either legal or equitable, or any right, interest or property therein, shall not pass to or vest in any person, without the prior written consent of the Authority.

(2) The Authority shall not, without a reasonable justification, withhold the consent referred to in subsection (1).”.

Amendment of
s. 32 of the
principal Act

23. Section 32 of the principal Act is amended—

(a) in paragraph (d), by deleting the word “and” appearing at the end of the paragraph;

(b) in paragraph (e), by—

(i) deleting the full-stop appearing at the end of the paragraph and substituting therefor a semicolon; and

(ii) inserting the word “and” immediately after the semicolon; and

(c) by inserting, immediately after paragraph (e), the following new paragraph (f)—

“(f) a commercial dispute on any provision of this Act or the Energy Laws.”.

Replacement
of s. 35 of the
principal Act

24. Section 35 of the principal Act is repealed and replaced with the following new section 35—

“Procedure
and fees for
mediation and
arbitration

35. The Authority shall make rules of procedure for arbitration and mediation of disputes and shall, by notice published in the *Gazette*, prescribe fees to be paid for arbitration and mediation of disputes.”.

Replacement
of s. 36 of the
principal Act

25. Section 36 of the principal Act is repealed and replaced with the following new section 36—

Decision of the
Authority in
arbitrating a
dispute

36. Subject to the Arbitration Act, the decision of the Authority in arbitrating a dispute, including a decision as to costs, shall be final and binding on the disputing parties.”.

26. Section 37 of the principal Act is amended by—

Amendment
of s. 37 of the
principal Act

(a) deleting subsection (6) and substituting therefor the following new subsection (6)—

“(6) On receipt of the report under subsection (5), the Authority may—

(a) refer the report to the Attorney General for his or her advice; and

(b) if a licensee is involved, take action in accordance with this Act or the Energy Laws.”; and

(b) inserting, immediately after subsection (6), the following new subsection (7)—

“(7) The Authority shall give a copy of the report received under subsection (5) to a concerned consumer or affected person.”.

27. Section 38 of the principal Act is repealed and replaced with the following new section 38—

Replacement
of s. 38 of the
principal Act

“Licensee to
report
accidents

38.—(1) A licensee shall send to the Authority a report of—

(a) any accident that has caused loss of life or serious personal injury, or is likely to have caused loss of life or serious personal injury, which occurs in any part of the licensee’s works or equipment; and

(b) any loss of life or serious personal injury occasioned by the accident,

as soon as possible, but not later than seven days of the accident.

(2) A person who contravenes subsection (1) commits an offence.

(3) On receipt of the report under subsection (1), the Authority shall, within twenty-one days, investigate the matter.

(4) Nothing contained in this section shall absolve a licensee from the duty of complying with the provisions of any other written law relating to reporting of accidents.”.

28. Section 39 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection (4)—

Amendment
of s. 39 of the
principal Act

“(4) A person who alters, destroys or otherwise suppresses a document or information required of him or her under subsection (1) commits an offence.”.

Amendment
of s. 40 of the
principal Act

29. Section 40 of the principal Act is amended—

(a) in subsection (1), by deleting the words “shall be guilty of” and substituting therefor the word “commits”;

(b) in subsection (2), by deleting the words “shall be guilty of” and substituting therefor the word “commits”; and

(c) by deleting subsection (3) and substituting therefor the following new subsection (3)—

“(3) A licensee who, without reasonable justification, denies another licensee access to his or her system commits an offence.”.

Replacement
of s. 41 of the
principal Act

30. Section 41 of the principal Act is repealed and replaced with the following new section 41—

“Penalties

41.—(1) A person who commits an offence under this Act for which no penalty has been provided in this Act shall, upon conviction, be liable to a fine of K50,000,000 and imprisonment for ten years.

(2) In addition to the penalty provided under subsection (1), a court may order the forfeiture to the State of any commodity or equipment used in the commission of the offence.

(3) The Authority shall determine the disposal method of the commodity or equipment forfeited under subsection (2).”.

Insertion of
a new s. 41A
into the
principal Act

31. The principal Act is amended by inserting, immediately after section 41, the following new section 41A—

“Administra-
tive penalties

41A.—(1) The Authority may impose a monetary administrative penalty against a licensee or consumer who fails to comply with the conditions of his or her licence under this Act or the Energy Laws.

(2) The Authority shall, pursuant to subsection (1), prescribe a *schedule* of acts of non-compliance and the corresponding monetary penalties payable.

(3) The Authority may, from time to time, amend the *schedule* referred to under subsection (2).”.

Replacement
of s. 43 of the
principal Act

32. Section 43 of the principal Act is repealed and replaced with the following new section 43—

Judicial
review

43. A person who is aggrieved by a decision or action of the Authority under this Act or any of the Energy Laws may apply for judicial review to the High Court within a period of thirty days from the date of the decision or action of the Authority.”.

33. Section 44 of the principal Act is repealed and replaced with the following new section 44—

Replacement
of s. 44 of the
principal Act

Obligation
of secrecy

44. A member of the Authority or a committee of the Authority, or any officer, servant or agent of the Authority, or a person attending any meeting of the Authority or of a committee of the Authority, whether during his or her tenure of office or during his or her employment or thereafter, shall not disclose any information which has been obtained by him during his or her duties, and which has not been published under this Act or any Energy Law, unless the disclosure is—

(a) for purposes of this Act or any Energy Law;

(b) for purposes of any civil or criminal proceedings under any written law; or

(c) otherwise authorized by the Authority.”.

Passed in Parliament this third day of December, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament

(Published 14th January, 2025)

Act

No. 2 of 2025

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

21st December, 2024

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 4 of Cap. 50:03
3. Amendment of s. 5 of the principal Act
4. Amendment of s. 6 of the principal Act
5. Insertion of a new s. 6A into the principal Act
6. Insertion of a new s. 23A into the principal Act
7. Amendment of s. 39 of the principal Act
8. Replacement of s. 40 of the principal Act
9. Amendment of s. 41 of the principal Act
10. Amendment of s. 42 of the principal Act
11. Insertion of a new s. 48A into the principal Act

An Act to amend the Liquid Fuels and Gas (Production and Supply) Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Liquid Fuels and Gas (Production and Supply) (Amendment) Act, 2025. Short title

2. The Liquid Fuels and Gas (Production and Supply) Act (hereinafter referred to as the “principal Act”) is amended, in section 4, by inserting, in the correct alphabetical order, the following new definitions— Amendment
of s. 4 of
Cap. 50:03

"Government Agent" means a state-owned entity nominated under section 6A;

"Government-to-Government fuel supply arrangement" means a bilateral or multilateral arrangement with a foreign state, a province of a foreign state or a sovereign government, for the procurement of liquid fuels and gas by the Government of Malawi, either—

(a) directly from the foreign state, the province of the foreign state or the sovereign government; or

(b) through legal entities owned by the foreign state, the province of the foreign state or the sovereign government; and

"open tendering system" means public invitation of bids from suppliers of liquid fuels and gas."

Amendment
of s. 5 of the
principal Act

3. Section 5 of the principal Act is amended—

(a) in paragraph (f), by deleting the word "and" appearing at the end of the paragraph;

(b) in paragraph (g), by—

(i) deleting the full-stop appearing at the end of the paragraph and substituting therefor a semicolon; and

(ii) inserting the word "and" immediately after the semicolon; and

(c) by inserting, immediately after paragraph (g), the following new paragraph (h)—

"(h) ensure—

(i) supply efficiency and reliability of liquid fuels and gas;

(ii) regulatory compliance; and

(iii) operational transparency,

through Government-to-Government fuel supply arrangement."

Amendment
of s. 5 of the
principal Act

4. Section 6 of the principal Act is amended, in subsection (1), by inserting the words "and (h)" immediately after the words "paragraph (g)".

Insertion of a
new s. 6A into
the principal
Act

5. The principal Act is amended by inserting, immediately after section 6, the following new section 6A—

"Government
-to-
Government
fuel supply
arrangements

6A.—(1) The importation of diesel and petrol into the country shall be conducted through Government-to-Government fuel supply arrangement.

(2) The Minister shall nominate a Government Agent to be responsible for importation of diesel and petrol into the country through Government-to-Government fuel supply arrangement referred to under subsection (1).

(3) The Minister may, through direct negotiation and on recommendation of the Government Agent, arrange for the importation of diesel and petrol into the country through Government-to-Government fuel supply arrangement.

(4) Where there is need to procure liquid fuels and gas product other than diesel and petrol, through the Government-to-Government fuel supply arrangement, the Minister may, on recommendation of the Government Agent, include the importation of the other liquid fuels and gas product.

(5) The Minister shall seek the approval of the Authority before importation of liquid fuels and gas under this section.

Cap. 37:03 (6) The Public Procurement and Disposal of Public Assets Act shall not apply to Government-to-Government fuel supply arrangement.

(7) Where an open tendering system for the supply of diesel and petrol offers a competitive supply of diesel and petrol than the Government-to-Government fuel supply arrangement, the Minister may, on the recommendation of the Government Agent and after consulting the Authority, allow the procurement and supply of diesel and petrol through the open tendering system on such terms and conditions as the Minister may determine.

(8) The Minister may, through the Government Agent and after consulting the Authority, receive liquid fuel and gas donation from a foreign government, an international body, a province of a foreign state, or any other entity.

(9) The Minister shall seek guidance of the Authority on the use and pricing of the liquid fuel and gas received under subsection (8)."

6. The principal Act is amended by inserting, immediately after section 23, the following new section 23A—

Insertion of a new s. 23A into the principal Act

"Administrative
penalties

23A.—(1) The Authority may impose monetary administrative penalty against a licensee or consumer who fails to comply with the conditions of his or her licence under this Act or the Energy Laws.

(2) The Authority shall, pursuant to subsection (1), prescribe a *schedule* of acts of non-compliance and the corresponding monetary penalties payable.

(3) The Authority may, from time to time, amend the *schedule* referred to under subsection (2)."

Amendment
of s. 39 of the
principal Act

7. Section 39 of the principal Act is amended, in subsection (2), by deleting the word "partners" and substituting therefor the word "parties".

Replacement
of s. 40 of the
principal Act

8. Section 40 of the principal Act is repealed and replaced with the following new section 40—

"Judicial
review

40. A person aggrieved by a decision or action of the Authority may apply for judicial review to the High Court within a period of thirty days from the date of the decision or action of the Authority."

Amendment
of s. 41 of the
principal Act

9. Section 41 of the principal Act is amended—

(a) in paragraph (d), by deleting the word "or" appearing at the end of the paragraph;

(b) in paragraph (e), by—

(i) deleting the full-stop appearing at the end of the paragraph and substituting therefor a semicolon; and

(ii) inserting the word "or" immediately after the semicolon; and

(b) inserting, immediately after paragraph (e), the following new paragraph (f)—

"(f) without the approval of the Authority, imports diesel or petrol otherwise than through the Government-to-Government fuel supply arrangement."

Amendment
of s. 42 of the
principal Act

10. Section 42 of the principal Act is amended by deleting the figure "K50,000,000" and substituting therefor the figure "K500,000,000".

Insertion of a
new s. 48A
into the
principal Act

11. The principal Act is amended by inserting, immediately after section 48, the following new section 48A—

“Transitional
provision

48A. Any licence issued, permit granted, or contract entered into, in accordance with this Act and prior to the commencement of this Act, shall continue to be in force until its expiry or termination.”.

Passed in Parliament this third day of December, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament