

Malawi

## Automotive Trades Registration and Fair Practices Act Chapter 50:05

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## Malawi

# Automotive Trades Registration and Fair Practices Act

## Chapter 50:05

Assented to on 6 August 1971

Commenced on 30 September 1972

*[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 registration of persons engaged for profit or reward in the business of the assembly, sale or repair of motor vehicles or internal combustion or other motor vehicle engines or of any electrical or mechanical parts or accessories of such vehicles or engines or engaged in businesses incidental to the maintenance or repair thereof and to provide for the protection of the general public from unfair or unconscionable practices by such persons and for matters related or incidental to any of the purposes aforesaid**

### Part I – Preliminary

#### 1. Short title, commencement and application

This Act may be cited as the Automotive Trades Registration and Fair Practices Act, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*:

Provided that, by one notice or by separate notices, different dates may be appointed for the coming into operation of this Act in relation to different specified Regions, local authority areas, Districts or places in Malawi.

#### 2. Interpretation

In this Act unless the context otherwise requires—

“**annual renewal of registration meeting**” means that meeting of the Board, held annually, at which renewals of registration are considered pursuant to [section 21](#);

“**automotive trade**” means the commercial garage business operating throughout Malawi;

“**Board**” means the Automotive Trades Registration Board established by [section 3](#);

“**Chairman**” means the Chairman of the Board, appointed and designated pursuant to [section 4](#) (2) (a);

“**commercial garage**” means any garage operated as a business for profit or reward;

“**date of commencement**” means, in relation to any Region, Local Government Area, District or place in Malawi, the date of the coming into operation of this Act, in such Region, Area, District or place, by notice pursuant to [section 1](#) ;

“**decision of the Minister**” means any decision in respect of registration under this Act, made by the Minister under [section 18](#), [24](#), [27](#) or [29](#);

“**garage**” means any premises used for the purpose of the assembly, repair or renovation of motor vehicles or of internal combustion or other engines designed to be the propelling force of such vehicles; or used for the purpose of the assembly, repair or renovation of mechanical or electrical components, parts or accessories of such vehicles or engines; or used for the assembly, repair or renovation of motor vehicle bodies, or for the breaking-up of old or damaged motor vehicles for scrap or salvage; or for the sale of new

or second-hand motor vehicles; or for the re-treading or re-capping or other such renovation of motor vehicle tyres; and includes premises used for the manufacture, assembly, repair or renovation of self-propelled farm machinery; but does not include premises used solely as a petrol service station;

**"investigation"** means an investigation by the Board into the business conduct or practices of a registered proprietor pursuant to Part IV;

**"motor vehicle"** means any self-propelled vehicle whose propulsive force is provided by a built-in internal combustion or other engine, and includes a motor car, motor cycle and self-propelled farm and road machinery but shall not include any ship or aircraft;

**"petrol service station"** means any premises used for the purpose of the sale of petrol and oil for delivery on such premises directly into motor vehicles for immediate use therein; for the sale of petrol or oil in containers and quantities of not more than five gallons in respect of each sale; for the sale and installation of tyres for motor vehicles; for tyre repairs; and for the sale or replacement and the installation of electric bulbs, windscreen wipers and other minor motor vehicle accessories;

**"premises"** means any land and includes any buildings and trade fixtures upon such land;

**"Public Service"** bears the meaning ascribed to the term "public service" by section 98 of the Constitution;

**"Register"** means the Register of Commercial Garage Proprietors and Commercial Garages kept pursuant to [section 14](#);

**"registered garage"** means a commercial garage premises registered as the place of business of a registered proprietor under Part III;

**"registered proprietor"** means the proprietor of a commercial garage registered in respect of such garage under Part III;

**"Registrar"** means the Secretary to the Board designated pursuant to [section 6](#);

**"registration"** means the registration of commercial garage proprietors and commercial garages under Part III;

**"registration year"** means the twelve month period from 1st January to 31st December, or any lesser period ending on the 31st December, during which any registration under this Act is subsisting;

**"renewal of registration"** means the registration, pursuant to [section 21](#), of an existing registered proprietor in respect of a particular registered garage for the registration year immediately following the year in relation to which the existing registration is subsisting;

**"second-hand part"** means any mechanical or electrical part of any motor vehicle or internal combustion or other engine which has previously been installed and used in any such vehicle or engine;

**"second-hand vehicle"** means any motor vehicle which, since its manufacture and initial sale has been in ordinary use;

**"Secretary"** means the Secretary to the Board, designated by the Minister pursuant to [section 6](#);

**"transfer of registration"** means the transfer of the registration of a registered proprietor in respect of a registered garage to another person;

**"Vice-Chairman"** means the Vice-Chairman of the Board appointed and designated pursuant to [section 4](#) (2) (b).

## Part II – Administration

### A – The Automotive Trades Registration Board

#### 3. Establishment of Automotive Trades Registration Board

There is hereby established a board to be known as the Automotive Trades Registration Board (hereinafter referred to as “the Board”).

#### 4. Composition of the Board

- (1) The Minister shall, by notice in the *Gazette*, appoint the members of the Board other than the *ex officio* members.
- (2) The Board shall consist of—
  - (a) one member designated as Chairman by the Minister;
  - (b) one member designated as Vice-Chairman by the Minister;
  - (c) the Chairman of the Price Control Board established pursuant to regulations made under the Control of Goods Act;  
*[Cap. 18:08]*
  - (d) one member representing the Malawi Congress Party;
  - (e) the Director of Plant and Vehicles, *ex officio*,
  - (f) the Road Traffic Commissioner, *ex officio*.
- (3) The Minister may appoint to the Board such additional Members as he deems essential to the Board in the exercise of its powers and functions.
- (4) No person shall be appointed to the Board who—
  - (a) is an undischarged bankrupt;
  - (b) has, within three years last past, been convicted of an offence under this Act;
  - (c) has, within three years last past, been convicted of an offence under any written law and been sentenced therefor to imprisonment for a term of six months or more without the option of a fine;
  - (d) has, within five years last past, been convicted of an offence involving fraud or dishonesty.
- (5) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the Public Service.
- (6) The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

#### 5. Board may co-opt persons to attend meetings

- (1) The Board may, with the consent of the Minister, co-opt any one or more persons to attend any particular meeting or series of meetings for the purpose of assisting or advising the Board in respect of any particular matter under consideration by the Board.
- (2) Any person co-opted pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he so attends, but shall have no voting powers.

## 6. Secretary/Registrar

- (1) There shall be a Secretary to the Board who shall be an officer in the Public Service and shall be designated as Secretary by the Minister.
- (2) The Secretary to the Board shall be the Registrar for all of the purposes of this Act.

## 7. Tenure of office of Board members

- (1) Members of the Board, other than *ex officio* members, shall, subject to the provisions of this section, hold office for such period, being not less than two years, as may be specified in their respective appointments.
- (2) *Ex officio* members of the Board shall hold office as such so long as they hold the public office whereby they are members of the Board pursuant to this Act.
- (3) A retiring member shall be eligible for re-appointment.
- (4) On the expiry of the period for which a member, other than an *ex officio* member, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.
- (5) The office of a member other than an *ex officio* member shall be vacated—
  - (a) upon his death;
  - (b) if he is adjudged a bankrupt;
  - (c) if he is convicted of an offence under this Act;
  - (d) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine;
  - (e) if he is convicted of an offence involving fraud or dishonesty;
  - (f) if he is absent from three consecutive meetings of the Board without the permission of the Board;
  - (g) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;
  - (h) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;
  - (i) if he becomes mentally or physically incapable of performing his duties as a member of the Board;
  - (j) if, being registered as a registered proprietor under this Act, his registration has been cancelled on the direction of the Minister.

## 8. Remuneration of members of the Board

Any member of the Board who is not an officer in the Public Service shall be paid such remuneration and allowances, if any, as the Minister may in his case fix.

## 9. Meetings of the Board

- (1) The Board may meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

- (2) In the absence of the Chairman from any meeting of the Board the Vice-Chairman shall preside, and in the absence of both the Chairman and the Vice-Chairman from any such meeting the members present shall elect one of their number to preside at that meeting and the person so elected shall have all of the powers and shall perform all of the duties of the Chairman for that meeting.
- (3) Save where otherwise provided by this Act, the Board shall conduct its proceedings in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Board deems meet.
- (4) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or, in his absence, by the Vice-Chairman or member presiding, as the case may be.
- (5) Three members of the Board shall form a quorum.
- (6) At all meetings of the Board the person presiding shall have a deliberative vote and in the event of an equality of votes shall also have a casting vote.

## 10. Non-liability of members of the Board

No member of the Board shall be personally liable for any act or default of his, or of the Board, done in the exercise in good faith of the functions of the Board.

## 11. Member to declare pecuniary interests

- (1) If a member of the Board or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Board he shall, as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the Board and the Minister.
- (2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the Board which relates to the matter referred to in that subsection.
- (3) For the purposes of this section, the expression "major shareholder" means any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten per cent of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

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## B – Functions and duties of the Board

### 12. Functions of the Board

The functions and duties of the Board shall be—

- (a) to advise the Minister on matters relating to—
  - (i) the maintenance and improvement of the services, facilities and workmanship offered to the general public by commercial garages within Malawi;
  - (ii) what minimum standards of workmanship and materials the proprietors of commercial garages should use and maintain in their operations in order to be registered under this Act or to retain such registration;
  - (iii) such other matters concerning the automotive trade in Malawi as the Board deems meet;

- (iv) any question concerning the automotive trade submitted to the Board by the Minister for its opinion and advice thereon;
- (b) to keep and maintain a register of commercial garage proprietors and commercial garages in Malawi pursuant to Part III;
- (c) to hear complaints against commercial garage proprietors pursuant to Part IV and to make recommendations to the Minister thereon.

### **Part III – Registration of commercial garage owners and commercial garages**

#### **13. Compulsory registration of garage owners and garages**

- (1) After six months from the date of commencement, no person shall carry on the business of a commercial garage on any premises without being registered as a commercial garage proprietor (hereinafter called “the registered proprietor”) in respect of such premises, nor shall such proprietor carry on such business on such premises without the said premises being registered as a commercial garage (hereinafter called a “registered garage”) under this Act.
- (2) Any person who, after six months from the date of commencement—
  - (a) carries on the business of a commercial garage without being registered as a registered proprietor; or
  - (b) carries on the business of a commercial garage on any premises without the said premises being registered as a registered garage,shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.
- (3) Where a company or other body corporate is found guilty of an offence under subsection (2) there shall be imposed in lieu of the penalty provided by the said subsection, a penalty of K3,000.
- (4) Subsection (2) (b) shall not apply to any registered proprietor carrying on business at the scene of any breakdown or accident for the purpose of dealing with such breakdown or accident.

#### **14. Register of proprietors and garages**

The Registrar, under the direction of the Board, shall keep, in the prescribed form, a Register of Commercial Garage Proprietors and Commercial Garages (hereinafter called “the Register”) for the purposes of this Act.

#### **15. Application for registration**

- (1) An application for registration under this Act or for a renewal or transfer of such registration shall be made to the Board in the manner prescribed.
- (2) Not less than two weeks before making his application to the Board under this section, the applicant shall cause notice, in the prescribed form, of his intention to apply for registration, renewal or transfer to be published in the *Gazette* and in one issue of a newspaper in general circulation in the area in which the relevant garage is located.
- (3) Where an application is made in respect of a partnership firm., the partners shall nominate one member of the firm, who shall, upon the application being granted by the Minister, be registered as the proprietor in respect of the premises registered pursuant to such application.
- (4) Every application for registration under this Act, or for renewal or transfer of such registration shall be accompanied with the appropriate prescribed fee.

- (5) Any application for a transfer of registration under this Act may be made by the intended transferee or transferor and such application shall be accompanied with the current Certificate of Registration of the registered proprietor for purposes of cancellation upon the grant of the applied for transfer.
- (6) Where any person carries on the business of a commercial garage in more than one premises a separate application shall be made by such person in respect of each separate premises in which such business is carried on.

## 16. Applicant to furnish description of premises

Every applicant for registration, or for renewal of registration, under this Act, shall, at the time of his application, furnish to the Board a description in writing of the premises used or proposed to be used by him as a commercial garage, and shall, if so required by the Board, furnish a map or plan of such premises.

## 17. Consideration by and report of the Board

- (1) As soon as is practicable after receiving an application under [section 15](#) the Board shall consider the same in accordance with this section and report thereon in writing to the Minister—
  - (a) in the case of an application for a new registration, whether—
    - (i) the applicant is already registered under this Act in respect of other premises;
    - (ii) they consider the applicant a person suitable for registration;
    - (iii) they consider the premises, in respect of which the application is made, suitable for the intended uses thereof;
    - (iv) they consider the applicant reasonably capable of providing the service intended or of employing persons so capable;
    - (v) the applicant has previously been refused registration under this Act or whether any previous registration of the applicant hereunder has been cancelled by direction of the Minister and the date and cause of such cancellation;
  - (b) in the case of an application for renewal of an existing registration, whether—
    - (i) if the applicant has been registered in respect of the relevant premises during the entire past registration year, he has been the subject of any investigation under Part IV during the said period and the outcome of such investigation;
    - (ii) if the applicant has been first registered in respect of the premises, whether by way of new registration or transfer, during the past registration year, he has been the subject of any investigation under Part IV during the said period and the outcome of such investigation;
    - (iii) anything has been done to the premises during the past registration year, whether by way of alteration or reconstruction, to render them unsuitable for registration;
  - (c) in the case of a transfer of an existing registration, whether—
    - (i) the applicant is already registered in respect of other premises;
    - (ii) they consider the applicant reasonably capable of providing the service intended or of employing persons so capable;
    - (iii) the applicant has been refused registration under this Act or whether any previous registration of the applicant hereunder has been cancelled by direction of the Minister and the date and cause of such cancellation;
    - (iv) anything has been done to the premises during the past registration year, whether by way of alteration or reconstruction, to render them unsuitable for registration.

- (2) Each applicant shall be entitled to attend before the Board in person (or, if the applicant is a body corporate, by a senior director or executive of such body corporate) or to be represented thereat by a legal practitioner during the consideration of his application, and shall be entitled to be heard and to adduce evidence in respect of any matter relevant to such application.

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- (3) The Board shall notify each applicant, by letter sent by ordinary post to the address given on the application, of the date, hour and place of consideration of his said application by the Board.
- (4) Having considered the application and such other matters as were adduced thereon by the applicant, or deemed relevant by the Board, the Board shall, without undue delay, forward to the Minister its report together with a copy of the application and such other documents in its possession as it deems relevant to the application.
- (5) The applicant shall not be entitled to a copy, or to be informed of the contents, of any report made to the Minister by the Board pursuant to this section.

## **18. Minister to decide application**

- (1) The Minister, having considered the application and the report of the Board thereon and such other documents in relation thereto as were submitted to him by the Board, shall decide whether the application should be granted or refused, and shall notify the Board of his decision.
- (2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reasons for such decision.

## **19. Registration or refusal**

- (1) Whenever the Minister grants an application for registration, renewal of registration, or transfer of registration under this Part, and notifies the Board of his decision thereon, the Board shall cause the Registrar to enter such registration, renewal or transfer in the appropriate parts or part of the Register and shall notify the applicant thereof and cause notice thereof to be published in the *Gazette*.
- (2) Having entered any registration or renewal of registration pursuant to subsection (1) the Registrar shall, within one month thereafter, furnish the registered proprietor with a certificate of his registration as registered proprietor and of the registration of the relevant garage as a registered garage.
- (3) Having entered any transfer of registration pursuant to subsection (1) the Registrar shall, within one month thereafter, furnish the new registered proprietor with a certificate of his registration in the prescribed form as registered proprietor of the relevant registered garage together with a certified copy of the registration of the said relevant garage.
- (4) Whenever the Minister refuses an application under this Part and notifies the Board of his decision thereon, the Board shall cause the Registrar to notify the applicant, in writing, of such refusal.

## **20. Duration of registration**

Registration under this Act shall be effective from the date of its entry in the Register by the Registrar and shall determine on the 1st January following unless sooner surrendered or cancelled.

## **21. Annual renewal of registration**

- (1) The Board shall, in the month of December of each year, hold an annual renewal of registration meeting for the purposes of renewal of registration of existing registrations for the following year:

In this regard the Board may fix different dates in the said month of December for the holding of the annual renewal of registration meeting in respect of different places or areas in Malawi.

- (2) The Board shall, during the first week of the month of October of each year, publish, in one issue of the *Gazette* and in one issue of a newspaper in general circulation in Malawi, a notice setting forth the date, time and venue of such annual renewal of registration meeting, and if the said meeting is to be held on different dates in respect of different areas the said notice shall specify the place or area in respect of which each such meeting is to be held.
- (3) Application for renewal of registration shall be made pursuant to [section 15](#) and shall be delivered to the Board not later than 21 days before the date of the relevant annual renewal of registration meeting of the Board.
- (4) Application for renewal of registration shall be considered at the relevant annual renewal of registration meeting and shall normally not be considered at any other meeting of the Board save for just cause.
- (5) The Board may adjourn any annual renewal of registration meeting from time to time until all applications for renewal of registration to be considered at such meeting have been considered by the Board.
- (6) If, in respect of any application for renewal of registration, the decision of the Minister thereon under [section 18](#) has not been notified by the said 31st December, the existing registration shall be deemed to be extended, for the purposes of this Act, until such time in the following year as the Minister notifies his decision on such application to the Board in accordance with the said [section 18](#).

## Part IV – Surrender, suspension and cancellation of registration

### 22. Surrender of registration

Any registered proprietor of any registered garage may, at any time, by notice in writing to the Board, surrender his registration in relation to any specified registered garage, and upon receipt of such surrender the Board shall cause the Registrar to strike off the Register the registration of the said registered proprietor in relation to the said garage and also to strike off the Register the registration of the said registered garage.

### 23. Complaints to and hearings by the Board

- (1) Any person who has had repairs or alterations or any other work or service done upon any motor vehicle or internal combustion or other engine or upon any mechanical or electrical parts or accessories of such motor vehicle or engine or who has had any new mechanical or electrical accessories or devices attached to such motor vehicle or engine at any registered garage and is of opinion that—
  - (a) the quality of the workmanship was bad; or
  - (b) the work was negligently executed; or
  - (c) the work executed was unnecessary; or
  - (d) the re-assembly of the said motor vehicle or engine, after the work was completed, was negligently executed; or
  - (e) the replacement parts fitted were of inferior quality or not reasonably suited to the purpose for which they were installed; or
  - (f) the replacement parts fitted were of inferior quality or second-hand parts and were so fitted without his knowledge or consent; or

- (g) while the motor vehicle or internal combustion or other engine was in the said registered garage for the purposes of the said work, parts thereof, unrelated to and not involved in the said work, were removed therefrom without his knowledge or consent and were replaced by parts of inferior quality; or
- (h) the said motor vehicle or internal combustion or other engine, when re-delivered to him, was unfit for immediate use, and no warning was given to him as to its condition; or
- (i) the statement of time attributed to the work, and charged for, was false; or
- (j) the charges generally were unreasonably high; or
- (k) the requirements of [section 33](#) were not complied with; or
- (l) the inefficient or negligent manner in which the work was executed and the unreasonable charges for such work constituted an unconscionable act towards him by the registered proprietor,

may, in the prescribed manner, make complaint in writing to the Board against the registered proprietor of the said registered garage.

- (2) Every complaint made to the Board under subsection (1) shall be made within ninety days after the execution of the work in question, or after receipt of the statement of charges therefor whichever is the later:

Provided that, in any case where the Board deems it just and reasonable so to do, the Board may extend the time specified by this subsection.

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- (3) The Board shall, as soon as practicable, scrutinize each complaint received pursuant to subsection (1), and, if it is of opinion that the subject matter thereof should be investigated by it, it shall fix a date and place for the hearing of such complaint, and, shall cause notice, in the prescribed form, of the said hearing to be served upon the complainant and the registered proprietor not less than twenty days before the said date of hearing.
- (4) Every notice of hearing issued by the Board shall contain a statement of the matters of complaint which the Board intends to investigate at the hearing.
- (5) The Board may require the complainant to attend the hearing in person and adduce evidence on the matters arising out of his complaint which are under investigation by the Board.
- (6) Every registered proprietor whose business activities are under hearing by the Board pursuant to this section shall be entitled to attend such hearing in person or, if the registered proprietor is a body corporate, by a senior director or executive of such body corporate, and shall also be entitled to adduce evidence on any of the matters under investigation.

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- (7) The Registrar, or, in his absence, any officer of the Public Service who is acting as Registrar, or any member of the Board, shall be empowered to administer an oath for the purpose of any hearing pursuant to this section.
- (8) The Board shall be empowered to summon witnesses to attend and give evidence on oath or produce documents at any hearing pursuant to this section.
- (9) Having heard the evidence adduced and any representations made by or on behalf of the complainant and the registered proprietor the Chairman, Vice-Chairman or other member presiding shall declare the hearing closed.
- (10) The Board shall, as soon as practicable after the close of the hearing, consider the evidence adduced and representations made thereat and shall, without undue delay, furnish the Minister with its report thereon together with such documents as were produced and are relevant to the matters

investigated, and shall make its recommendations as to whether in its opinion the complaint should be dismissed or the registered proprietor cautioned, or the registration suspended or cancelled, as the case may be.

- (11) Neither the applicant nor the registered proprietor shall be entitled to a copy, or to be informed of the contents, of any report or of the recommendations made thereon to the Minister pursuant to this section.

## 24. Minister to decide complaints

- (1) Having considered the report and recommendations of the Board on any investigation of a complaint pursuant to [section 23](#), and also having considered such other matters as he deems relevant, the Minister shall decide whether—
- (a) the complaint should be dismissed; or
  - (b) the registered proprietor should be required to compensate the complainant in a stated sum for his default in workmanship or service, and thereupon cautioned, or in the event of his failure to so compensate the complainant within a stated time, whether his registration in respect of the relevant registered garage be suspended or cancelled; or
  - (c) the registration of the registered proprietor in respect of the relevant registered garage be suspended for a stated period of time and may attach terms and conditions to such suspension; or
  - (d) the registration of the registered proprietor in respect of all garages registered under his name be suspended for a stated period of time and may attach terms and conditions to such suspension; or
  - (e) the registration of the registered proprietor in respect of the relevant registered garage be cancelled; or
  - (f) the registration of the registered proprietor in respect of all garages registered under his name be cancelled,

and shall notify the Board of his said decision.

- (2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for such decision.

## 25. Implementation of decision of Minister under section 24

- (1) Upon the Board being notified of the decision of the Minister pursuant to [section 24](#), the Board shall cause the Registrar to make the appropriate entry thereof in the record of the relevant investigation held under [section 23](#).
- (2) Where the decision of the Minister is one of caution of the registered proprietor or suspension of his registration, the Board shall further cause the Registrar to make the appropriate entry thereof in the appropriate place or places in the Register.
- (3) Where the decision of the Minister is one of cancellation of registration, the Board shall cause the Registrar to strike the relevant registration off the Register, and to publish notice thereof in one issue of the *Gazette*.
- (4) Within three days after making an entry in the Register pursuant to subsection (2), the Registrar shall notify the registered proprietor, in writing, of the caution or suspension, as the case may be, and of any conditions attached by the Minister to such caution or suspension.
- (5) As soon as practicable after striking a registration off the Register pursuant to subsection (3) the Registrar shall cause notice thereof, in the prescribed form, to be given to the registered proprietor

and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.

## 26. Board- initiated investigation.

- (1) If the Board is of opinion that any registered proprietor—
  - (a) knowingly and habitually engages in practices, in the course of his business as a garage proprietor, which are dishonest, fraudulent or unconscionable; or
  - (b) has, notwithstanding any caution given pursuant to a decision of the Minister under [section 24](#) (1) (b), knowingly continued to commit acts similar to those which gave rise to such caution; or
  - (c) has wilfully failed to compensate a complainant as directed pursuant to a decision of the Minister under [section 24](#) (1) (b); or
  - (d) has, notwithstanding the suspension of his registration pursuant to a decision of the Minister under [section 24](#) (1) (c) or (d), engaged in business as a garage proprietor contrary to the terms and conditions of such suspension; or
  - (e) has been convicted of an offence which, in the opinion of the Board, renders him unfit to continue in business as a registered proprietor,

the Board may, by notice, require such registered proprietor to appear before the Board and show cause why the Board should not recommend to the Minister the cancellation of his registration under this Act.

- (2) The notice referred to in subsection (1) shall be in the prescribed form, shall set forth the grounds upon which it is issued by the Board and the day, time and place of hearing thereon, which shall be not more than two months and not less than one month from the date of its issue, and it shall be served upon the said registered proprietor within ten days of the said date.
- (3) The said registered proprietor shall be entitled to attend such hearing in person, or if the said registered proprietor is a body corporate, by a senior director or executive of such body corporate, and shall also be entitled to adduce evidence on any of the matters under investigation.
- (4) The provisions of [section 23](#) (7) and (8) shall apply *mutatis mutandis* to any hearing under this section.
- (5) Having heard any evidence adduced and any representations made by or on behalf of the said registered proprietor, the Chairman, Vice-Chairman or other member presiding shall declare the hearing closed.
- (6) The Board shall, as soon as practicable after the close of the hearing, consider the evidence adduced and the representations made thereat, and shall, without undue delay, furnish the Minister with its report thereon together with such documents as were produced and are relevant to the matters investigated and shall make its recommendations as to whether in its opinion the said registered proprietor has shown cause why his registration should not be cancelled or whether he has failed to show such cause and, in its opinion, his registration should be cancelled.
- (7) The said registered proprietor shall not be entitled to a copy, or to be informed, of the contents of any report or the recommendations made thereon to the Minister pursuant to this section.

## 27. Minister to decide on report of the Board

- (1) Having considered the report and recommendations of the Board on any investigation made pursuant to [section 26](#), and also having considered such other matters as he deems relevant, the Minister shall decide whether the registration of the said registered proprietor should or should not be cancelled, and shall notify the Board of his said decision.

- (2) Any decision of the Minister made pursuant to subsection (1) shall be final and shall not be subject to appeal to, or question by, any court of law, and the Minister shall not be required to assign any reason for such decision.

## 28. Implementation of decision of Minister under section 27

- (1) Upon the Board being notified of the decision of the Minister, pursuant to [section 27](#), the Board shall cause the Registrar to make the appropriate entry thereof in the record of relevant investigation held under [section 26](#).
- (2) Where the decision of the Minister is one of cancellation of registration, the Board shall cause the Registrar to strike the relevant registration off the register and to publish notice thereof, in the prescribed form, in one issue of the *Gazette*.
- (3) As soon as practicable after striking a registration off the Register pursuant to subsection (2), the Registrar shall cause notice thereof in the prescribed form to be given to the registered proprietor and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.

## 29. Minister may direct investigation by the Board

- (1) The Minister may, at any time, direct the Board to investigate the business activities of, or any specific act done in the course of business by, any registered proprietor.
- (2) Upon receiving any direction of the Minister pursuant to subsection (1) the Board shall issue a notice to the registered proprietor requiring him to appear before it in person, or if the said registered proprietor is a body corporate, by a senior director or executive of such body corporate, and answer any questions put by the Board in respect of the said business activities or specific act, as the case may be.
- (3) The notice referred to in subsection (1) shall be in the prescribed form, shall set forth in general terms the matters intended to be investigated by the Board and the day, time and place of hearing thereon, which shall not be more than two months and not less than one month from the date of its issue, and it shall be served upon the registered proprietor within ten days of the said date.
- (4) The provisions of [section 23](#) (6), (7), (8), (9) and (10), and of [sections 24](#) (1) (a), (c), (d), (e) and (f), [24\(2\)](#) and [25](#) shall apply *mutatis mutandis* to any investigation under this section.

## 30. Power of the Minister re registration

- (1) Notwithstanding any other provision of this Act, the Minister may, at any time, in his absolute discretion, direct the Board to cancel any registration of any registered proprietor in respect of any registered garage under this Act and the Board shall thereupon cause the Registrar to strike the relevant registration off the Register and to publish notice thereof in one issue of the *Gazette*.
- (2) As soon as practicable after striking a registration off the Register pursuant to subsection (1), the Registrar shall cause notice thereof, in the prescribed form, to be given to the registered proprietor and shall cause a copy of such notice to be posted in a prominent place on any garage premises whose registration has been cancelled by reason of such striking off.
- (3) Notwithstanding any other provision of this Act, the Minister may, at any time, in his absolute discretion, direct the Board to reinstate on the Register the name of any garage proprietor whose name was struck off the Register under this Act, and such reinstatement on the Register may, in the absolute discretion of the Minister, be in respect of any or all garage premises in respect of which the said garage proprietor was registered before such striking off, and such premises shall, on such reinstatement of such registration, thereupon become and be registered garage premises for all of the purposes of this Act, and the Board shall thereupon cause the Registrar to make the necessary amendments to the Register and publish the notices necessary to implement the decision of the Minister.

- (4) The Minister may, at any time, in his absolute discretion, lift any suspension of any registered garage proprietor made pursuant to this Act and the Board shall cause any direction of the Minister in this regard to be implemented by the Registrar.
- (5) Any direction of the Minister given pursuant to subsection (1) shall not be subject to appeal to, or question by, any court of law.
- (6) The Minister shall not be required to assign any reason for any direction given by him pursuant to this section.

### **31. Effect of cancellation**

- (1) A cancellation of the registration of a registered proprietor in accordance with this Act may be a general cancellation, whereby the resultant striking of his name off the Register effects the cancellation and striking off of the registration of all Registered garages in respect of which the said garage proprietor is registered under this Act.
- (2) Where a cancellation of the registration of a registered proprietor in accordance with this Act is not a general cancellation, the resultant striking of his name off the Register shall be in respect of the particular registered garage or registered garages to which the direction of the Minister made under section 24 (1) (e), 24 (1) (f), 27, 29 or 30, as the case may be, expressly refers, and shall effect the cancellation and striking off of the registration of the said registered garage or registered garages expressly referred to. The said registered proprietor shall in such event remain registered as registered proprietor of any other registered garage in respect of which he is registered under this Act.

### **32. Suspension of registration**

- (1) Suspension of the registration of a registered proprietor, pursuant to this Act, may be a general suspension whereby the said registered proprietor is, for the duration of the suspension, deemed not to be registered under this Act in respect of all registered garage premises in respect of which he is registered as the registered proprietor, and all such registered garages shall be deemed not to be registered, for the duration of the said period of suspension.
- (2) Suspension of the registration of a registered proprietor pursuant to this Act may be expressed to be in respect of one or more particular registered garage premises in respect of which he is registered as the registered proprietor whereby, for the duration of the period of suspension, the said registered proprietor is deemed not to be registered under this Act in respect of the said particular registered garage or registered garages, and the said particular registered garage or registered garages shall be deemed not to be registered for the duration of the said period of suspension.
- (3) Where any registered proprietor is registered as such in respect of more than one registered garage and the Minister directs suspension of his registration, the Minister shall, in his direction thereon to the Board, state the duration of such suspension, and, if the said suspension is not intended, to be general, the registered garages in respect of which it is to apply.

## **Part V – Miscellaneous**

### **33. Duty of registered proprietor on repair of vehicle or engine**

- (1) Every registered proprietor, who, in the course of repairing a motor vehicle or internal combustion or other engine, causes any existing part of such vehicle or engine to be replaced shall, at the time of re-delivery of such vehicle or engine to the owner thereof—
  - (a) either—
    - (i) deliver the said replaced part to the said owner; or

- (ii) show the said replaced part to the said owner and seek his directions as to its disposal; and
- (b) furnish the said owner with a statement in writing, signed by the said registered proprietor or his agent, stating whether the replacement is—
  - (i) a new part issued by the manufacturers of the said vehicle or engine; or
  - (ii) a new part made by a motor spares manufacturer, giving the name of such manufacturer; or
  - (iii) a substitute part made by the registered proprietor, or by another person on his behalf, for the purpose of such repair; or
  - (iv) a second-hand part, and stating that such second-hand part is reasonably fit for the purpose for which it is intended.
- (2) Where a registered proprietor wilfully and habitually fails to comply with the provisions of this section such conduct shall be deemed to be unconscionable practice for the purposes of any investigation of the business activities of the said registered proprietor by the Board under Part IV.

### **34. Duty of registered proprietor who is agent of manufacturer**

- (1) Every registered proprietor who is, in Malawi or in any part thereof, the approved or accredited agent of any manufacturer in respect of any type or make of motor vehicle or internal combustion or other engine, or of any mechanical or electrical part or accessory of any such vehicle or engine, shall, at all times, keep in stock in Malawi a reasonable quantity of spare parts and accessories appertaining to each model of motor vehicle or internal combustion or other engine of such manufacturer's making sold in Malawi or, as the case may be, a reasonable quantity of such mechanical or electrical parts or accessories of such manufacturer's making.
- (2) Failure to comply with subsection (1) shall, of itself, be sufficient grounds for the Board to recommend to the Minister that the registration of the registered proprietor concerned be cancelled.

### **35. Regulations**

The Minister may make regulations for the better carrying out of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the forms to be used for any register, application or notice;
- (b) the forms of certificates of registration;
- (c) the fees for registration under this Act;
- (d) the fees for any application to the Board;
- (e) the form to be used for any complaint to the Board;
- (f) the places where the Board may meet for the purposes of the investigation of complaints;
- (g) any matter to be or which may be prescribed.

### **36. Exemptions**

- (1) Nothing in this Act shall apply to any person who is carrying on business as a commercial garage proprietor immediately prior to the date of commencement until the expiry of six months from such date:

Provided that if, within such period of six months, such person first applies for registration, nothing in this Act shall apply to him until the notification to him of the result of such application under [section 19](#).

- (2) The Minister may by Order, published in the *Gazette*, and subject to such conditions, if any, as he may impose, exempt any particular commercial garage proprietor, or any class or description of commercial garage proprietors, from this Act, either generally or in respect of any area or place, or in respect of any class or description of garage premises, business or undertaking.

### **37. Registration not in lieu of licensing or registration, etc., under other written laws**

Registration under this Act shall be in addition to and not in derogation of any applicable licensing, registration or other requirement of the Businesses Licensing Act, or the Second-hand and Scrap Metal Dealers Act, or any other written law.

*[Cap. 46:01]*

*[No. 7 of 1971]*

### **38. Not applicable to Government or local authorities**

This Act shall not apply to the Government or to any local authority.