

Malawi

## Council for National Herbarium and Botanic Gardens of Malawi Act Chapter 30:06

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# Council for National Herbarium and Botanic Gardens of Malawi Act

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# Malawi

## Council for National Herbarium and Botanic Gardens of Malawi Act

### Chapter 30:06

Assented to on 7 April 1987

Commenced on 1 December 1987

*[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 development and management of herbarium and botanic matter as national heritage of Malawi and to establish the Council for National Herbarium and Botanic Gardens of Malawi and further to provide for matters connected therewith or incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Council for National Herbarium and Botanic Gardens of Malawi Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**botanic gardens**" means a botanic garden referred to in [section 5](#) (1) (b);

"**Council**" means the Council for National Herbarium and Botanic Gardens of Malawi established under [section 3](#)(1);

"**financial year**" means the financial year of the Council being the period specified in [section 12](#);

"**herbarium**" means a herbarium established under [section 5](#) (1) (a);

"**object**" includes a plant, living or dead.

### Part II – The Council for National Herbarium and Botanic Gardens of Malawi

#### 3. Establishment of the Council

(1) There is hereby established a body to be known as the Council for National Herbarium and Botanic Gardens of Malawi which shall—

- (a) be a body corporate with perpetual succession;
- (b) have a common seal;
- (c) be capable of—
  - (i) acquiring, holding and disposing of real and personal property;
  - (ii) suing and being sued in its corporate name; and
  - (iii) doing or performing all such acts and things as a body corporate may by law do or perform.

- (2) The provisions of the Schedule shall have effect with respect to the Council.

[Schedule]

- (3) The Minister may, by Order published in the *Gazette*, amend the Schedule.

[Schedule]

#### 4. Composition of the Council

- (1) The Council shall consist of—
- (a) one member appointed by the Minister and designated by him as Chairman of the Council;
  - (b) one member appointed by the Minister and designated by him as Vice-Chairman of the Council;
  - (c) three members representing the University of Malawi, other than the Vice-Chancellor thereof, appointed by the Minister;
  - (d) one member representing the Research Council of Malawi, appointed by the Minister from the officials or members of that Council;
  - (e) one member representing the National Fauna Preservation Society of Malawi, appointed by the Minister;
  - (f) one member representing the Museums of Malawi, appointed by the Minister from the officials or the Trustees of the Museums of Malawi;
  - (g) the following ex officio members—
    - (i) the Secretary for Forestry and Natural Resources or his representative;
    - (ii) the Secretary for Agriculture or his representative;
    - (iii) the Secretary for Local Government or his representative;
    - (iv) the Secretary for Education and Culture or his representative; and
    - (v) the Vice-Chancellor of the University of Malawi, unless he is appointed either under paragraph (a) or (b).
- (2) A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.
- (3) The names of all members of the Council as first appointed and every change in membership thereof shall be published in the *Gazette*.
- (4) No person shall be appointed to the Council who—
- (a) is an undischarged bankrupt;
  - (b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment, otherwise than as an alternative to, or in default of, the payment of a fine.

## Part III – Functions and powers of the Council

### 5. General functions of the Council

- (1) Subject to the provisions of this Act and to any other written law, the functions of the Council shall be to—
  - (a) establish a herbarium at a suitable place which shall be a centre for the assemblage, growth, curation and classification of plants in Malawi;
  - (b) develop the existing botanic garden in the Municipality of Zomba and establish other botanic gardens at such other suitable place or places in Malawi as the Council may see fit;
  - (c) carry out investigation and research into the science of plants and related subjects, and disseminate the results of the investigation and research;
  - (d) provide advice, instruction and education in relation to those aspects of the sciences of plants with which the Council is for the time being in fact concerned;
  - (e) care for the Council's collection of plants, preserved plant material, other objects relating to plants, books and records;
  - (f) keep the collections as national reference collections, ensure that such collections are available to interested persons for the purposes of study and add to, or adapt, such collections according to scientific needs and as the resources of the Council may allow;
  - (g) afford members of the public opportunity to enter a herbarium or any land occupied or managed by the Council, for the purposes of gaining knowledge and enjoyment from the Council's collection.
- (2) For the purpose of discharging its functions, the Council may, subject to the provisions of this Act—
  - (a) acquire by purchase, exchange or lease any land or building for the purpose of a herbarium or botanic garden and sell, exchange or lease land or buildings vested in, or held by, the Council which is not required for those purposes;
  - (b) erect, repair, alter, or demolish, or cause to be erected, repaired, altered or demolished, such buildings and other structures as the Council may deem necessary or expedient in the exercise of its powers or in the performance of its functions;
  - (c) with the approval of the Minister, solicit, accept and receive subscriptions, donations, devises, gifts and bequests of real or personal property, howsoever made to the Council for the purposes of a herbarium or a botanic garden;
  - (d) require and obtain payment for any advice, instruction, education or other service provided by the Council or for any goods supplied by the Council or for entry upon any land or building occupied or managed by the Council;
  - (e) apply any moneys of the Council for the purchase of any object which, in the opinion of the Council, it is desirable to acquire for a herbarium or botanic garden or in furthering the interests and increasing the utility of a herbarium or botanic garden or for any other purpose in the exercise of the Council's powers or in the performance of its functions;
  - (f) exchange with or sell to any person or institution any object;
  - (g) affiliate with any institution, whether within or outside Malawi, of a generally similar character;
  - (h) enter into contracts and other agreements;

- (i) do such other things as it thinks necessary or expedient—
    - (i) for preserving and increasing the utility of the Council's collections;
    - (ii) for ensuring the due administration of anything vested in or acquired by the Council and any land or building occupied or managed by the Council under, or by virtue of, this Act; and
    - (iii) otherwise for the purposes of the Council's functions.
- (3) The Council may, with the approval of the Minister and by Order published in the *Gazette*, prescribe—
  - (a) the hours during which members of the public may enter any land or building occupied or managed by the Council; and
  - (b) the fees charged for such entry.

## 6. Powers of the Council

- (1) The Council may, with the approval of the Minister and subject to any conditions he may impose, form or take part in forming one or more bodies corporate which or each of which has as its main objective or objectives one or more of the following—
  - (a) the production and publication of books, films or other informative material relating to the science of plants or related subjects or to the Council and its functions;
  - (b) the production of souvenirs relating to plants or to the activities of the Council;
  - (c) the sale of materials referred to in paragraphs (a) and (b);
  - (d) the provision of catering, car parking or other services or facilities for the public at any land or building occupied or managed by the Council.
- (2) The Council may hold interests in such body, exercise rights conferred by the holding of interests in it, and provide financial or other assistance to or in respect of such body.

## Part IV – Vesting provisions

## 7. Initial vesting in the Council

- (1) Where any object belonged to, or was otherwise vested in the Government or in the University of Malawi immediately before the commencement of this Act, and the object—
  - (a) then formed part of a collection of plants, preserved plant material, other objects relating to plants, or books or records of the institution known as the National Herbarium of Malawi; or
  - (b) was then in use in respect of the collections or solely for the purposes of the administration of the National Herbarium of Malawi,such object shall, upon the commencement of this Act, vest instead in the Council.
- (2) In the case of an object referred to in subsection (1) (a), it shall be immaterial that, immediately before the commencement of this Act, it was situated elsewhere than at premises managed for the purposes of the National Herbarium of Malawi.
- (3) Upon the commencement of this Act, any right, power, duty or liability or obligation which immediately before then was exercisable by or against the Government, or the University of Malawi in relation to the National Herbarium of Malawi shall instead become exercisable by or against the Council and may be enforced by or against the Council in like manner as it would have been enforced by or against the Government or the University of Malawi:

Provided that nothing in this subsection shall preclude the Government or the University of Malawi from divesting the Council of any liability or obligation hitherto vested in the Government or the University of Malawi.

## **8. Acquisition and disposal of objects**

- (1) The Council may acquire (whether by purchase, exchange, gift or otherwise) any object which in its opinion it is desirable to add to the collections of the Council.
- (2) The Council may not dispose of an object the property in which is vested in the Council and which is comprised in the Council's collection unless—
  - (a) the disposal is by way of sale, exchange or gift of an object which is a duplicate of another object the property in which is so vested and which is so comprised; or
  - (b) the disposal is by way of sale, exchange or gift of an object which in the Council's opinion is unsuitable for retention in its collections and can be disposed of without detriment to the interests of scientific research or studies in Malawi; or
  - (c) the disposal (by whatever means, including destruction) is of an object which the Council is satisfied has become useless for the purposes of the Council's collections by reason of damage, physical deterioration, or infestation by destructive organisms.
- (3) An object may be disposed of as mentioned in subsection (2) (c) notwithstanding a trust or condition, express or implied, prohibiting or restricting the disposal of the object.

## **9. Lending and borrowing of objects**

- (1) Subject to subsection (3), the Council may lend any object the property in which is vested in the Council and which is comprised in the collections of the Council.
- (2) The provisions of subsection (1) shall apply, whether or not such lending is for purposes of public exhibition, and whether or not under the terms of the lending the object is to remain in Malawi or to be taken out of Malawi.
- (3) In deciding whether or not to lend an object, and in determining the time for which and conditions subject to which an object is to be lent, the Council shall—
  - (a) give special consideration to a request for the lending of an object for public exhibition; and
  - (b) have regard to the interests of scientific research and study in Malawi, the suitability of the prospective borrower, the purpose of the lending, the physical condition and degree of rarity of the object, and any risks to which it is likely to be exposed.
- (4) The Council may borrow objects from other organizations within or outside Malawi for the purpose of exhibiting them or of scientific research or study.

## **Part V – Financial provisions**

### **10. Funds of the Council**

- (1) The funds of the Council shall consist of—
  - (a) such sums as may be payable to the Council from moneys appropriated by Parliament for the purpose;
  - (b) such moneys or assets as may accrue to, or vest in, the Council whether in the course of the exercise of its functions or powers, or otherwise;

- (c) such moneys or other assets as may accrue to, or vest in, the Council by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;
- (d) such sums as are derived from the sale of any property, real or personal, by, or on behalf of, the Council;
- (e) such sums as are received by the Council by way of voluntary contributions;
- (f) such moneys or other assets as may be donated to the Council by any foreign government, international agency or other foreign institution or body;
- (g) such moneys as the Council may raise under [section 11](#);
- (h) such other moneys as the Council may lawfully acquire in the exercise of its functions or powers under this Act.

## 11. Borrowing powers

Subject to the Finance and Audit Act, the Council may raise moneys by way of loans or bank overdrafts.

[Cap. 37:01]

## 12. Annual budget

- (1) The Council shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, respectively, and shall submit the budget for the approval of the Minister.
- (2) The financial year of the Council shall be a period of twelve months ending on 31st March each year:  
Provided that the first financial year of the Council may be a period shorter or longer than twelve months, but not exceeding twenty-four months ending on the 31st March of such year as the Minister may, by general notice published in the *Gazette*, specify.

## 13. Books of accounts, audit and reports

- (1) The Council shall cause to be kept proper books of accounts and other books in relation thereto.
- (2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council with the approval of the Minister. The expenses of the audit and incidental thereto shall be paid from the funds of the Council.
- (3) The Council shall, as soon as is practicable, but no later than months after the end of each financial year, submit to the Minister an annual report upon its work and operations.
- (4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to the Finance and Audit Act.

[Cap. 37:01]

## Part VI – Miscellaneous

## 14. Regulations

The Minister may, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.



## Schedule 2 (Section (3) and (4))

### 1. Staff of the Council

- (1) There shall be a manager (by whatever title designated) of the Council who shall be appointed by the Council with the approval of the Minister.
- (2) The manager shall be the chief executive officer of the Council and shall be responsible to the Council for the general exercise of the functions of the Council.
- (3) The Council may appoint such other professional, technical and administrative officers, clerks and other servants as it may deem requisite.
- (4) The Council shall pay to a person in its employ such remuneration and allowances as it may, with the approval of the Minister, determine.
- (5) An employee of the Council shall be appointed on such other terms and conditions as the Council may, with the approval of the Minister, determine.
- (6) The Council may enter into agreements to facilitate the voluntary transfer of employees between itself and any other employer.

### 2. Meeting of the Council

- (1) The Council shall meet at least three times a year at such places and times as the Chairman may determine or as may be directed by the Minister.
- (2) The Chairman shall convene meetings of the Council by giving the members at least seven days' written notice but, where the urgency of the matter to be discussed so requires, the Chairman shall convene a meeting without giving such notice.
- (3) The Chairman shall preside at meetings of the Council or, in his absence, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all the powers and perform all the duties of the Chairman.
- (4) In the absence of both the Chairman and the Vice-Chairman the members present at a meeting shall elect from amongst themselves one member who, for the purposes of that meeting, shall exercise all the powers and perform all the duties of the Chairman.
- (5) At every meeting of the Council the quorum shall be formed by more than one-third of the members.
- (6) The Council shall have power to regulate its own procedures.
- (7) Decisions of the Council shall be made by a majority of the members present at a meeting of the Council. At all such meetings the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (8) The Council may, in the exercise of its powers and functions, appoint or dissolve any committee.
- (9) The Council may, with the approval of the Minister, co-opt one or more persons to attend any particular meeting or series of meetings of the Council or committee for the purpose of assisting or advising the Council or committee, as the case may be, in respect of any matter under consideration by the Council or committee.
- (10) A person co-opted pursuant to subparagraph (9)—
  - (a) may take part in the deliberations of the Council or committee, as the case may be, at any meeting he attends, but shall not be entitled to vote; and
  - (b) shall not, by virtue of such co-option, be deemed to be a member of the Council.

- (11) The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of any member.
- (12) The manager of the Council shall be the secretary to the Council at its meetings and shall keep minutes of each meeting and, with the approval of the Chairman, shall prepare the agenda of each meeting. The minutes shall be confirmed at the succeeding meeting by the Chairman or, in his absence, by the Vice-Chairman, or, in his absence, by the member for the time being acting as Chairman.

### 3. Allowances

A member of the Council or of a committee, not being an officer in the public service, may be paid such allowances as the Minister may from time to time determine.

### 4. Tenure of office

- (1) A member of the Council, other than an *ex officio* member, shall, subject to this paragraph, hold office for two years from the date of his appointment.
- (2) An *ex officio* member of the Council shall hold office as such so long as he holds the office by virtue of which he is a member of the Council.
- (3) Upon the expiry of the period for which a member of the Council who is not a member *ex officio* 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.
- (4) A retiring appointed member shall be eligible for reappointment if not disqualified under [section 4 \(6\)](#).
- (5) Where the office of a member of the Council is vacated, the Minister may appoint any person, qualified for appointment in accordance with the provisions under which the former member was appointed, to fill the vacancy until the expiry of the remaining period.
- (6) A member, other than an *ex officio* member, shall vacate his office—
  - (a) if the Minister so directs;
  - (b) upon the expiry of two years from the date of his appointment;
  - (c) upon his death;
  - (d) if he is adjudged bankrupt;
  - (e) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of fine;
  - (f) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;
  - (g) if the Minister is satisfied upon medical evidence that by reason of mental or physical infirmity he has become incapable of performing his duties as a member of the Council.