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**Act**

**No. 21 of 2024**

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
19th May, 2024

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**An Act to provide for the status, well-being, safety and security of older persons through the promotion and protection of their rights; and to provide for connected and incidental matters**

ENACTED by the Parliament of Malawi as follows—

## PART I—PRELIMINARY

Short title and commencement

**1.** This Act may be cited as the Older Persons Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

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

"abuse" means any conduct contemplated in section 22

"beneficiary" means a recipient of an older person's grant under Part IV;

"care" means physical, psychological, social or material assistance to an older person, and includes services aimed at promoting the quality of life and general well-being of an older person;

"caregiver" means any person who provides care;

"community-based care and support services" means any programme provided for under section 25;

"Director" means the Director of Elderly Affairs appointed under section 64;

"frail older person" means an older person in need of continuous care due to a physical or mental condition which renders him incapable of caring for himself;

"health care provider" means a person registered under the Medical Practitioners and Dentists Act; Cap. 36:01

"home-based care" means care provided or services rendered at the place where a frail older person resides, other than at a residential facility, by a caregiver in order to maintain maximum level of comfort of a frail older person, including care towards a dignified death;

"inspector" means a person appointed or designated as an inspector under section 46;

"manager" means the person responsible for the day-to-day management of a residential facility;

"National Steering Committee" means the National Steering Committee on Older Persons established under section 49;

"older person" means a person who is sixty years of age or older;

"operator" means a person who operates a residential facility;

"rehabilitation" means a process by which an older person is enabled to reach and maintain optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore any such functions or compensate for the loss or absence of any such function, but does not include medical care;

"residential facility" means a building or other structure used primarily for the purposes of providing accommodation and providing continuous services to older persons;

"respite care" means a service offered specifically to a frail older person, and which is aimed at the provision of temporary care and relief;

"service" means any activity or programme designed to meet the needs of an older person;

"shelter" means any building or premises maintained or used for the reception, protection and temporary care of an older person in need of care and protection;

"social welfare officer" means a person registered as a social welfare officer under any written law and in the employ or service of government or an organization registered under the Non-Governmental Organizations Act; and Cap. 5:05

"Technical Sub-Committee" means the National Technical Sub-Committee on Older Persons established under section 56;

PART II—GENERAL PRINCIPLES

Objects of the Act

**3.** The objects of the Act are to—

(*a*) maintain and protect the rights of older persons;

(*b*) maintain and promote the status, well-being, safety and security of older persons;

(*c*) promote community-based care of older persons in order to ensure that older persons remain in their home within the community for as long as possible;

(*d*) regulate the registration, establishment and management of services for older persons;

(*e*) regulate the registration, establishment and management of residential facilities for older persons; and

(*f*) prevent, eliminate and punish the abuse of older persons.

Implementation of the Act

**4.**—(1) This Act shall be implemented in an integrated, co-ordinated and uniform manner, at national and local council levels, by all organs of State which render services to older persons.

(2) All organs of State shall take reasonable measures to the maximum extent of their available resources to achieve the realization of the objects of this Act.

(3) All organs of State shall co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to older persons to achieve the implementation of this Act in the manner contemplated in subsections (1) and (2).

General principles

**5.**—(1) All proceedings, actions or decisions in a matter concerning an older person shall—

(*a*) respect, protect, promote and fulfil the rights and the best interests of the older person;

(*b*) respect the inherent dignity of the older person;

(*c*) treat the older person fairly and equitably;

(*d*) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person;

(*e*) not discriminate against an older person on political grounds; and

(*f*) respect, protect, promote and fulfil the principles and rights set out in this Act.

(2) In any matter concerning an older person—

(*a*) an approach which is conducive to conciliation and problem-solving shall be followed; and

(*b*) delay in any action or decision to be taken shall be avoided as far as possible.

## PART III—ENABLING AND SUPPORTIVE ENVIRONMENT FOR OLDER PERSONS

Rights of older persons

**6.**—(1) An older person shall, at all times, enjoy the rights provided for under Chapter IV of the Constitution and, in particular, shall not unfairly be denied the right to—

(*a*) participate in community life in any position appropriate to interests and capabilities of the older person;

(*b*) participate in inter-generational programmes;

(*c*) establish and participate in structures and associations for older persons;

(*d*) participate in activities that enhance income-generating capacity of older persons;

(*e*) live in an environment catering for changing capacities of older persons; and

(*f*) access opportunities that promote optimal level of social, physical, mental and emotional well-being of older persons.

(2) An older person has the right, without discrimination on the basis of age, to an adequate standard of living, for himself or herself and his or her family, including—

(*a*) access to adequate food, water, clothing and housing; and

(*b*) the continuous improvement of living conditions.

(3) The Minister shall ensure equal access by older persons to —

(*a*) appropriate and affordable social services; and

(*b*) social support programmes.

(4) The Government shall provide appropriate health care services to older persons, including services designed to minimize and prevent the occurrence of communicable and non-communicable diseases, and aggravation of disabilities in old age.

(5) The Minister shall, in collaboration with the Minister responsible for health, take appropriate measures to ensure access for older persons to health services that are age and gender sensitive, and to health-related rehabilitation, and shall, in particular, prescribe measures to—

(a) formulate and implement a programme to enable older persons have access to free or affordable medical and

rehabilitation services in public hospitals and, where there is need for a referral to a private hospital, put mechanisms in place for the older person to access the medical and rehabilitation services;

(*b*) provide older persons with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in, the area of sexual and reproductive health and population-based public health programmes;

(*c*) develop national guidelines, minimum norms and standards for the provision of health care services to older persons;

(*d*) ensure that older persons have access to health care and rehabilitation services in any health establishment, and shall not be required to pay a higher fee for such services, on the basis of age;

(*e*) include geriatric studies in the curriculum of training institutions for health professionals to develop appropriate human resources to provide general and specialized services to older persons;

(*f*) prohibit discrimination against older persons in the provision of medical or health insurance and life insurance, where such insurance is permitted by law, which shall be provided in a fair and reasonable manner; and

(*g*) prevent discriminatory denial of health care or health services, food and fluids on the basis of age.

(6) A person who denies an older person any entitlement under this Act, including access to a medical insurance or life insurance, on the basis of age or medical condition, commits an offence and is, on conviction, liable to—

(*a*) in the case of a natural person, a fine of ten million Kwacha and to imprisonment for seven years; or

(*b*) in the case of a body corporate, a fine of one hundred million Kwacha.

Development of national standards and compliance

**7.**—(1) The Minister may, from time to time, by notice published in the *Gazette*, prescribe national standards for the acceptable levels of services that may be provided to older persons, and the terms under which services shall be monitored and evaluated.

(2) Any person who provides a service to an older person shall comply with the standards prescribed under subsection (1).

Guiding principles for provision of services

**8.** Every service for older persons shall be provided in an environment that—

(*a*) recognizes the social, cultural and economic contribution of older persons;

(*b*) promotes participation of older persons in decision-making processes;

(*c*) recognizes the multi-dimensional needs of older persons, and promotes inter-sectoral collaboration;

(*d*) ensures access to information by, education of and training of older persons;

(*e*) promotes the development and basic care of older persons in rural and urban areas;

(*f*) promotes the prevention of exploitation of older persons;

(*g*) promotes the respect and dignity of older persons;

(*h*) ensures that older persons receive priority in the provision of basic services;

(*i*) ensures rehabilitation and the provisioning of assistive devices to older persons; and

(*j*) ensures, as far as is practicable, that services and facilities are accessible to older persons.

Fiscal incentives for support services delivered by third parties

**9.**—(1) The Minister may —

(*a*) recommend to the Minister responsible for finance-

(i) the provision of fiscal incentives to service providers that provide social services to older persons; and

(ii) conditions for the provision of fiscal incentives, including accounting measures, compliance measures and norms and standard;

(*b*) for the purposes of paragraph (*a*), prioritize needs and services for older persons;

(*c*) in the prescribed manner, enter into contracts with service providers to ensure that the services prescribed under paragraph (a) are provided; and

(*d*) prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (*c*).

(2) The Minister shall cause to be opened and maintain a register of all assets bought under the fiscal incentives, and may prescribe conditions for the management of the assets.

## PART IV—OLDER PERSON'S GRANT

Provision of older person's grant

**10.**—(1) The Minister shall, in consultation with the Minister responsible for finance, out of the moneys appropriated by the National Assembly for that purpose, prescribe for a grant to be called the older person's grant (in this Act referred to as the "older person's grant") for eligible older persons.

(2) The older person's grant shall be provided to eligible older persons at monthly intervals, or at such intervals as the Minister may prescribe.

Eligibility for an older person's grant

**11.** An older person shall be eligible to an older person's grant, if the person—

(*a*) is a citizen of Malawi; and

(*b*) has attained the age of seventy years.

Identification and selection of beneficiaries for an older person's grant

**12.**—(1) The Director shall design the method of identifying and selecting beneficiaries for an older person's grant using community-based targeting approaches.

(2) The identification, selection and verification of beneficiaries shall be done within the community where the beneficiaries live.

(3) A person shall be registered as a beneficiary of the older person's grant in the area where he or she ordinarily resides.

(4) An eligible older person shall, in person present to the Director, or any other designated officer, sufficient and cogent proof of his or her eligibility, and may do so by producing—

(*a*) a national identification card; or

(*b*) proof of application for a national identification card.

(5) Where the Director, or other duly designated officer, is in doubt with the credibility of proof of citizenship or eligibility of an older person, he or she may seek written, verbal or visual testimony of the chief or a village headman from the area where the older person resides.

(6) Where an older person satisfies the eligibility and selection criteria for an older person's grant, the eligible older person shall be—

(*a*) enrolled in the older person's grant payroll by entering the particulars of that person as prescribed therein; and

(*b*) issued with an older person's grant recipient card in the prescribed form.

(7) The Director shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness of the older person's grant among the citizens of Malawi.

Payment of older persons grants

**13.**—(1) The Director shall, in consultation with local authorities, establish centres throughout every traditional authority area in Malawi as pay points where beneficiaries may receive their grant, and for this purpose the Director shall endeavour to establish the pay points at reasonable walking distances for older persons.

(2) A recipient of an older person's grant (in this Part otherwise referred to as the "beneficiary") shall have the right and the duty to-

(*a*) present himself or herself for receipt of the grant;

(*b*) verify with the Director, or its designated officers, the amount he or she is supposed to receive; and

(*c*) request that any error or omission with respect to his or her grant be corrected.

(3) The Director shall, on a monthly basis, or as otherwise prescribed, pay the beneficiaries of an older person's grant in such amounts as the Minister may, from time to time, determine.

(4) Where a beneficiary is absent during a pay parade for any reasons whatsoever, except where he or she is dead, the Director shall carry forward the grant to the next pay parade.

(5) Where a beneficiary is unable to physically present himself or herself at the pay point due to a medical condition, a disability or frailty, the Director may nominate an adult person who is related to the beneficiary, or a social worker, to receive an older person's grant, on behalf of the beneficiary, if the person so nominated satisfies prescribed conditions.

Discontinuation of payments to older persons absent from Malawi

**14.**—(1) Where, due to a medical, safety or family emergency, a beneficiary is likely to be absent from his or her area of residence, or from the Republic for a period exceeding ninety days, the Director shall suspend payment of the older person's grant until the beneficiary appears in person before the Director, and confirms his or her permanent return.

(2) A beneficiary shall not be entitled to claim arrears of an older person's grant for the period he or she was absent from his or her area of residence, or from the Republic.

(3) The Director shall permanently discontinue payment of the grant and de-register the beneficiary from the beneficiary payroll after receipt of information and proof of—

(*a*) death of a beneficiary; or

(*b*) permanent absence of a beneficiary in the Republic.

Recovery of older person's grant

**15.**—(1) Where the Director pays money to an older person under the belief that the older person is entitled thereto under this Act, but the older person was not entitled thereto, the amount of money so paid is an amount due and payable to the State by the older person or, if he or she is deceased, by his or her estate.

(2) The Director shall recover the amounts to which an older person was not entitled, as specified under subsection (l).

(3) The Director shall investigate all complaints of alleged fraudulent withholding of the full or partial benefit due to a beneficiary, and the holding of the investigation shall not affect the right of a beneficiary to receive the full value of the benefit from date of accrual.

Appeals

**16.**—(1) Where an older person is dissatisfied with a decision made by the Director with respect to a matter regulated by this Act, the older person or a person acting on his or her behalf may, within ninety days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.

(2) The Minister may, after considering the appeal and the reasons of the Director for the decision—

(*a*) confirm, vary or set aside that decision; or

(*b*) appoint an independent tribunal to consider the appeal in accordance with such conditions as the Minister may prescribe by notice published in the *Gazette*, and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision or make any other decision.

False representation

**17.**—(1) A person who, during identification, selection, verification or registration of beneficiaries for an older person's grant, furnishes information which he or she knows to be untrue or misleading in an material respect, or makes a representation which to his or her knowledge is false, in order that he or she, or another person may—

(*a*) obtain or retain the older person's grant to which the person is not entitled to under this Act; or

(*b*) obtain the older person's grant in excess of his or her entitlement under this Act,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

(2) A person who receives an older person's grant knowing that he or she is not entitled thereto, or is not entitled to the full amount which he or she is receiving, and fails to inform the Director thereof,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

(3) A beneficiary who knowingly fails to inform the Director of any material change of information shall be liable to an administrative penalty.

## PART V—PROTECTION FOR OLDER PERSONS

Older persons in need of care and protection

**18.**—(1) Any person who is involved with an older person in a professional capacity, and who on personal observation concludes that the older person is in need of care and protection, shall report his observations to the Director.

(2) Any person, other than a person referred to in subsection (1), who is of the opinion that an older person is in need of care and protection may report such opinion to a social welfare officer or the Director.

(3) The Director or the social welfare officer to whom a report has been made under subsection (1) or (2) shall investigate the matter.

(4) If the report is substantiated by the investigation, the Director or the social welfare officer concerned, as the case may be, may take any one or more of the following actions—

(*a*) facilitate the removal of the older person concerned to a hospital, in case of injury or illness, or to a shelter;

(*b*) report the matter to a police officer, and request the police officer to act in accordance with this Act;

(*c*) take any other steps as may be prescribed to ensure adequate provision for the basic needs and protection of the older person concerned; or

(*d*) if the older person concerned is the victim of an offence, assist the older person to lay a complaint before a police officer.

(5) For purposes of this section an older person who is in need of care and protection is one who—

(*a*) has his or her income, assets or old age grant taken against his or her wishes or who suffers any other economic abuse;

(*b*) has been removed from his or her property against his or her wishes or who has been unlawfully evicted from any property occupied by him or her;

(*c*) has been neglected or abandoned without any visible means of support;

(*d*) lives or works on the streets or begs for a living;

(*e*) abuses or is addicted to a narcotic or intoxicating substance, and is without any support or treatment for the substance abuse or addiction;

(*f*) lives in circumstances likely to cause or to be conducive to seduction, abduction or sexual exploitation;

(*g*) lives in or is exposed to circumstances which may harm that older person physically or mentally; or

(*h*) is in a state of physical, mental or social neglect.

Notification of abuse of older persons

**19.**—(1) Any person who suspects that an older person is or has been abused, or suffers from an abuse-related injury, shall immediately notify the Director, or a police officer, of his or her suspicion.

(2) A person is not liable for an offence in respect of any notification given in good faith under subsection (1).

(3) On receipt of a notification under subsection (1)—

(*a*) the Director or police officer, as the case may be, shall immediately investigate the matter and if the suspicion is substantiated by the investigation, section 18 (4)(*d*), with the necessary modifications, shall apply; and

(*b*) the police officer shall inform the Director of the alleged abuse or, if he or she is satisfied that it is in the best interests of the older person that the alleged offender is removed from the home or place where the older person resides, act accordingly.

(4) Any person who conceals information regarding abuse of an older person, or aids and abets the abuse of an older person, in contravention of this section commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

Written notice to alleged offender

**20.**—(1) A police officer to whom a complaint referred to in section 18 (4)(d) has been made and who is satisfied that it is in the best interests of the older person that the alleged offender is removed from the home or place where the older person resides, shall issue a written notice which—

(*a*) specifies the full names, residential address, occupation and status of the alleged offender;

(*b*) requests the alleged offender to leave the home or place where the older person resides and refrain from entering the home or place or having contact with the older person until the court hearing specified in paragraph (*c*);

(*c*) summons the alleged offender to appear at a magistrate's court having jurisdiction on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the older person resides:

Provided that the date so specified shall be the first court day after the day upon which the notice is issued; and

(*d*) contains a certificate under the hand of the police officer that he or she has handed the original copy of the written notice to the alleged offender, and that he or she has explained to the alleged offender the importance of the notice.

(2) The police officer shall forthwith forward a duplicate copy of the written notice to the clerk of the magistrate's court concerned.

(3) The production to the magistrate's court of the duplicate copy of the written notice referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender.

(4) A magistrate's court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice, and may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender—

(*a*) issue an order prohibiting the offender from entering the home or place where the older person resides or from having any contact with the older person, or both from entering the home or place and having contact with the older person, for a period of time as the court deems fit;

(*b*) order that the offender may enter the home or the place where the older person resides or have contact with the older person upon such conditions as would ensure that the best interests of the older person are served;

(*c*) order that the offender will be responsible for the maintenance of the family of the older person during the period specified under paragraph (*a*); or

(*d*) make such other order with regard to the matter as the court deems fit.

(5) A person who—

(*a*) has been issued with a written notice issued under subsection (1) and—

(i) refuses to leave the home or place where the older person resides; or

(ii) has contact with the older person in contravention of the written notice;

(*b*) contravenes or fails to comply with an order of the magistrate's court issued under subsection (4) or with any condition contained in the order,

commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

Procedure for bringing alleged offenders before court

**21.**—(1) If a social welfare officer or a health care provider submits or makes a written statement under oath or affirmation to a public prosecutor, and in such statement alleges that any person within the area of jurisdiction of the magistrate's court to which that public prosecutor is attached abuses an older person, that public prosecutor may, subject to subsection (2), request the clerk of that court to issue a summons informing such first-mentioned person of the allegations against him or her and calling upon him or her to appear, at a time and place specified in the summons, before a magistrate within that area.

(2) A public prosecutor shall not, under subsection (1), request a clerk of the court to issue summons, unless he or she has obtained from the social welfare officer or health care provider a report on the alleged abuse of the older person concerned.

(3) If, on the basis of a statement under oath or affirmation referred to in subsection (1) the magistrate has reason to suspect that a social welfare officer or health care provider will be prevented or prohibited from going into or entering upon the place where the older person concerned resides to make the necessary investigation for the purposes of a report referred to in subsection (2), or if such social welfare officer or health care provider has been prevented or prohibited from doing so, the magistrate may, on an application of the public prosecutor, issue a warrant authorizing the social welfare officer or health care provider to go into or enter upon that place to make such investigation.

(4) A magistrate may, in the warrant issued by him under subsection (3), authorize the social welfare officer or health care provider to take a police officer with him or her for the purposes of an investigation referred to in subsection (3).

Cap. 8:01

(5) The Criminal Procedure and Evidence Code applies, with the necessary changes, in relation to the form and manner of service of summonses in criminal cases in lower courts, the time to be allowed to a person summoned to appear, and the manner in which a person who has been summoned to appear may be dealt with if the person fails to appear or to remain in attendance, as required, in respect of summons issued under section.

(6) A person who—

(*a*) obstructs or hinders a social welfare officer or a health care provider in the performance of his functions under this section; or

(*b*) refuses to furnish to a social welfare officer or a health care provider any information in connexion with the alleged abuse of an older person at his disposal which the officer requires for the purposes of an investigation referred to in subsection (3),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

Enquiry into alleged abuse of older persons

**22.**—(1) Subject to this section, a magistrate before whom a person is brought under section 21 shall enquire into the correctness or otherwise of the allegations contained in the summons.

(2) A public prosecutor or any other person designated by the magistrate for the purpose shall appear at the enquiry, and may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.

(3) The person against whom the allegations is made may give evidence, and he or she, or his or her legal representative, may cross-examine any witnesses called under subsection (2), and may call witnesses and shall be given the opportunity to advance reasons why an order under subsection (9) should not be issued.

(4) Subject to anything to the contrary contained in this Act, the law relating to criminal trials in magistrates' courts applies with the necessary changes in respect of subpoenas, the calling and examination of witnesses for the purposes of or at the enquiry, the taking of evidence and the production of documents and other articles thereat, and the payment of allowances to witnesses.

(5) The magistrate holding the enquiry may determine whether or not the proceedings shall be conducted in open court or in camera.

Cap. 8:01

(6) The Criminal Procedure and Evidence Code, in so far as it relates to the conduct of a criminal trial in the absence of an accused, applies with the necessary changes in respect of an enquiry held under this section.

(7) The report referred to in section 21 (2) shall be submitted to the magistrate holding the enquiry, who may direct the district health officer, a psychiatrist or a clinical psychologist to examine the older person concerned and to furnish the magistrate with a report on the findings of the examination.

(8) The contents of a report submitted or furnished in accordance with subsection (7) shall be disclosed to the person against whom

the allegations were made, and if he or she so desires, he or she, or his or he legal representative, shall be given an opportunity to cross-examine the person who made the report, in relation to any matter arising out of the report, and to disprove any allegation made therein.

(9) If, after consideration of the evidence and of any report submitted or furnished under subsection (7), it appears to the magistrate that any allegation in the summons is correct, the magistrate may—

(*a*) authorize the person concerned to accommodate or care for the older person concerned under such conditions as the magistrate may impose; or

(*b*) prohibit that person from accommodating or caring for any older person for such period, but not exceeding ten years, as may be determined by the magistrate.

(10) Any person who contravenes or fails to comply with any condition imposed under subsection (9)(a) or who contravenes or fails to comply with subsection (9)(b) commits an offence and is, upon conviction, liable, to a fine of ten million Kwacha and to imprisonment for five years.

Prohibition of abuse of older persons and special measures to combat abuse of older persons

**23.**—(1) Any conduct or lack of appropriate action, occurring within any relationship where there is dependence or an expectation of trust, which causes harm, injury or distress, or is likely to cause harm, injury or distress, to an older person constitutes abuse of an older person.

(2) For the purposes of subsection (1), "abuse" includes physical abuse, sexual abuse, psychological abuse and economic abuse and—

(*a*) "physical abuse" means any act or threat of physical violence towards an older person;

(*b*) "sexual abuse" means any conduct that violates the sexual integrity of an older person;

(*c*) "psychological abuse" means any pattern of degrading or humiliating conduct towards an older person, and includes—

(i) repeated insults, ridicule or name calling;

(ii) repeated threats to cause emotional pain; and

(iii) repeated invasion of the privacy, liberty, integrity or security of an older person; and

(*d*) "economic abuse" means—

(i) the deprivation of economic and financial resources to which an older person is entitled under any written law;

(ii) the unreasonable deprivation of economic and financial resources which the older person requires out of necessity; and

(iii) the disposal of household effects or other property that belongs to the older person without the consent of the older person.

(4) If a court, after having convicted a person of any offence, finds that the convicted person has abused an older person in the commission of the offence, that finding shall be regarded as an aggravating circumstance for sentencing purposes.

(5) Any person who abuses an older person commits an offence and is, upon conviction, liable to a fine of fifteen million Kwacha, and to imprisonment for seven years.

Register of abuse of older persons

**24.**—(1) The Director shall, in the prescribed manner, keep a register of persons convicted of the abuse of an older person or of any offence provided under section 23 (4).

(2) A person whose name appears in the register contemplated in subsection (1) shall not, in any way—

(*a*) operate or be employed at any residential facility;

(*b*) provide any community-based care and support service to an older person.

## Part VI—Community-Based Care and Support Services

Rights of older persons receiving community-based care and support services

**25.** An older person receiving community-based care and support services has, in addition to the rights provided for under section 6, the right to—

(*a*) reside at home as long as possible;

(*b*) pursue opportunities for the full development of his or her potential; and

(*c*) benefit from family and community care and protection in accordance with the system of cultural values of society.

Community-based programmes for older persons

**26.**—(1) The Minister may, in collaboration with any other relevant Minister—

(*a*) develop community-based programmes regarding—

(i) prevention and promotion, which shall ensure the independent living of older persons in the community in which the older persons reside; and

(ii) home-based care, which shall ensure that frail older persons receive maximum care within the community through a comprehensive range of integrated services; and

(*b*) determine how any person who runs a programme under paragraph (a) may be supported, either financially or otherwise.

(2) The programmes referred to in subsection (1) shall be aimed at—

(*a*) achieving economic empowerment of older persons;

(*b*) establishing recreational opportunities for older persons;

(*c*) providing information, education and counselling services, including information, education and counselling services relating to HIV and AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;

(*d*) providing spiritual, cultural, medical, civic and social services;

(*e*) providing nutritionally balanced meals to needy older persons;

(*f*) promoting skills and capacity of older persons to sustain their livelihoods;

(*g*) providing professional services, including care and rehabilitation, to ensure independent living of older persons;

(*h*) providing appropriate services for vulnerable and qualifying older persons;

(*i*) utilizing and managing existing facilities for older persons as multi-purpose community centres;

(*j*) integrating community care and development systems for older persons; and

(*k*) implementing inter-generational programmes.

(3) All home-based care programmes for frail older persons within the community may include—

(*a*) the provision of hygienic and physical care of older persons;

(*b*) the provision of professional and lay support for the care of older persons within the home;

(*c*) rehabilitation programmes that include provision of assisted devices;

(*d*) the provision of respite care;

(*e*) information, education and counselling for family members, caregivers and the community regarding ageing and associated conditions; and

(*f*) the provision of free health care to frail older persons and to other older persons, as may be determined by the Minister.

Community-based care and support services to be registered and licensed

**27.**—(1) A person shall not provide community-based care and support services, unless the service is registered and licensed in accordance with section 28.

(2) A person who provides community-based care or support services without being registered and licensed in accordance with section 35 commits an offence, and is liable, on conviction, to a fine of ten million Kwacha and to imprisonment for five years.

Registration and licensing of community-based care and support services

**28.**—(1) A person who intends to provide community-based care and support services shall apply to the Director for the registration and a licence in the prescribed manner.

(2) The Director may prescribe conditions for the registration and licensing of community-based care and support services, including conditions regarding application, approval, temporary registration or licensing, withdrawal and termination of registration or the licensing.

(3) A person who has been registered in accordance with this section may apply to the Director for a licence to provide community-based care and support services in accordance with the provisions of Part VIII.

(4) The licence issued by the Director shall not be transferable to another person.

(5) If the service provider, for any reason, intends to stop providing the service, the service provider shall, prior to stopping the service in question—

(*a*) in writing, notify the Director of the intention and the implications of such stoppage for the affected older persons;

(*b*) inform the older persons affected of the intended stoppage of the service; and

(*c*) take reasonable steps to ensure that the older persons benefiting from the service are not adversely affected or put at risk and, where appropriate, are referred to a person providing similar services.

Persons providing home-based care

**29.**—(1) Every service provider for home-based care for older persons shall, prior to provision of services, ensure that caregivers receive the training prescribed by the Director.

(2) Sub-section (1) does not apply to social welfare officers and health care providers referred to in subsection (3).

(3) All social welfare officers and health care providers in the public service providing care to older persons under subsection (1) shall be registered with the Director.

(4) The Director shall keep a register of all caregivers providing home-based care for older persons.

(5) The Director shall prescribe a code of conduct for the caregivers.

(6) Any person who contravenes or fails to comply with this section commits an offence and shall, on conviction, be liable to a fine of five million Kwacha, and to imprisonment for two years.

Monitoring and evaluation of community-based care and support services

**30.**—(1) A social welfare officer in the public service may, at any time, and any social welfare officer or person designated by the Director shall, if requested to do so by the Director—

(*a*) visit and monitor any service provider for home-based care and support services for older persons in order to ensure compliance with this Act;

(*b*) interview any older person cared for or accommodated by service provider for home-based care and support services either with or without the assistance of a health care provider enquire into the well-being of any older person;

(*c*) direct any person who has in his possession or custody any book or document relating to the service provider for home-based care and support services, to submit the book or document to him for inspection;

(*d*) submit a report to the Director on the outcome of the inspection; and

(*e*) provide the service provider for home-based care and support services with a report on the findings of the inspection.

(2) A social welfare officer, or designated person exercising any power under subsection (1), shall, at the request of service provider for home-based care and support services in question or the person who has control over the place in question, as the case may be, produce proof of identity issued by the Director stating that he is a social welfare officer or designated person.

(3) A social welfare officer or designated person may issue a compliance notice to the service provider for home-based care and support services if a provision of this Act has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this Act has been complied with and the social welfare officer or designated person has issued a compliance certificate in respect of that notice.

(5) A person who—

(*a*) obstructs or hinders a social welfare officer or designated person in the performance of his functions in terms of subsection (1);

(*b*) refuses to give a social welfare officer or designated person access to an older person cared for or accommodated in a residential facility referred to in subsection (1); or

(*c*) refuses or fails to comply with a direction in terms of subsection (1)(*d*),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

## PART VII—RESIDENTIAL FACILITIES

Rights of older persons in residential facilities

**31.** An older person residing in a residential facility shall have, in addition to the rights under Chapter IV of the Constitution or any other written law, the right to—

(*a*) appoint a representative to act on his or her behalf;

(*b*) have reasonable access to assistance and visitation;

(*c*) keep and use personal possessions;

(*d*) have access to basic care;

(*e*) be informed about the financial status of the residential facility and changes in management;

(*f*) participate in social, religious and community activities of his choice;

(*g*) privacy;

(*h*) a personal physician, if he or she can afford it; and

(*i*) be given a notice of at least thirty days of a proposed transfer or discharge.

Services at residential facilities

**32.** The following services may be provided at residential facilities—

(*a*) continuous care and support services to frail older persons and older persons who need special attention;

(*b*) care and supervision services to older persons who are suffering from dementia and related diseases;

(*c*) rehabilitation services;

(*d*) public education on issues of ageing, including dementia;

(*e*) counselling services to residents and family members who need these services;

(*f*) implementation and monitoring of outreach programmes;

(*g*) provision of beds for the temporary accommodation of older persons who are at risk;

(*h*) respite care services;

(*i*) training of volunteer caregivers to deal with frail older persons; and

(*j*) sport and recreational activities.

Registration and licensing of residential facilities

**33.**—(1) A person shall not operate a residential facility, unless the facility is registered and licensed under this Act.

(2) A person who wishes to operate a residential facility shall, in the prescribed manner, apply to the Director for registration thereof.

(3) The Director may refuse an application under subsection (3), or grant the application, subject to such conditions as the Director may determine, and if the application is granted, the Director may direct that a certificate of registration, in the prescribed form and specifying conditions attached thereto, if any, be issued to the applicant.

(4) The Director may, at any time after giving a notice of one month of its intention to do so, and after consideration of any representations received by the Director during that month, amend or cancel registration.

(5) An amendment or cancellation of a certificate of registration shall be effected by notice to the holder thereof, and takes effect on a date specified in the notice:

Provided that the date specified in the notice in an amendment or cancellation of a certificate of registration shall not be earlier than three months for permanent registration and one month for temporary registration after the date of the notice, unless the Director and the holder of the certificate of registration certificate agree otherwise.

(6) A person to whom a certificate of registration has been issued under subsection (3) shall not transfer it to any other person.

(7) Where the registration of a residential facility has been cancelled in accordance with subsection (4), or if the operator wishes to close down the facility for any reason, the operator shall take reasonable steps to ensure that, on the closing down of the facility, the older persons concerned are accommodated in another registered residential facility or with persons who, in the opinion of a social welfare officer, are fit and proper persons to accommodate the older person or older persons.

(8) A person who has been registered under subsection (4) may apply for a licence to operate a residential facility in accordance with the provisions of Part VIII.

(9) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

(10) This section does not apply to a private residence in which an older person is looked after by a family member.

Compliance with conditions for registration of residential facilities

**34.**—(1) If there is reason to believe that any of the conditions prescribed under section 33 (3) have not been complied with by the operator, the Director may order specific measures to be adopted to facilitate compliance with those conditions.

(2) The operator shall, at all reasonable times, report to the Minister any circumstances which may result in his inability to comply fully with any condition prescribed under section 33 (3).

(3) Where the registration of a residential facility has been cancelled in accordance with section 33 (5), or if the operator wishes to close down that residential facility, the operator shall—

(*a*) prior to any decision to close down that residential facility, consult with the Director on the matter;

(*b*) furnish the Director with a full report on the accommodation of the older persons concerned required under section 33 (7); and

(*c*) hand over to the Director all assets bought with Government funds.

(4) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for five years.

Establishment of residents' committees for residential facilities

**35.**—(1) If more than ten older persons reside in a residential facility, other than a shelter, the residents shall establish a residents' committee which shall represent the interests of the residents at the residential facility.

(2) The Director shall prescribe—

(*a*) the composition of a residents' committee established under subsection (l), which shall be reflective of the profile of residents, and shall include representatives of the residents and members of staff of the residential facility and members of the public;

(*b*) the election, appointment, qualifications, terms of office and grounds for removal from office of the members of a residents' committee and the filling of vacancies on such committee; and

(*c*) the number of, and procedure at, meetings of a residents' committee.

(3) A residents' committee established under subsection (1) shall ensure that the manager of the residential facility—

(*a*) facilitates interaction between the residents of the residential facility and their families, the public in general and the committee;

(*b*) provides quality service to the residents of the residential facility;

(*c*) provides opportunities for the training of the staff of the residential facility;

(*d*) applies principles of sound financial management, and submits quarterly financial reports to the residents and staff of the residential facility;

(*e*) monitors activities at the residential facility in order to deal speedily with any incidents of abuse of the residents of the residential facility, and takes steps to report such incidents to the Director and any other appropriate authority;

(*f*) consults the residents' committee in the appointment of the residential staff of the residential facility;

(*g*) establishes complaints procedures for the residents and staff of the residential facility and persons who wish to lodge a complaint on behalf of any such resident; and

(*h*) does everything necessary or expedient for the effective functioning of the residential facility.

Admission to residential facilities

**36.**—(1) A person shall not, directly or indirectly, unfairly discriminate against an older person applying for admission to a residential facility on the grounds specified in section 20 of the Constitution.

(2) Where an older person is refused admission to a residential facility, the manager of that residential facility shall, on the request of that person, give reasons in writing for the refusal to that person.

(3) An older person shall not be admitted to a residential facility without his consent, unless his or her mental condition renders him or her incapable of giving the consent, in which case a person authorized to give the consent under any written law or pursuant to a court order may give the required consent,

(4) In the absence of a person envisaged under—

(*a*) subsection (3), the required consent may be given by the spouse or partner of the older person concerned or, in the absence of the spouse or partner, an adult child or sibling of the older person, in the specific order as listed; or

(*b*) paragraph (*a*), the required consent may be given by the Director.

(5) The consent specified under subsections (3) and (4) shall only be given after a medical practitioner registered under the Medical Practitioners and Dentists Act has certified that any delay in the admission of the older person to the residential facility may result in the death or irreversible damage to the health of the older person. Cap. 36:01

(6) The operator of a residential facility shall take all reasonable steps to obtain the older person's consent.

(7) Notwithstanding subsection (3), an older person who is capable of understanding shall be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent in terms of that subsection.

(8) The operator of a residential facility into which an older person is admitted as a result of consent given in accordance subsection (4)(b) shall notify the Director of the admission within forty-eight hours after such admission.

(9) On receipt of the notice referred to in subsection (8), the Director shall constitute multidisciplinary committee as may be prescribed in order to assess and to confirm or reject the admission contemplated in that subsection.

(10) Any person who contravenes this section, or of a condition imposed thereunder, commits an offence and is, upon conviction, liable to a fine of ten million Kwacha, and to imprisonment for five years.

Monitoring of registered residential facilities

**37.**—(1) A social welfare officer in the public service may at any time, and any social welfare officer or person designated by the Director shall, if requested to do so by the Director—

(*a*) visit and monitor a residential facility in order to ensure compliance with this Act;

(*b*) interview any older person cared for or accommodated in the residential facility;

(*c*) either with or without the assistance of a health care provider enquire into the well-being of any older person;

(*d*) direct any person who has in his possession or custody any book or document relating to the residential facility, to submit the book or document to him for inspection;

(*e*) submit a report to the Director on the outcome of the inspection; and

(*f*) provide the operator with a report on the findings of the inspection.

(2) A social welfare officer or designated person exercising any power under subsection (1) shall, at the request of the manager of the residential facility in question, or the person who has control over the place in question, as the case may be, produce proof of identity issued by the Director stating that he or she is a social welfare officer, or designated person.

(3) A social welfare officer or designated person may issue a compliance notice to the operator concerned if a provision of this Act has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this Act has been complied with and the social welfare officer or designated person has issued a compliance certificate in respect of that notice.

(5) Any person who—

(*a*) obstructs or hinders a social welfare officer or designated person in the performance of his functions under subsection (1);

(*b*) refuses to give a social welfare officer or designated person access to an older person cared for or accommodated in a residential facility referred to in subsection (1); or

(*c*) refuses or fails to comply with a direction under subsection (1)(*d*),

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

Reports by operators of residential facilities

**38.**—(1) The operator shall, within sixty days after the end of the financial year of that residential facility, submit to the Director, a report covering that financial year in respect of—

(*a*) compliance with the prescribed service standards and the prescribed measures to prevent and combat abuse of older persons; and

(*b*) the provisions of the prescribed service level agreements concluded during that financial year.

(2) If the operator fails to submit a report referred to in subsection (1), the Director may—

(*a*) give notice to that operator that, if such report is not submitted within ninety days after the date of that notice, the registration of the residential facility may be withdrawn; and

(*b*) if the report is not submitted within ninety days after the date of the notice given under paragraph (*a*), withdraw the registration of the residential facility after giving a notice of one month of the intention to do so.

## PART VIII—LICENCES

Requirement for a licence

**39.**—(1) A person who is not licensed or permitted under this Act or any other written law, shall not operate a residential facility or offer community based care and support services to older persons.

(2) A person who engages in any act in contravention of subsection (1) commits an offence, and is, upon conviction, liable to a fine of ten million Kwacha, and to imprisonment for five years.

Application for a licence

**40.**—(1) An application for the issue of a licence shall be in the prescribed form, and shall accompanied by—

(*a*) a certificate of registration issued under section 33;

(*b*) proof of payment of the prescribed fee;

(*c*) a plan with the full details of activities for which the licence is being sought and specification of the location where the applicant intends to operate;

(*d*) where appropriate, proof of incorporation or registration under a written law;

(*e*) a security clearance certificate from the Malaŵi Police Service of the applicant and each senior officer and director of the applicant;

(*f*) an undertaking to comply with the laws of Malaŵi;

(*g*) a declaration, signed and dated by the applicant that he or she is conversant with the provisions of this Act; and

(*h*) such other details as the Director may prescribe by notice published in the *Gazette*.

(2) The application shall further contain a detailed description of the method that the applicant proposes to use for keeping records, which shall—

(*a*) ensure compliance with the record keeping requirements under this Act; and

(*b*) permit the Director to audit the activities of the applicant once licensed in terms of this Act.

(3) An application under this section shall be signed by the applicant or, in the case of a body corporate, one of its officers, directors or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of their knowledge.

Grant or refusal of application for licence

**41.**—(1) Where, after consideration of an application made under section 40, the Director is—

(*a*) satisfied that the application meets the requirements of this Act, the Director shall grant the licence to the applicant; and

(*b*) not satisfied that the application meets the requirements of this Act, the Director shall, within ninety days, give a written notification to the applicant why the application has not been granted.

(2) Where the Director refuses the application in accordance with subsection (1) (b), the applicant may re-submit the application to the Director after rectifying the shortfalls or mischief in the application cited by the Director in his written notification.

(3) The Director may, after consideration of the application under section 40—

(*a*) grant a licence, subject to such conditions as the Director may determine; or

(*b*) grant a temporary licence to operate the residential facility or offer community based care and support services for such period as the Director may determine, and direct that a temporary licence specifying those conditions be issued to the applicant in the prescribed form for that period, and after expiration of the said period, or after notice by the applicant in the prescribed manner, that the said conditions have been complied with, whichever occurs first, reconsider the application.

(4) A temporary licence issued under subsection (3)(b) may not be extended for more than twelve months under the same conditions.

(5) Where the grounds for refusal to grant a licence under this section are not in accordance with the principles of fairness or natural justice, the applicant for a licence is entitled to a review of the decision of the Director by a competent court of law.

Particulars of licence

**42.**—(1) Every licence issued under this Act shall—

(*a*) be in the prescribed form, and bear a licence number;

(*b*) bear the name and address of the licensee;

(*c*) bear the physical address of the site or sites and, if possible,

of each building location if located in different locations but under the same licence where authorized activities may be conducted;

(*d*) be valid of for period specified in subsection (3);

(*e*) indicate the effective and expiry date of the licence;

(*f*) be issued subject to payment of a prescribed fee, and any other conditions as the Director to prescribe;

(*g*) bear any conditions which the licensee is required to meet;

(*h*) list the authorized activities; and

(*i*) be published in the *Gazette*.

(2) Upon being granted the licence, the licensee shall—

(*a*) be entitled to engage in the activities for which the licence has been issued;

(*b*) cause a licence to be conspicuously displayed, at all times, on the site to which the licence relates; and

(*c*) comply with all the conditions stipulated on the licence.

(3) A licence issued under this Act shall be valid for a period of twelve months after which it may be renewed for further period of twelve months, upon the payment of a prescribed fee.

(4) A person intending to renew a licence under subsection (1) shall apply to the Director for the renewal of the licence, at least three months prior to the expiry of the licence.

(5) A person holding a valid licence under this Act may only transfer the licence to another person with the approval, in writing, of the Director.

(6) The Director may prescribe conditions under which a licence issued under this Act may be transferred to another person.

Annual returns

**43.**—(1) A licensee shall submit to the Director, on 30th June every year, records of all transactions which are required to be kept under this Act.

(2) The Director shall prescribe the manner in which records may be submitted.

(3) A licensee who fails to submit to the Director the records, without a reasonable justification for the default, by the period specified under this section commits an offence and shall be liable to a prescribed daily penalty.

(4) The Director may suspend a licence where the licensee fails to submit the records within the thirty days referred to in subsection (3), on such conditions as the Director deems fit.

(5) The Director may reinstate the licence suspended under subsection (4) on such conditions as he deems fit upon being satisfied that the licensee has complied with the requirement.

(6) Where the licensee fails to rectify the reasons for suspension or fails to comply with the conditions of reinstatement referred to under this section within sixty days of the date of notification, the Director shall cancel the licence.

Cancellation of licences

**44.**—(1) The Director shall cancel a licence issued under this Act, where—

(*a*) the Director has reasonable grounds to believe that the licence was issued on the basis of false or misleading information or false or falsified documents submitted with the application;

(*b*) the licensee has, since the issuance of the licence, contravened this Act or its regulations or a condition of his licence, and has failed to remedy the contravention within a specified period;

(*c*) the licensee is no longer eligible to be registered as required under section 28 or 33, as the case may be; or

(*d*) the information received from any competent national or international agency or under the mutual assistance corporation agreements with other national or international law enforcement partners raises reasonable grounds to believe that the licensee has been involved in illegal activities.

Cessation of activities

**45.**—(1) A licensee who intends to cease conducting activities authorized under a licence, whether before or on the expiry of their licence, shall submit to the Director a written notice to that effect, at least thirty days before ceasing those activities.

(2) The Director shall prescribe the manner and nature of information which a licence holder shall submit on cessation of activities.

## PART IX—INSPECTION

Inspectors

**46.**—(1) The Director may appoint or designate inspectors on terms and conditions determined by the Director, to check and verify compliance with this Act, and in this regard the Director may designate any person employed by the Director or appointed under any written law, as an inspector.

(2) The Director shall cause to be published in the *Gazette* the list of persons appointed or designated as inspectors.

(3) The Director shall provide an inspector with an identification card which shall be prima facie evidence of his appointment or designation as an inspector.

(4) An inspector shall, in the performance of his or her functions under this Act—

(*a*) bear an identification card referred to under subsection (3); and

(*b*) on request, show the identification card to any person.

Powers of inspectors

**47.**—(1) An inspector may, for the purpose of enforcing compliance of this Act, at any reasonable time, without prior notice, enter into any premises that the inspector has reasonable grounds to believe that it is being used by a person licensed, or ought to be licensed, under this Act to commit an offence or act contrary to the provisions of this Act, and the Director may—

(*a*) search the premises;

(*b*) search any person on the premises, if there are reasonable grounds to believe that the person has possession of an article or item that has a bearing on the investigation, except that the person shall not be searched by a person of the opposite sex;

(*c*) take extracts from, or any copies from any book, document or record that is on the premises and that has a bearing on the investigation;

(*d*) demand the production of relevant certificates and inspect the same; and

(*e*) make any such inquiries as may be necessary in order to ascertain whether this Act, or any other written law on which there is an investigation, is being complied with.

(2) An inspector shall submit to the Director, a written report containing all relevant matters relating to an inspection for the information or action by the Director, as the case may be.

Obstruction of inspectors, etc.;

**48.** A person who—

(*a*) delays or obstructs an inspector in the performance of the inspector's duties and functions under this Act;

(*b*) refuses to give an inspector reasonable assistance as he may require for the purpose of exercising the inspector's functions; or

(*c*) gives an inspector false or misleading information in response to an inquiry made by the inspector,

commits an offence and is, upon conviction, liable to a fine of five million Kwacha and to imprisonment for two years.

PART X—NATIONAL STEERING COMMITTEE ON OLDER PERSONS AND NATIONAL TECHNICAL SUB-COMMITTEE ON OLDER PERSONS

Establishment and composition of the National Steering Committee on Older Persons

**49.**—(1) There is hereby established a national committee to be known as the National Steering Committee on Older Persons (in this Act referred to as the "National Steering Committee").

(2) The National Steering Committee shall consist of—

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

(i) the Principal Secretary responsible for Elderly Affairs;

(ii) the Principal Secretary responsible for Justice;

(iii) the Secretary to the Treasury;

(iv) the Principal Secretary responsible for Local Government;

(v) the Principal Secretary responsible Health;

(vi) the Principal Secretary responsible for Agriculture;

(vii) the Inspector General of Police;

(viii) the Commissioner of Disaster Preparedness and Management;

(ix) the Director General of the National Planning Commission; and

(x) the Executive Secretary of the Human Rights Commission;

(*b*) the following members appointed by the Minister—

(i) the Executive Director of an association of older persons;

(ii) one person representing civil society operating in the elderly persons sector;

(iii) two eminent older persons;

(iv) one person representing Traditional Leaders; and

(v) two persons representing religious groups.

(3) A representative of an *ex-officio* member referred to in subsection (2) (*a*) shall be designated by, or on behalf of, the *ex-officio* member by notice in writing to the National Steering Committee to attend the meetings thereof, and upon such designation the *ex-officio* member shall not himself or herself attend to the business of the Committee in person unless the designation is rescinded.

(4) The Minister shall, in making appointments under subsection (2) (*b*)—

(*a*) take into account the provisions of the Gender Equality Act; and Cap. 25:06

(*b*) have regard to the need for continuity in the membership of the National Steering Committee so that at least two members of the immediate past shall be retained.

(5) A member of the National Steering Committee, other than an *ex-officio* member, shall not, by virtue of the appointment, be deemed to be an officer in the public service.

(6) The Minister shall cause to be published, in the *Gazette*, names of all members of the National Steering Committee, as first constituted, and every subsequent change in the membership.

Tenure of office and vacancies

**50.**—(1) A member of the National Steering Committee appointed under section 49 (2) (*b*) shall serve for a term of three years from the date of appointment and shall be eligible for re-appointment at the expiry of that period for another term of three years.

(2) The office of a member of the National Steering Committee appointed under section 49 (2) (*b*) shall become vacant—

(*a*) on the expiry of the term of office of the member;

(*b*) upon the member being adjudged bankrupt;

(*c*) upon the member being sentenced to any term of imprisonment for an offence, without the option of paying a fine, against any written law;

(*d*) if the member is absent, without valid reason, from three consecutive meetings of the Committee of which the member has had notice;

(*e*) upon the member becoming mentally or physically ill, where upon a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Committee;

(*f*) if the member resigns from office by giving one month's notice in writing to the Minister;

(*g*) in the case of a member appointed under paragraph (ii) or (iii), if the member is no longer able to represent the relevant sector; and

(*h*) upon the death of the member.

(3) A vacancy in the membership of the National Steering Committee shall be filled by the appointment of a new member by the Minister in accordance with the criteria set out in section 49 (2)(*b*).

(4) A person appointed to fill a vacancy under subsection (3) shall serve for the remainder of the term, but the Minister shall not appoint a person to fill the vacancy where the remainder of the term is a period of less than six months.

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

Co-opted persons

**51.** The National Steering Committee may, in its discretion, at any time and for any period, co-opt any person to be a member of the Committee, and such member shall attend any meeting of the Committee and take part in the deliberations thereof, but shall not be eligible to vote.

Chairperson and Vice-Chairperson of the National Steering Committee

**52.**—(1) The Principal Secretary responsible for Gender, Community Development and Social Welfare shall be the Chairperson of the National Steering Committee.

(2) The members of the National Steering Committee shall, at their first meeting, elect one of their number to be Vice-Chairperson who, subject to subsection (3), shall hold office for the duration of his or her tenure of office.

(3) The office of the Vice-Chairperson shall become vacant if—

(*a*) the holder resigns from office by giving notice in writing to the Chairperson;

(*b*) the holder of the office ceases to be a member of the National Steering Committee; and

(*c*) the Committee so decides by simple majority or the Minister so directs.

(4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his or her office, the Vice-Chairperson shall discharge the functions of the Chairperson.

Functions of the National Steering Committee

**53.**—(1) The National Steering Committee shall—

(*a*) advise the Government on all aspects of ageing and the welfare of older persons, either on its own initiative or upon the request of the Minister, and in particular on—

(i) the measures to promote the health, wellbeing and social inclusion of older persons;

(ii) the implementation of the recommendations contained in the national policy on ageing;

(iii) any action, based on research required to plan and develop services for older people;

(iv) the means of meeting the needs of the most vulnerable older persons;

(v) the methods of ensuring co-ordination between the public, private and community sectors at the national and the local level, in the planning and provision of services for older persons; and

(vi) the mobilization of resources for investment in programmes and services for the empowerment of older persons; and

(vii) the allocation of financial resources for elderly services;

(*b*) provide advice and guidance in the development and implementation of national policies and strategies designed to produce health and social gain for older persons;

(*c*) promote—

(i) the autonomy of older persons by supporting international conventions, and protocols on the rights of older persons;

(ii) the economic and financial security of older persons; and

(iii) multi-sectoral collaboration and co-ordination in the planning, provision and evaluation of programmes and services for older persons;

(*d*) regulate and monitor the activities of organizations providing services to older persons to ensure transparency and adherence to regional and national policies on ageing;

(*e*) review and approve policies, guidelines, regulations and any other programme implementation documents pertaining to older persons programmes;

(*f*) inspect any institutions and facility registered under this Act or purporting to pursue any activities related to this Act or its objectives;

(*g*) provide oversight functions in the administration of grants for older persons;

(*h*) recommend to the Minister measures necessary for ensuring the inclusion of older persons in all aspects of the design and implementation of social protection programmes in Malawi;

(*i*) oversee the implementation of the provisions of this Act and other elderly related laws, policies and plans; and

(*j*) conduct inquiries, including public inquiries, into any matter relating to the dignity, welfare, care and protection of older persons.

(2) The National Steering Committee shall, in the performance of its functions, consult and collaborate with Government institutions, private sector entities and civil society organizations.

Powers of the National Steering Committee

**54.** The National Steering Committee shall, in the discharge of its functions, have power to—

(*a*) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organization of conferences, workshops or meetings;

(*b*) receive donations of funds, materials and technical assistance for the furtherance of its work;

(*c*) carry out consultations regarding any matter under its consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(*d*) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

Meetings of the Steering National Committee

**55.**—(1) The National Steering Committee shall meet for the transaction of its business once in every three months, at such places and times as the Chairperson may determine.

(2) The Chairperson shall convene ordinary meetings of the National Steering Committee by giving the members not less than seven days' written notice.

(3) The Chairperson may, on his or her own motion and at any time, convene an extraordinary meeting of the National Steering Committee by giving the members not less than twenty-four hours' written notice.

(4) The Chairperson shall convene an extraordinary meeting of the National Steering Committee within three days of receipt of a request in writing signed by not less than eight members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the National Steering Committee shall be constituted by ten members.

(6) The Chairperson or, in the absence of the chairperson, the Vice-Chairperson shall preside over a meeting of the National Steering Committee and, in the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the National Steering Committee on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to a deliberative vote.

(8) A member of the National Steering Committee, other than an *ex-officio* member, shall attend meetings of the National Committee in person.

(9) The National Steering Committee may, where necessary and taking into account the nature of the matter to be deliberated, invite any person to attend its meeting and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall have no right to vote.

(10) The National Steering Committee may make rules to regulate its proceedings and business or the proceedings and business of the Technical Sub-Committee and other sub-committees of National Committee.

(11) The Commissioner shall be secretary of the National Steering Committee and shall record and keep minutes of meetings of the National Steering Committee and the minutes shall be confirmed at the subsequent meeting.

(12) The Director or other officer as the Director may designate, may attend meetings of the National Steering Committee and the Technical Sub-Committee, and of any of its committees, and may address the meetings, but shall not vote on any matter.

(13) Where, in any meeting, the deliberations of the National Steering Committee and the Technical Sub-Committee, or any of its committee concerns the Director or any officer designated to attend the meeting, the Director or the designated officer, as the case may be, may excluded from the meeting.

Establishment and membership of the National Technical Sub-Committee on Older Persons

**56.**—(1) There shall be a National Technical Sub-Committee on Older Persons (in this Act referred to as the "Technical Sub-Committee") which shall be the main technical forum on technical direction and recommendations on programme implementation.

(2) The Technical Sub-Committee shall consist of designated senior officers of —

(*a*) the Ministry of Gender, Community Development and Social Welfare;

(*b*) the Ministry of Finance, Economic Planning and Development;

(*c*) the National Planning Commission;

(*d*) the Malawi Police Service;

(*e*) the Judiciary;

(*f*) the Ministry of Justice;

(*g*) the Ministry of Local Government and Rural Development;

(*h*) the Ministry of Homeland Security;

(*i*) Ministry of Information;

(*j*) the Ministry of Agriculture;

(*k*) the Ministry of Health;

(*l*) the Department of Disaster Preparedness and Management;

(*m*) the Human Rights Commission;

(*n*) an association of older persons; and

(*o*) academic institutions.

(3) Members of the Technical Sub-Committee under subsection (2) (*c*) and (*d*) shall be appointed by the National Committee and shall serve for a term of three years, and may be re-appointed once for another term of three years.

(4) The Director, or any other senior officer designated by the Principal Secretary responsible for Elderly Affairs, shall be the chairperson of the Technical Sub-Committee

Functions of the Technical Sub-Committee

**57.**—(1) Subject to provisions of this Act, the Technical Sub-Committee shall serve as a national technical advisory body to the National Committee on all matters relating to the promotion and protection of the rights of older persons.

(2) Without prejudice to the generality of subsection (1), the Technical Sub-Committee shall provide technical support to the National Committee on —

(*a*) the establishment, registration, licensing and inspection, of providers of community-based care and support services, and residential facilities, for older persons;

(*b*) the administration, management and provision of grants to older persons;

(*c*) resource mobilization and allocation for elderly services;

(*d*) surveys, investigations and research concerning older persons;

(*e*) matters relating to care, violence, abuse and protection of older persons; and

(*f*) the development, implementation and monitoring of a national public awareness strategy for elderly issues.

Sub-committees

**58.**—(1) The National Steering Committee may establish any number of sub-committees, in addition to the Technical Sub-Committee, to carry out any special or general functions determined by the Committee and may delegate to the sub-committees any of its functions as the Committee may consider expedient.

(2) The National Steering Committee shall appoint a chairperson for each sub-committee from amongst its members.

(3) A member of a sub-committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that sub-committee be paid such allowances as the Minister may determine.

Personal attendance of meetings

**59.** A member of the National Steering Committee or Technical Sub-Committee shall not attend a meeting of the Committee or the Sub-Committee by proxy, and where a member of the Committee or the Sub-Committee is unable to attend any meeting of the Committee or the Sub-Committee, he or she may request that his apologies for failure to attend be recorded.

Disclosure of interest

**60.**—(1) If a member of the National Steering Committee or Technical Sub-Committee is present at a meeting of the Committee or Sub-Committee at which any matter which is the subject of consideration is a matter in which that member, or his or her immediate family member, or his or her professional or business partner, is directly or indirectly interested, he or she shall, as soon as practicable, after the commencement of the meeting, disclose his or her interest, and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member of the National Steering Committee or Technical Sub-Committee shall be recorded in the minutes of the meeting at which it is made.

Allowances and expenses of members of the National Steering Committee and the Technical Sub-Committee

**61.** Members of the National Steering Committee or Technical Sub-Committee, other than *ex-officio* members, and of any of its committees, and persons invited under section 51 in connexion with the business of the National Committee or Technical Sub-Committee, or any committee, shall be paid travelling, subsistence, sitting and other allowances, and be reimbursed for reasonable expenses incurred, as the Minister may determine.

Secretariat

**62.**—(1) The Ministry of Gender, Community Development and Social Welfare shall serve as the secretariat for the National Steering Committee and Technical Sub-Committee.

(2) The Director shall be the secretary to the National Steering Committee.

(3) The Principal Secretary responsible for Elderly Affairs shall designate a senior officer to be the secretary to the Technical Sub-Committee.

## PART XI—ADMINISTRATION

Implementation and monitoring of programmes

**63.**—(1) The Ministry of Gender, Community Development and Social Welfare shall deliver, implement and monitor elderly policy programme under this Act in close collaboration with structures at district and local council level, which shall be responsible for co-ordination all stakeholders in the implementation and monitoring of programmes at district and local levels.

(2) For purposes of subsection, there shall be established, in each district—

(*a*) a District Technical Committee of Older Persons, which shall include community-based organizations, faith-based organizations, and other community and civil society organizations;

(*b*) a District Elders Committee, which shall include representatives of Older Persons in the District; and

(*c*) Community Elders Committees, which shall include representatives of Older Persons in the community.

Director for Elderly Affairs

**64.**—(1) There shall be a Director for Elderly Affairs (in this Act referred to as the "Director") whose office shall be a public office.

(2) The Director shall be responsible for all matters pertaining to older persons.

Duties and functions of the Director

**65.**—(1) Without prejudice to the generality of section 65 (2), the Director shall be responsible for and shall have power to—

(*a*) request the production by any person, of any document or information which, in the opinion of the Director, is necessary for the execution of its functions under this Act;

(*b*) inquire into any matter concerning the provision of older person's grants, and may for that purpose—

(i) subpoena any person who can furnish information of material importance concerning the matter under investigation, or who is reasonably assumed to have under his or her control a book, document or thing that may have a bearing on the investigation, to appear within a reasonable period before it and to furnish the information or to produce the book, document or thing, as the case may be;

(ii) administer an oath to that person or cause that person to make an affirmation if that person was or could have been subpoenaed under paragraph (a) and he or she is present at the enquiry; and

(iii) cross-examine any person referred to in paragraph (ii);

(*c*) issue, review, approve or revoke licences pursuant to this Act;

(*d*) inspect any site or premises in connexion with the implementation of this Act or any written law; and

(*e*) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

## PART XII—MISCELLANEOUS

Oath of secrecy

**66.** Every—

(*a*) member of the National Steering Committee or Technical Sub-Committee; and

(*b*) member of a committee of the National Steering Committee or Technical Sub-Committee,

shall, upon assumption of office and before attending a meeting, take an oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a commissioner for oaths.

Protection from liability

**67.**—(1) No court action or other proceedings shall be brought personally against any member of the National Steering Committee or Technical Sub-Committee or member of staff of the Ministry in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

(2) Where, in any court action or other proceedings, a question arises on whether or not an act or an omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or the omission was not done in good faith in the course of carrying out the provision of this Act shall be on the person alleging that it was not so done.

Annual reports

**68.**—(1) The Director shall, as soon as practicable, but not later than three months after the end of each financial year, cause to be prepared and submitted to the Minister an annual report detailing activities implemented during the year.

(2) The Minister shall, as soon as practicable after the end of each financial year, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report received under subsection (1).

Offences and penalties

**69.**—(1) Any person who—

(*a*) hinders or obstructs any person in the performance of his functions under this Act;

(*b*) refuses or fails to comply with a requirement or request which the Director or an employee of the Director has lawfully set or made in the performance of his functions under this Act;

(*c*) intentionally furnishes the Director, or an authorized officer, with false or misleading information;

(*d*) has been subpoenaed under this Act and fails or refuses, without sufficient cause—

(i) to appear at the time and place specified in the subpoena;

(ii) to remain in attendance, until excused by the person presiding at the enquiry, from further attendance; or

(iii) to take an oath or to make an affirmation as a witness,

commits an offence and is, upon conviction, liable to a fine of ten million Kwacha and to imprisonment for five years.

(2) Any person who contravenes this Act for which no specific penalty has been prescribed under this Act shall be liable to a fine of five million Kwacha and to imprisonment for two years.

Regulations

**70.**—(1) The Minister may make regulations regarding—

(*a*) any matter which shall or may be prescribed under this Act;

(*b*) the form of any application, authority, certificate, consent, notice, order, register, process or subpoena which is to or may be made, granted, given, issued or kept under this Act, and any other form required in administering this Act;

(*c*) the procedure to be followed and the conditions which may be imposed in connexion with the registration of residential facilities, and the minimum standards with which such residential facilities are to comply;

(*d*) the books, accounts and registers which are to be kept by the managers of residential facilities, the manner in which such books, accounts and registers are to be kept and dealt with, and

the returns and reports to be furnished in connexion with such facilities;

(*e*) the records to be kept by any person who cares for or accommodates for remuneration, whether by way of money or goods, any older or frail person in any place other than a residential facility;

(*f*) measures to—

(i) prevent, combat and deal with the abuse of older persons;

(ii) be taken to advance persons disadvantaged by unfair discrimination;

(iii) promote the rights of residents of residential facilities;

(iv) promote the rights of older persons that are not in residential facilities;

(*g*) the form and content of service level agreements between the residents and the residents' committee of a residential facility;

(*h*) the minimum norms and standards for admission of older persons to residential facilities;

(*i*) service standards for older persons;

(*j*) the levels of community-based care and support services for older persons;

(*k*) the keeping of registers under this Act; and

(*l*) generally, any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation of this Act.

(2) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of five million Kwacha and imprisonment for two years, for an offence committed in contravention of the regulations.

(3) Any regulation made under subsection (1) which affects a department or agency outside the responsibility of the Minister, shall be made after consultation with the relevant Minister.

SCHEDULE (s. 66)

OATH OF SECRECY

OATH OF SECRECY FOR A MEMBER OF THE NATIONAL STEERING COMMITTEE/TECHNICAL SUB-COMMITTEE

I, …….....……., being a member/person invited to attend a meeting, of the National Steering Committee/Technical Sub-Committee, do hereby solemnly and sincerely swear/ affirm that I will freely

without fear or favour, affection or ill-will, discharge the functions of a member/co-opted member/invited person of the National Steering Committee/Technical Sub-Committee, and that I will not, directly or indirectly, communicate or reveal to any unauthorized person or persons any matter or business of the National Steering Committee/Technical Sub-Committee which shall be brought under my consideration or shall become known to me as a member/co-opted member/person attending a meeting of the National Steering Committee/Technical Sub-Committee except as may be required for the due discharge of my duties as such member/person attending the meeting. So, help me God.

.....
*Signature of the person making the oath* [*or affirmation*]

Sworn [or affirmed] by the said ……...…

at …… this … day of ……, 20….

Before me:

……
*Commissioner for Oaths*

Passed in Parliament this fifth day of April, two thousand and twenty-four.

FIONA KALEMBA
*Clerk of Parliament*

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