

MALAWI GOVERNMENT

(Published 22 November 2019)

Act

No. 28 of 2019

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

11th November, 2019

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 6 of Cap. 42:01
3. Amendment of s. 65 of the principal Act
4. Amendment of s. 82 of the principal Act
5. Amendment of s. 83 of the principal Act
6. Amendment of Part XVI of the principal Act
7. Amendment of s.143 of the principal Act
8. Amendment of s. 155 of the principal Act
9. Replacement of s. 167 of the principal Act

An Act to amend the Customs and Excise Act

ENACTED by the Parliament of Malaŵi as follows—

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2019. Short title

2. The Customs and Excise Act (hereinafter the “principal Act”) is amended, in section 6, by— Amendment
of s. 6 of
Cap. 42:01

(a) deleting the word, “and” at the end of paragraph (b);

(b) deleting the word, “.” At the end of paragraph (c); and

(c) inserting immediately after paragraph (c), a new paragraph (d), as follows—

“(d) design, amend, approve and publish Customs and Excise Forms as may, from time to time, be required for the administration of this Act.”.

Amendment of
s. 65 of the
principal Act

3. The principal Act is amended in section 65 by—

(a) deleting the word, “Controller” wherever it appears in that subsection and replacing therefor with the word, “Commissioner General”;

(b) deleting the words, “and the decision of the Minister shall be final and shall not be questioned in any court”.

Amendment of
s. 82 of the
principal Act

4. The principal Act is amended in section 82 by—

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

(b) deleting the word, “.” at the end of paragraph (e) and replacing therefor with the word, “;”;

(c) deleting the word, “.” at the end of paragraph (f) and replacing therefor with the words, “; and”;

(d) inserting immediately after paragraph (f), the following new paragraphs as paragraph (g) and paragraph (h)—

“(g) in respect of goods imported into Malaŵi, surcharge duties in accordance with the provisions of a surcharge tariff prescribed by the Minister; and

(h) in respect of motor vehicles imported into or locally registered in Malaŵi, carbon tax in accordance with the provisions of a carbon tax tariff prescribed by the Minister.”.

Amendment of
s. 83 of the
principal Act

5. Section 83 of the principal Act is amended by deleting subsection (1) and replacing therefor, a new subsection (1), as follows—

“(1) The Minister may, subject to section 84, by order published in the *Gazette*, prescribe—

(a) a customs tariff;

(b) an excise tariff;

(c) a dumping duties tariff;

(d) an export duties tariff;

(e) a surtax tariff;

(f) a surcharge tariff; and

(g) a carbon tax tariff,

for the purposes of this Act, and may similarly amend any such tariff.”.

6. Part XVI of the principal Act is amended by—

(a) deleting the word, “AGENTS” in the title of Part XVI and replacing therefor, a new title, as follows—

“AGENTS AND AUTHORIZED ECONOMIC OPERATORS”

(b) inserting, immediately after section 131, the following new sections as section 131A, 131B, 131C, 131D, 131E, 131F, 131G, 131H, 131I and 131J, in a correct numerical sequence, as follows—

“Authorized
Economic
Operators
may be
licensed

131A.—(1) The Commissioner General may, on application by any person, issue a licence to the applicant as an Authorized Economic Operator, for the purpose of transacting business with the Malawi Revenue Authority.

(2) The applicant for an Authorized Economic Operator licence, under subsection (1), shall pay such fees as the Commissioner General may prescribe.

Conditions on
licence

131B.—(1) The Commissioner General shall prescribe any conditions that he deems fit at the issuance of a licence for an Authorized Economic Operator.

(2) The conditions, criteria and procedures for the granting, suspension and revocation of the Authorized Economic Operator status, as well as the facilities accorded, shall be determined in accordance with this Act.

Application
may be
refused

131C. A licence issued under section 131A shall—

(a) be valid for a period of three (3) years from the date of issue; and

(b) not be transferrable.

Licensee
under full
Customs
obligations

131D. The Commissioner General may refuse to grant the application for an Authorized Economic Operator licence, if the applicant does not comply with the criteria for Authorized Economic Operator status.

Objection and
appeal for
licensing

131E.—(1) An applicant who is not satisfied with the decision of the Commissioner General not to grant an application made pursuant to section 131A, may lodge an objection to the Commissioner General.

(2) Where the objection under subsection (1) is not sustained, the applicant may lodge an appeal against the decision to a Special Referee.

- Application for renewal of licence **131F.** A holder of an Authorized Economic Operator licence shall, not later than thirty (30) calendar days before the licence expires, apply for the renewal of the licence.
- Application for renewal of licence **131G.**—(1) The Commissioner General may, out of his ownvolition or on application by a holder of an Authorized Economic Operator licence, amend the licence, where necessary, in order to—
- (a) extend or limit the purposes for which the licence was issued;
 - (b) update or change any detail on the licence; or
 - (c) change any condition to the licence.
- (2) The reasons for the decision to amend the licence shall be communicated to the Authorized Economic Operator.
- Withdrawal of licence **131H.**—(1) The Commissioner General shall cancel a licence of an Authorized Economic Operator’s licence, if the licensed person—
- (a) the licence on the basis of false and misleading information;
 - (b) is no longer entitled to a licence;
 - (c) is sequestrated or liquidated; or
 - (d) is no longer engaged in the activity for which the licence was issued.
- (2) The reasons for the decision to amend shall be communicated to the Authorized Economic Operator.
- Suspension and cancellation of licence **131I.**—(1) The Commissioner General may suspend a licence of an Authorized Economic Operator, if the licensed person—
- (a) is in breach of the terms and conditions of his licence;
 - (b) fails to pay to the Commissioner General duties and taxes five (5) days after due date;
 - (c) is in breach of a provision of this Act;
 - (d) has been convicted of an offence under this Act; or
 - (e) has been convicted of an offence involving fraud or dishonesty.

(2) The Commissioner General shall, in writing, before he suspends or cancels the licence issued under section 131A,—

(a) notify the licensee about his decision and reasons for the suspension or cancellation of his licence;

(b) notify the licensee of the period for which the licence is suspended;

(c) notify the licensee of the date from which the licence is cancelled;

(d) grant an aggrieved licensee the right to be heard and the right to representation:

Provided that where an aggrieved licensee elects to exercise the right to representation, he shall notify the Commissioner General details of his case as well as his representative, at least seven days before the date of hearing; and

(e) inform the person that he may appeal against his decision.

Licensee
under full
Customs
obligations

131J. A holder of an Authorized Economic Operator licence is not absolved from meeting the full requirements of this Act or any other tax law.”

7. Section 143 of the principal Act is amended by deleting the words, “K100,000” and replacing therefor, the words, “K500,000”.

Replacement
of s. 167 of
the principal
Act

8. The principal Act is amended by deleting subsection (1) of section 155 and substituting therefor, a new subsection (1), as follows—

Amendment
of s. 155 of
the principal
Act

“(1) Any proceedings for an offence against the customs laws may be commenced within six (6) years of the date of the offence and the powers of seizure under section 146 may be exercised within six (6) years of the date when the goods first became liable to seizure:

Provided that—

(i) in any case where fraud is a material element, the limitation period shall not apply; and

(ii) prohibited goods may be seized at any time.”

9. The principal Act is amended by deleting section 167, and substituting therefor, a new section 167, as follows—

Replacement
of s. 167 of
the principal
Act

“167.—(1) Every person carrying on any business which involves handling or dealing with goods shall keep or cause to be kept within Malaŵi, in the English language, reasonable and proper records and accounts in indelible writing or in electronic data of all his transactions, to the satisfaction of the Commissioner General.

(2) Every such person shall, if so required at any time within a period of six (6) years after the date of the importation or purchase of any goods, produce any bills of lading, rail notes, invoices and all other documents and books containing any particulars regarding those goods, and shall allow such documents and books at all reasonable times within such period to be open for inspection by an officer in the course of his duty.”

Passed in Parliament this tenth day of October, two thousand and nineteen.

FIONA KALEMBA
Clerk of Parliament