

Malawi

Lands Acquisition and Compensation Act

Chapter 58:04

Legislation as at 31 December 2017

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Lands Acquisition and Compensation Act

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Malawi

Lands Acquisition and Compensation Act Chapter 58:04

Assented to on 24 August 1970

Commenced on 24 August 1971

[This is the version of this document at 31 December 2017.]

[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 acquisition of land and compensation; and for incident matters

Part I – Preliminary

1. Short title

This Act may be cited as the Lands Acquisition and Compensation Act.

[9 of 2017]

2. Interpretation

In this Act, unless the context otherwise requires—

“court” means a court of competent jurisdiction;

“land” has the meaning as ascribed to that term under section 2 of the Land Act;

“transfer” includes convey, assign, surrender or otherwise alienate or dispose of and “transfer” and “transferor” as nouns shall be correspondingly construed;

“public land” has the meaning ascribed to that term by the Land Act.

[Cap 57:01; 9 of 2017]

Part II – Acquisition

3. Power to acquire land

Subject to the provisions of this Act, the Minister may acquire land for public utility either compulsorily or by agreement, and pay compensation therefor as may be agreed or determined under this Act.

[9 of 2017]

4. Preliminary investigation

- (1) Where there is need to acquire land under this Act for public utility, it shall be lawful for any person authorized by the Minister under section 3 in that behalf, and for his servants and agents to—
 - (a) enter upon any land in question or any land in the vicinity thereof and survey and take levels;
 - (b) dig or bore under the subsoil;
 - (c) do all other acts necessary to ascertain whether the land is or may be suitable; or

- (d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of work, if any, proposed to be done on it.
 - (2) Any entry upon land under this section shall be preceded by a notice of not less than seven days to the occupier.
 - (3) The Minister shall pay for any damage done by persons entering any land pursuant to this section.
- [9 of 2017]

5. Notice of intention to acquire

- (1) If the Minister resolves that it is desirable or expedient compulsorily to acquire any land under this Act, he shall serve notice upon the persons who are possessed of an interest in the land or upon such of those persons as are after reasonable enquiry known to him.
- (2) Every notice under this section shall with all reasonable dispatch be published in the *Gazette*.
- (3) Every notice under this section shall invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the *Gazette*.

6. Notice to yield up, and power to take, possession

- (1) The Minister may by notice under section 5 direct the persons upon whom such notice is required to be served by that section, or may by any subsequent notice direct such persons, and any other persons believed by him to be in possession of the land to which the notice in question relates, to yield up possession of such land upon the expiration of the period specified in the notice which period shall not be less than two months from the date of the service of the notice:
Provided that where the Minister considers that the land is urgently required the persons aforesaid may be required to yield up possession on the expiration of such lesser period as the Minister may direct.
- (2) On the expiration of the period referred to in subsection (1) the Minister and all persons authorized by him may take possession of the land.

7. Service of notices, etc

- (1) Every notice under section 5 or section 6 shall be served either personally on the persons to be served or by leaving it at their last usual place of residence or business if any such place can after reasonable enquiry be found; and if any such person is absent from Mala#i or if he or his last usual place of residence or business cannot after reasonable enquiry be found, such notice shall be left with the occupier of such land or his agent or, if such occupier or agent cannot after reasonable enquiry be found, shall be affixed upon some conspicuous part of such land.
- (2) If any such person be a body corporate such notice shall be deemed duly served if it be left at the principal office of such body corporate in Mala#i or if no such office can, after reasonable enquiry, be found, such notice shall be deemed duly served if served upon some officer (if any) or agent (if any) of such body corporate in Mala#i if such officer or agent can, after reasonable enquiry, be found.
- (3) Where any such notice has been published the acquisition of the property to which it relates shall not be invalid by reason only of any irregularity in the service or publication of the notice.

8. Acquisition of portion of house or other building

Where he is willing and able to yield up possession of the whole thereof, no person shall be required to yield up to the Minister possession of part only of any house or other building.

Part IIA – Compensation

[9 of 2017]

9. Compensation

- (1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act, the Minister shall pay in respect thereof, appropriate compensation agreed or determined in accordance with the provisions of this Act.
- (2) Any compensation payable under this section shall be paid in one lump sum.

[9 of 2017]

10. Assessment of appropriate compensation

- (1) Unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.
- (2) An assessment of compensation shall be calculated based on any of the following grounds—
 - (a) loss of occupational rights;
 - (b) loss of land;
 - (c) loss of structure;
 - (d) loss of business;
 - (e) relocation costs;
 - (f) loss of good will;
 - (g) costs of professional advice;
 - (h) nuisance;
 - (i) loss or reduction of tenure; or
 - (j) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.

[9 of 2017]

10A. Matters to be taken into consideration in assessing compensation for alienated land

- (1) In assessing the amount of compensation under section 10, the following matters, and no other matters, shall be taken into consideration—
 - (a) the market value of the land, or interest therein of the claimant at the valuation date;
 - (b) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his land by reason of the exercise of the powers conferred by this Act;
 - (c) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, reasonable expenses, if any, incidental to such change;
 - (d) any increase in the value of the land or other benefit likely to accrue at the valuation date from the proposed development to the person interested; and

- (e) the relief obtained by the claimant as a result of the taking of the land against the necessity of carrying out, in whole or in part, any order or direction against the land made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.
- (2) For the purposes of subsection (1)(a)—
- (a) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two years before the valuation date, such increase shall be disregarded unless it is proved that the improvement was made in good faith and not in contemplation of the acquisition;
 - (b) the following matters shall not be taken into consideration—
 - (i) any enhancement of the market value due to the proposal to change use of the land;
 - (ii) any increased value thereof due to use of the land or any premises thereon which is contrary to the law or could be restrained by a court;
 - (iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;
 - (iv) the special suitability or adaptability of the land for the proposed development;
 - (v) the degree of urgency which has led to the taking of the land; and
 - (vi) any disinclination of the claimant to part with his interest in the land.
- (3) For the purposes of subsection (1)(d), the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—
- (a) not less than one hundred sixty hectares in extent and not more than four hundred hectares in extent, be deemed equal in value to two *per centum* of the total area of the estate;
 - (b) exceeding four hundred hectares in extent, be deemed equal in value to four *per centum* of the total area of the estate:
- Provided that—
- (i) where the land taken is improved land, this subsection shall not operate to deprive the person interested of compensation in respect of damage to, or destruction of, surface rights existing at the valuation date on the land taken; and
 - (ii) where the land taken forms part of an estate less than one hundred and sixty hectares in extent, it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.
- (4) For the purposes of this section, “estate” means an undivided area of land for commercial agricultural purposes or otherwise, the legal right to occupy which is vested in a person other than the Government.

[9 of 2017]

11. Effect of payment of compensation

The payment to the person who appears to be entitled thereto (or into court if the identity of such person, or any question of apportionment, is in dispute) of compensation under this Act shall operate as a complete discharge of the Minister from all claims in respect of the land, but shall not bar any subsequent proceedings against the person to whom the same was awarded by any person claiming to have a better right to the compensation or the right to a share thereof:

Provided that no proceedings under this subsection by any person claiming to have a better right to any compensation or a right to a share therein shall be commenced after the expiration of three years from the date of the payment of the compensation by the Minister.

Part III – Reversion

12. Reversion to the Government

- (1) Where a notice to acquire any land under this Act has been published in terms of section 5, such land shall revert to the Government as public land within two months of the publication of such notice.
- (2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is removed or the court decides in favour of the Minister.

[9 of 2017]

13. ***

[Repealed by 9 of 2017]

14. ***

[Repealed by 9 of 2017]

Part IV – Miscellaneous and general

15. Minister may withdraw from acquisition

Nothing in this Act shall be construed as requiring the Minister to complete the acquisition of any property unless he has taken possession thereof:

Provided that where the acquisition of any land is not completed the Government shall pay to the owner thereof all such costs and expenses as may have been incurred by him by reason of or in consequence of the proceedings for acquisition and compensation for any loss or damage which may have been sustained by reason or in consequence of the notice of intended acquisition.

16. Service of notice not an admission

The fact that a notice has been served or published in terms of this Act shall not be regarded as an admission by the Minister that the person named in any such notice or the person on whom any such notice was served or any other person has any interest in the land specified in the notice or any part thereof, or debar the Minister from alleging in any proceedings under this Act or otherwise that all rights in or in relation to such land are vested in the Republic.

[9 of 2017]

17. Penalty for hindering or obstructing

- (1) Any person who wilfully fails to comply with a notice to yield up possession, or who wilfully hinders or obstructs any duly authorized person taking possession of any land in terms of this Act or exercising any rights or performing any functions under this Act in relation thereto, shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for six months.

- (2) The court may issue an order of ejectment in addition to penalties under subsection (1), or upon application to such court.

[9 of 2017]

18. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act and in particular, but without derogating from the generality of the foregoing, may make regulations prescribing anything which in terms of this Act may be prescribed.