

Malawi

Second-hand and Scrap Metal Dealers Act

Chapter 50:06

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Second-hand and Scrap Metal Dealers Act

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Commenced on 12 March 1973

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[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 dealers in second-hand goods and scrap metal and for matters incidental thereto and connected therewith

1. Short title

This Act may be cited as the Second-hand and Scrap Metal Dealers Act.

2. Interpretation

In this Act unless the context otherwise requires—

“**article**” in relation to second-hand goods, means any item of second-hand goods, and in relation to scrap metal means anything consisting wholly or partly of metal and includes any part of such item or thing;

“**to buy**” means to obtain by way of purchase, barter or exchange, and cognate words shall be construed accordingly;

“**dealer**” means a second-hand dealer or a scrap metal dealer;

“**goods**” means any tangible movable property entirely or partly manufactured, cast, wrought, woven or fashioned out of or on any metal, precious metal, cloth, paper, glass, clay, wood, plastic or other material, and includes motor vehicles, machinery, tools, works of art and printed and photographic reproductions of paintings, photographs, and recorded reproductions of speech or music;

“**metal**” means aluminium, cobalt, copper, iron, lead, manganese, vanadium, cadmium, tungsten, zinc, all other ferrous and nonferrous metals and alloys of these metals but does not include precious metals except to the extent that one tenth of one *per centum* or less of the weight of such an alloy as aforesaid is attributable to any precious metal;

“**precious metal**” means gold, silver and platinum;

“**premises**” includes any land whether enclosed or unenclosed and whether consisting of land and buildings or otherwise;

“**register**” means the register of second-hand and scrap metal dealers kept by the registering authority as provided by [section 4 \(2\)](#);

“**registered dealer**” means a dealer registered pursuant to [section 4](#);

“**registering authority**” means the Commissioner of Police;

“**re-possessioned goods**” means any goods which, under the terms of a hire-purchase or instalment sale agreement, have been re-possessioned by the seller thereof from the purchaser;

“**scrap metal**” includes—

- (i) any old metal or broken metal;

- (ii) any broken, worn out or defaced or manufactured, or partly manufactured, processed or wrought articles which are not fit for the purpose for which they were manufactured, processed or wrought or which are no longer so required;
- (iii) metallic waste;
- (iv) any metal, occurring as a mineral in a raw or natural state, in quantities of less than one thousand pounds in weight, except when utilized *bona fide* as raw metal geological specimens;

“**scrap metal dealer**” means any person who carries on a trade or business which consists wholly or partly of buying and selling scrap metal, whether the scrap metal sold is in the form in which it was bought or otherwise, and includes any person who, from a person other than a scrap metal dealer, buys or acquires scrap metal for further processing or for the manufacture of other things or for export, but does not include any person engaged in mining who in the course of his mining business buys or sells scrap metal from or to another such person;

“**second-hand goods**” means any goods which have been bought or delivered or are possessed for sale after use by a previous owner, and includes goods received by any person from their previous owner in partial or full consideration for any contract, or by way of deposit or part deposit in respect of any hire-purchase or instalment sale agreement, but does not include re-possessed goods so long as the said goods remain in the possession of the seller thereof.

3. Appointment of registering authority

- (1) There shall be a registering authority who shall be the Commissioner of Police and who shall, subject to the general or special directions of the Minister, be responsible for the administration of this Act.
- (2) The registering authority may designate a police officer of the rank of superintendent or of any higher rank as registrar for the purposes of this Act.
- (3) The police officer in charge of each District shall be *ex officio* assistant registrar for the purposes of this Act.
- (4) The registering authority may, subject to the general or special directions of the Minister, delegate any of his powers or functions under this Act to any police officer or public officer.

4. Registration of dealers

- (1) On and after the date of commencement of this Act, no person shall carry on the business of a second-hand dealer or scrap metal dealer without being registered as such under this Act.
- (2) The registering authority shall keep a register in the prescribed form for the purposes of this Act.
- (3) An application for registration under this Act or for a renewal thereof shall be made, in the prescribed manner and at the prescribed time, to the registering authority and may be granted or refused at the discretion of that authority.
- (4) Where an application for registration is made under this Act in respect of a partnership firm, the partners shall nominate one member of the firm who shall, upon the application being granted by the registering authority, be registered as the registered dealer in respect of the said partnership business.
- (5) Every application for registration or for a renewal thereof shall be accompanied with the appropriate prescribed fee.
- (6) Registration under this Act shall be effective from the date of its entry in the register by the registering authority and shall determine on the 1st January following unless sooner revoked or cancelled.

- (7) Any person who carries on business as a second-hand dealer or scrap metal dealer without being registered as such under this Act or who contravenes the terms of his registration shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

5. Dealer to furnish description of premises

Every person applying for registration under this Act or for a renewal thereof shall, at the time of his application, furnish to the registering authority a description, in writing, of his premises, including all cellars, closets and other places proposed to be used by him in the course of his business, and shall, if so required by the said authority, furnish a map or plan of such premises.

6. Non-registration of certain persons

- (1) Save with the consent of the Minister, the registering authority shall not register any person under this Act who—
- (a) is not a resident of Malawi; or
 - (b) has been convicted of an offence under this Act and sentenced therefor to a fine of K20 or more or to imprisonment without the option of a fine; or
 - (c) has been convicted of an offence under any fiscal or revenue law; or
 - (d) has been convicted of an offence involving fraud or dishonesty; or
 - (e) has, within six years last past, been convicted of an offence under any written law and sentenced therefor to a term of imprisonment without the option of a fine.
- (2) Nothing in this section provided shall be deemed to impair or delimit the general discretion of the licensing authority to refuse registration under this Act.

7. Dealers to keep books

- (1) Every dealer shall enter in a bound book (hereinafter referred to as the “dealings book”) to be kept, exclusively for the purposes of this Act, by him on his premises the particulars of each transaction in secondhand goods or scrap metal, as the case may be, entered into by him in the course of his said business, including—
- (a) a proper and distinctive description of each article purchased or received by him;
 - (b) the name and residential address of the person from whom he purchased or received the article;
 - (c) the date and hour of the day of each transaction;
 - (d) the price paid or agreed to be paid for the article;
 - (e) in the case of a transaction in scrap metal, the source of such scrap metal;
 - (f) such other particulars as may be prescribed:

Provided that, where articles of the same kind, value and description are on any particular occasion bought or sold in a lot or parcel, it shall be sufficient to describe such lot or parcel without describing each of the several articles comprising same.

- (2) Where a dealer engages in business in more premises than one he shall keep a dealings book for and in respect of each such premises and each dealings book shall be kept on the premises to which it relates and shall contain a record of transactions in second-hand goods or scrap metal, as the case may be, entered into on such premises.
- (3) Every entry in the dealings book kept by a dealer shall be deemed, unless the contrary is proved, to have been made by or under the authority of that dealer.

- (4) Any person who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K100.

8. Dealers to retain articles for seven days

- (1) Every article purchased or received by a dealer shall be kept by him, on his premises, for seven days from the date on which it was so purchased or received, unless in the meantime he shall, on giving twenty-four hours' previous notice to the officer in charge of the Police of the District in which the premises are located, have received from such officer permission to dispose of such article.
- (2) Every dealer shall, when required so to do by a police officer, produce to him any such article before the expiration of the said period of seven days.
- (3) Any person who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K20.

9. Dealers to enter names of purchasers, etc.

- (1) Every dealer shall enter in the dealings book the name and address of the person to whom any article, lot or parcel is sold or delivered by him and also the date of the sale or delivery.
- (2) Any person who fails to comply with the requirement of this section shall be guilty of an offence and shall be liable to a fine of K5.

10. False entries and information

Any person who—

- (a) knowingly makes any false entry in any dealings book; or
- (b) knowingly gives to a second-hand dealer or his servant or agent any false particulars concerning his name and address; or
- (c) gives to any scrap metal dealer or his servant or agent any false particulars concerning his name and address or concerning the source of any scrap metal,

shall be guilty of an offence and liable to a fine of K2,000 or imprisonment for a term of two years.

11. Dealers to produce articles and books on demand

- (1) Every dealer shall at all reasonable times produce on demand to any police officer any article in his possession and shall also so produce the dealings book in which the description of any article is or ought to have been entered.
- (2) Any police officer obtaining the production of any dealings book shall on each occasion subscribe his name immediately after the last entry therein.
- (3) Whenever any article which has been stolen or fraudulently obtained is found in the possession of any dealer, he shall, on being informed by any police officer that such article was stolen or fraudulently obtained, hand over the said article to such officer.
- (4) Any dealer who fails to comply with any requirement of this section shall be guilty of an offence and liable to a fine of K20, without prejudice to his being also proceeded against under any other written law as a receiver of stolen goods.

12. Dealers to report stolen goods

- (1) Where any article, with respect to which information in writing is given by any police officer to a dealer that it has been stolen or fraudulently obtained, is then in, or subsequently comes into, the possession of the said dealer, he shall as soon as is practicable inform a police officer that an article

answering the description of the said stolen or fraudulently obtained article is in his possession and shall state the name and address given by the person from whom the article was received.

- (2) Any dealer who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of K10:

Provided that, in the case of any article which it may be difficult to trace and identify, no fine shall be imposed under this section unless it appears to the court that the article was knowingly concealed by the dealer.

13. Dealer may not alter or deface articles without permission

Where any dealer, after receiving information of the theft or fraudulent obtaining of any article, melts, alters, defaces or conceals any article answering to the description of the aforesaid article, or causes the same to be melted, altered, defaced or concealed, without having been authorized in writing by a police officer so to do, and it is found that the said article was stolen or fraudulently obtained by the person from whom the dealer received the same or by any other person, then in such case it shall be held that the dealer knew that the said article was stolen or fraudulently obtained and he shall be proceeded against according to law as a receiver of stolen goods, and no evidence of his guilt shall be necessary other than the evidence of such melting, altering, defacing or concealing, after receiving such information as aforesaid.

14. Dealer may not possess smelting pots, etc.

Any dealer, who, without permission in writing from the police officer in charge of the District in which his premises are located, possesses, keeps or knowingly allows to be kept on his premises any smelting pot or implement for melting, altering or defacing metals or precious metals shall be guilty of an offence and liable to a fine of K1,500 and to imprisonment for a term of one year.

15. Business not to be transacted with persons under 14 years of age

- (1) A dealer shall not sell to or purchase from any person apparently under the age of fourteen years, whether such person is acting on his own behalf or on behalf of any other person.
- (2) Any dealer who contravenes the provisions of this section, either by himself or any agent or servant, shall be guilty of an offence and liable to a fine of K20.

16. Dealers to have their names over shop doors

- (1) Every registered dealer shall have his name with the words "registered second-hand dealer" or "registered scrap metal dealer", as the case may be, painted over the door or principal entrance to his premises in legible characters, either black upon a white ground or white upon a dark ground, and shall replace the same if removed, obliterated or defaced.
- (2) The requirements of this section shall be met if the said name and words are legibly painted, impressed or embossed on a plate of metal or other durable material which is affixed over the said door or principal entrance.
- (3) Any person who fails to comply with the requirements of this section shall be guilty of an offence and liable to a fine of K5.

17. Revocation of registration

- (1) The registering authority may, with the approval of the Minister, revoke any registration under this Act, if—
- (a) the registered dealer fails or refuses to comply with any term or condition of his registration; or

- (b) by reason of any structural alterations, or otherwise, the said authority is of opinion that the premises in which the registered dealer carries on his business as such have become unsuitable for such business; or
 - (c) the registered dealer has been convicted of an offence under this Act or under any fiscal or revenue law;
 - (d) the said authority is of opinion that the registered dealer has failed to make entries, or has made inaccurate or misleading entries, in any dealings book.
- (2) Whenever the registering authority decides to revoke any registration pursuant to subsection (1), he shall send to the registered dealer a notice in the prescribed form stating that he has decided to revoke the said registration as of a date not less than one month or more than three months from the date of the said notice.
- (3) Any registered dealer who receives a notice pursuant to subsection (2) may, within seven days after receipt thereof, appeal in writing to the Minister against the decision of the registering authority to revoke the said registration and the decision of the Minister on such appeal shall be final and not subject to review by any court.
- (4) Where a registration has been revoked pursuant to this section the dealer concerned shall be allowed thirty days from the date of the revocation or from the date of the decision of the Minister disallowing any appeal pursuant to subsection (3), whichever is the later, within which to dispose of second-hand goods or scrap metal, as the case may be, in stock on his premises at the date of the revocation and during the said period the said dealer shall be subject to this Act in respect of such second-hand goods or scrap metal, as the case may be, as if his said registration had not been revoked.
- (5) A dealer whose registration has been revoked pursuant to this section shall not buy or receive for sale any article on or after the date of such revocation notwithstanding that the said dealer may, during the said time, be entitled to dispose of existing stocks of second-hand goods or scrap metal, as the case may be, pursuant to subsection (4).
- (6) Any person who contravenes the provisions of subsection (4) or (5) shall be guilty of an offence and liable to a fine of K1,500 and to imprisonment for a term of one year.

18. Cancellation of registration by court

- (1) Upon the conviction of any registered dealer of an offence under this Act or under any fiscal or revenue law or of an offence involving fraud or dishonesty the court, in addition to any other penalty it may impose, may order the cancellation of the registration of the said registered dealer under this Act, and if requested so to do by the prosecution in any such case, the court shall so order the cancellation of the said registration.
- (2) Whenever a court makes an order pursuant to subsection (1) it shall cause a certified copy of such order to be delivered to the registration authority, who shall, as soon as the said order becomes final, strike the name of the said dealer from the register.
- (3) Any person whose registration has been cancelled pursuant to this section shall, as soon as the order of cancellation becomes final, cease to deal in second-hand goods whether on his own behalf or through any partner, manager, employee or agent.

19. 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, return or application;
- (b) the fees for any registration or application;

- (c) the form of and particulars to be entered into any dealings book, and, in this regard, may provide for different forms and particulars in respect of different articles and businesses and in respect of different areas;
- (d) the terms and conditions of registration;
- (e) the penalties for breaches of the regulations;
- (f) any matter to be or which may be prescribed.

20. Exemptions

The Minister may, by Government Notice, exempt any dealer or class of dealer from the provisions and requirements of this Act, or any of them, and may, in like manner, revoke or alter any such exemption.

21. Registration not in lieu of licensing, etc., under other written laws

Registration under this Act shall be in addition to and not in derogation of any applicable licensing or other requirements of the Businesses Licensing Act or any other written law.

[Cap. 46:01]