

Malawi

## Tourism and Hotels Act

### Chapter 50:01

Legislation as at 31 December 2014

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## Tourism and Hotels Act

### Chapter 50:01

Commenced on 8 March 1968

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

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to provide for the control and management of hotels, the establishment of a Tourism and Hotels Board and other matters incidental thereto**

#### 1. Short title

This Act may be cited as the Tourism and Hotels Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Board**" means the Tourism and Hotels Board established under [section 3](#);

"**hotel**" includes a boarding-house and any other building or premises used for the accommodation of the public in which lodgings are provided and provisions are supplied by the keeper or manager thereof, but does not include any hostel or any school or any other premises or class of premises exempted from this Act by the Minister;

"**hotel-keeper**" means any person to whom a licence to keep or manage an hotel has been issued under [section 5](#), and includes any person to whom a licence has been transferred under [section 8](#);

"**licence**" means a licence issued under [section 5](#);

"**member**" includes the Chairman of the Board;

"**register**" means the register kept by an hotel-keeper in accordance with [section 14](#) (1).

#### 3. Establishment of Board

- (1) There is hereby established a board to be known as the Tourism and Hotels Board.
- (2) The Board shall consist of a chairman and not less than five other members appointed by the Minister.
- (3) Subject to a power or revocation of appointment by the Minister, every member shall hold office for a period of two years from the date of his appointment but shall be eligible for reappointment.
- (4) Four members shall constitute a quorum at any meeting of the Board. In the absence of the chairman the members present shall elect one of the number to act as chairman.

*[8 of 1980]*

- (5) The chairman at any meeting shall, in addition to his deliberative vote as a member of the Board, have a casting vote.

*[18 of 1969]*

*[8 of 1980]*

#### 4. Policy

The Board may, where necessary, seek the general direction of the Minister on the manner in which it is to carry out its duties under this Act.

*[18 of 1969]*

*[1 of 2003]*

#### 5. Licences

- (1) No person shall use any premises as an hotel unless he has previously obtained a licence from the Board authorizing that the premises be used as an hotel.
- (2) No person shall keep or manage an hotel unless he has previously obtained a licence from the Board authorizing him to keep or manage an hotel.
- (3) Every licence shall commence on the day on which it is expressed to commence and, unless previously cancelled or otherwise determined, shall expire on the thirty-first day of December next following the date of its commencement.
- (4) Any person who keeps or manages an hotel without a valid licence, or who, not being the holder of a valid licence, publicly uses, or permits to be used, the word "hotel" in relation to any premises of which he is the owner or occupier, shall be guilty of an offence and liable to a fine of K20,000 and to imprisonment of one year.
- (5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

*[1 of 2003]*

#### 6. Functions of the Board

- (1) The functions of the Board shall be to control and regulate the tourism industry.
- (2) Without prejudice to the generality of subsection (1), the Board shall—
  - (a) grant licences under [section 5](#);
  - (b) consent to transfer of licences under [section 8](#);
  - (c) vary, cancel or suspend licences under [section 9](#); and
  - (d) classify or reclassify hotels under [section 10](#).

*[1 of 2003]*

#### 7. Conditions under which the licence shall be granted

- (1) No licence shall be granted by the Board unless the applicant satisfies the Board that the conditions specified in this section are fulfilled.
- (2) The conditions to be fulfilled for the purposes of this section are that—
  - (a) the applicant is of good character and is a person capable of keeping or managing an hotel;
  - (b) the premises in respect of which the application is made are structurally adapted for use as an hotel, and are in all respects suitable for such use;
  - (c) proper provision has been made for the sanitation of the hotel;
  - (d) proper provision has been made for the hotel to be conducted in an efficient manner;

- (e) proper provision has been made for the storage, preparation, cooking and serving of food in the hotel; and
- (f) the premises in respect of which the application is made comply with the requirements of the Public Health Act and any subsidiary legislation made thereunder.

*[Cap. 34:01]*

- (3) The Board may attach to any licence such additional conditions as the Board may, in its discretion, and having regard to all the circumstances of the case, deem expedient.

## **8. Transfer of licence**

A licence may, with the consent of the Board previously obtained, be transferred to any person who is of good character and is capable of keeping or managing an hotel.

## **9. Cancellation of licence**

Where it is made to appear to the Board that—

- (a) any hotel is being conducted in an unclean or insanitary manner;
- (b) any hotel is not being conducted in an efficient manner;
- (c) the food served in an hotel is not properly prepared, cooked or served, or;
- (d) any hotel is being used for prostitution or for other unlawful activities; and
- (e) any condition specified in [section 7](#) (2) or (3) is not, or has ceased to be, complied with,

then the Board, by notice in writing, may require the hotel-keeper to remedy the defect within such period, not exceeding ninety days, as may be specified in such notice and if the hotel-keeper fails to remedy the defect to the satisfaction of the Board within the specified period, the Board shall cancel the licence in respect of such hotel.

*[1 of 2003]*

## **9A. Closure of premises and seizure of food, etc.**

- (1) Where the Board believes, on reasonable grounds, that this Act, has been contravened, in the circumstances spelt out in [section 5](#), [section 9](#) or otherwise, the Board may, subject to subsection (2) and in consultation with relevant authorities, order—
  - (a) the closure of any premises; and
  - (b) the seizure of any food, except perishables, equipment, instrument or any other thing, by means of, or in relation to which, the Board reasonably believes the contravention was committed.
- (2) The closure of any premises shall cease, and any food, equipment, instrument or any other thing shall not be detained, after the provisions of this Act have, in the opinion of the Board, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed and the food, equipment, instrument or other thing may be detained until the proceedings are finally concluded.
- (3) Where a person has been found guilty of an offence under this Act, any food, equipment, instrument or other thing by means of or in relation to which the offence was committed may, in addition to any other penalty imposed by the court, be forfeited, and may be disposed of in such manner and at such time and place, as the court may direct; but no such food, equipment,

instrument or other thing shall be disposed of pending an appeal against the decision of the court or before the time within which the appeal may be taken has expired.

*[1 of 2003]*

## **9B. Forfeiture, cancellation and other orders**

- (1) Where a court convicts a person for an offence under this Act, the court may, in addition to any other sentence, order that—
  - (a) any substance or equipment used in the commission of the offence be forfeited to the State and be disposed of as the court directs;
  - (b) the costs of disposing of any such substance or equipment be borne by the accused person;
  - (c) some or all of the reasonable cost of and incidental to any testing or analysis or other steps undertaken by or on behalf of the prosecution to investigate the alleged offence and obtain evidence, be borne by the accused person; or
  - (d) a licence granted to the person convicted under this Act be cancelled.
- (2) If a person is convicted for a second or subsequent time of an offence under this Act the court may, in addition to any other sentence, order that the person convicted be disqualified from holding a licence under this Act for a period not exceeding two years.

*[1 of 2003]*

## **10. Classification or re-classification of hotels**

- (1) The Board shall classify every hotel, in respect of which a licence is granted, in a class or grade conformable with the standard with which the hotel is, or is intended or is likely to be, kept, managed or conducted; and in so classifying any hotel the Board shall take into consideration the extent to, and the manner in, which the several conditions specified in [section 7](#) (2) are, or are intended or are likely to be, complied with.
- (2) Where it is made to appear to the Board that an hotel is being kept, managed or conducted in a manner conformable with a standard which is superior to the standard of an hotel of the class in which such hotel is classified, the Board may, upon giving notice thereof to the hotel-keeper, remove the name of the hotel from such class and place it in a higher class.
- (3) Where it is made to appear to the Board that an hotel is not being kept, managed or conducted in a manner conformable with the standard of an hotel of the class in which such hotel is classified, the Board may, upon giving notice thereof to the hotel-keeper, remove the name of such hotel from such class and place it in a lower class:

Provided that any re-classification of an hotel under this section shall not take effect until the expiration of not less than thirty days from the date of the service of the notice of reclassification.

## **11. Right to be heard**

The Board shall not refuse any application for a licence under [section 5](#), or any application for a transfer under [section 8](#), nor shall it cancel or suspend the licence of an hotel-keeper under [section 9](#), nor classify or re-classify an hotel under [section 10](#), unless the applicant, the proposed transferee or hotel-keeper, as the case may be, or a legal practitioner appearing on behalf of any such person, has been furnished by the Board with particulars of the contents of any complaint made to the Board and has been given an opportunity of appearing before the Board and of being heard in support of the application, or in opposition to the cancellation, suspension, classification or re-classification, as the case may be.

## 12. Appeals

Any person who is aggrieved by—

- (a) any refusal, cancellation, suspension, revocation or variation of a licence issued under this Act; or
- (b) any decision directly applicable to him taken by the Board or any person exercising powers under this Act,

may within thirty days appeal in writing to the Minister who shall appoint an appeals committee for the purpose of hearing the appeal in question.

### 12A. Appeals committee

- (1) An appeals committee shall consist of—
  - (a) one person who has expert knowledge in the issues raised in the appeal, appointed by the Minister;
  - (b) one person representing the tourism industry, appointed by the Minister;
  - (c) one legal practitioner, appointed by the Minister;
  - (d) the Secretary responsible for tourism or his representative; and
  - (e) one member of the Board, appointed by the Board.
- (2) The person appointed under subsection (1) (a) shall be chairman of the appeals committee.
- (3) Members of the appeals committee shall be paid such an allowance as the Minister shall determine.
- (4) The Board may make provision for reimbursement of any reasonable expense incurred by a member of the appeals committee in connexion with the business of the appeals committee.

*[1 of 2003]*

### 12B. Powers of appeals committee

- (1) An appeals committee shall have, in relation to the hearing of any appeal, the power to—
  - (a) confirm, set aside, vary, alter, reverse or amend the decision which is the subject of the appeal;
  - (b) refer the relevant matter back to the Board for its reconsideration;
  - (c) order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court:  
  
Provided that the appeals committee may, in its absolute discretion admit evidence which would not be admissible in a court of law and may use evidence contained in any official record and may call evidence of its own motion;
  - (d) make such order as it may deem fit; and
  - (e) do all things which it is required or empowered to do by or under this Act.
- (2) The decision of the appeals committee on any appeal shall be—
  - (a) made in writing;
  - (b) sent to all the parties to the appeal, and
  - (c) made available for public inspection.

- (3) Any person who, having appealed under [section 12](#), is aggrieved by the decision of the appeals committee may, within thirty days thereof, apply to the High Court for judicial review of the decision of the committee.

*[1 of 2003]*

### 13. Power to obtain information

Any member of the Board, or any person authorized in writing by the Board in that behalf, may at all reasonable times enter and inspect the premises of an hotel and may require the hotel-keeper to furnish such information as may be necessary to enable the Board to carry out its functions.

### 14. Register of guests

- (1) Every hotel-keeper shall keep a register for the purpose of showing the name of every resident guest and such other particulars as may be prescribed.
- (2) Every hotel-keeper shall—
- (a) present the register to every guest who proposes to stay at his hotel and shall request the guest to write his name in the register together with such other particulars as may be prescribed; and
  - (b) present the register for inspection when so requested by any member of the Board, by any person authorized by the Board under [section 13](#), or by any police officer of or above the rank of Inspector.

Any hotel-keeper who fails to comply with this subsection shall be liable to a fine of K10,000.

- (3) Any guest who proposes to stay at an hotel and who fails to write his name or any other prescribed particulars in the register, or who makes in any register a statement or entry knowing the same to be false, shall be liable to a fine of K5,000 and to imprisonment for three months.

*[1 of 2003]*

### 15. Power to make regulations

- (1) The Minister may make regulations for carrying this Act into effect.
- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may be made—
- (a) prescribing the form of any licence under this Act and, after consultation with the Minister of Finance, the fees, if any, payable therefor;
  - (b) providing for the classification or reclassification of hotels and all matters incidental thereto;
  - (c) fixing the maximum charges or enabling the Board to fix the maximum charges, which may be made by an hotel-keeper to guests staying in his hotel and providing for the posting-up by hotel-keepers of lists giving particulars of the maximum charges to such guests, or providing for different maximum prices to be fixed for different hotels, regard being had to the class to which an hotel belongs;
  - (d) providing for returns to be supplied from time to time by hotel-keepers to the Board or to any person authorized by the Board in that behalf, showing the number of guests staying at any hotel;
  - (e) prescribing the form of the register to be kept under [section 14](#);



- (ee) providing, after consultation with the Minister of Finance, for the establishment of tourism funds; and

[11 of 1971]

[1 of 2003]

- (f) prescribing any other matter which is required or is necessary to be prescribed under this Act.

- (3) Any regulation made under this Act may, notwithstanding the provisions of section 21 (e) of the General Interpretation Act prescribe a fine of up to K200,000 and imprisonment for up to two years for an offence committed against any provision of such regulation.

[Cap. 1:01]

[11 of 1971]

[1 of 2003]

## 16. Application of Act, etc., to other enterprises

- (1) The Minister may, by order published in the *Gazette*, apply the provisions of this Act to such enterprises, other than hotels, as he may specify in such order, and in such event those provisions shall *mutatis, mutandis* apply to any such enterprise.
- (2) Any order made under subsection (1) may contain such incidental or consequential provisions as the Minister deems fits.

[37 of 1970]

[1 of 2003]

## 17. Saving

Nothing in this Act shall be deemed to affect the Liquor Act or any regulations made thereunder:

Provided that where the Board refuses to issue, or cancels or suspends a licence in respect of an hotel under this Act any licence issued under the Liquor Act to such hotel shall, as from the date of such refusal, cancellation or suspension, and during the period of such refusal, cancellation or suspension, be of no force or effect.

[Cap. 50:07]

[37 of 1970]

[39 of 1981]