

CHAPTER 18:03
PROTECTED FLAG, EMBLEMS AND NAMES
ARRANGEMENT OF SECTIONS

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First Schedule
Second Schedule

10 of 1967

An Act to safeguard the dignity of the Head of State, the National Flag, the Armorial Ensigns and the Public Seal and to prevent the improper use of the National Flag, the Armorial Ensigns, the Public Seal and of certain emblems, colours, names, words and likenesses for professional, commercial and other purposes and for matters incidental thereto and connected therewith

[28TH JULY 1967]

1. Short title

This Act may be cited as the Protected Flag, Emblems and Names Act.

2. Interpretation

(1) In this Act—

“**National Flag**” means the National Flag of Malawi declared in section 5 of the Constitution and of which the description and design are set out in Part I of the First Schedule;

“**Armorial Ensigns**” means the Armorial Ensigns of Malawi (also known as the National Coat of Arms, or the Coat of Arms of Malawi), the heraldic device of which the blazon and design are set out in Part II of the First Schedule;

“**Public Seal**” means the Public Seal of Malawi as provided under section 3 of which the design is set out in Part III of the First Schedule;

“**protected colours**” means the colours of the Malawi Congress Party, that is to say, black, red and green successively arranged in that order or arranged in any other order so nearly resembling that order as to be liable or calculated to deceive, or any other colours or combination of colours which the Minister may, by order published in the *Gazette*, add to the Second Schedule;

“**protected emblem**” means the National Flag, the Armorial Ensigns, the Public Seal, or any emblem, seal, flag, pennant, insignia, ensign, design or coat of arms of a kind specified in Part I of the Second Schedule or any recognizable part of a protected emblem;

“**protected likeness**” means any photograph, drawing, painting, sculpture or other pictorial or visual representation of the person for the time being holding any of the offices or dignities specified in Part II of the Second Schedule;

“**protected name**” means the national name of Malawi, and any of the names or words

specified in Part III of the Second Schedule, and includes any abbreviation of any such name or word.

(2) Any representation, or colourable imitation of any protected emblem or protected likeness, or any device or design or likeness which represents, purports to represent, or is capable of representing any protected emblem or protected likeness, or any device or design or likeness which so nearly resembles any protected emblem or protected likeness as to be calculated or likely to deceive shall be deemed to be a protected emblem or protected likeness as the case may be for the purposes of this Act.

3. The Public Seal

(1) There shall be a Public Seal for Malawi which shall show the Armorial Ensigns with the words "Republic of Malawi" as circumscription.

(2) The President shall be the custodian of the Public Seal, and the manner in which it is to be kept and used shall be in accordance with the directions of the President.

4. Insulting President, National Flag, etc., an offence

Any person who does any act or utters any words or publishes or utters any writing calculated to or liable to insult, ridicule or to show disrespect to or with reference to the President, the National Flag, the Armorial Ensigns, the Public Seal, or any protected emblem or protected likeness, shall be liable to a fine of £1,000 and to imprisonment for two years.

5. Prohibition of improper use of emblems, colours, etc.

(1) Notwithstanding anything contained in any written law, no person shall, except with the written permission of the Minister—

- (a) use or permit to be used in connexion with or in furtherance of any trade, business, calling or profession any protected emblem, protected name, protected likeness or the protected colours;
- (b) use or display, or permit to be used or displayed, any protected emblem, protected name, protected likeness or the protected colours as an advertisement for any trade, business, calling or profession;
- (c) use any protected emblem, protected name, protected likeness or the protected colours in the title of any patent or in any trade mark or design;
- (d) manufacture, import, sell, offer for sale, expose for sale, possess for the purpose of sale or with intent to sell or publish any article, thing, matter or substance being or bearing any protected emblem, protected name, protected likeness, or the protected colours, or any article, thing, matter or substance on which or in respect of which any title, trade mark or design is used in contravention of paragraph (c); or
- (e) as a term or condition of, or in connexion with or in furtherance of, any collateral agreement or ancillary agreement for, or in connexion with, the sale of any article, thing, matter or substance, or of any service, donate, present, bestow or give to any other person any other article, thing, matter or substance which is, represents, purports to represent or is capable of representing any protected emblem, protected name, protected likeness or the protected colours.

(2) Nothing in subsection (1) shall apply or be deemed to apply to the publication of any *bona fide* news item (whether in a newspaper or by any other medium) or to the publication in a newspaper or other publication duly registered under the Printed Publications Act of any article connected with any *bona fide* news item, and not being an article in connexion with or in furtherance of, or as advertisement for, any trade, business, calling or profession.

(3) Any person who contravenes this section or who fails or neglects to comply with the conditions imposed by the Minister in respect of a permit issued to him under this section shall be liable to a fine of £1,000 and to imprisonment for one year, and if the offence is a continuing one shall be liable in addition to a fine of £100 and to imprisonment for one month in respect of each day on which the offence continues.

(4) In addition to any penalty imposed under subsection (3), where the person convicted

is the holder of a licence under the Businesses Licensing Act, the Intoxicating Liquor Ordinance, or the Hotels Act and the offence was committed in connexion with or in furtherance of the business or activity in respect of which the licence was issued, the court may order the forfeiture of such licence. **6. Restriction on use of protected names**

(1) Notwithstanding anything contained in any written law, save under the authority of a written permit issued by the Minister no company, business, cooperative or other society, trade union, club or other association of persons, printer or publisher shall be registered by or purport to be registered by, or use for its own purposes, any protected name or any name or names of which any protected name forms part.

(2) The Minister may by order published in the *Gazette* extend this section to such other class or classes of persons or associations as may be specified in such order, and may in like manner exempt from this section such companies, businesses, cooperative or other societies, trade unions, clubs or other persons or associations as may be specified in such order, and to the extent or subject to such conditions as may be specified in such order.

(3) Any company, business, cooperative or other society, trade union, club, association, printer, publisher or person contravening this section, or who fails or neglects to comply with the conditions imposed by the Minister in respect of a permit issued to him under this section, and any director, partner, manager or officer of any such company, business, society, trade union, club or association shall be liable to a fine of £500 and to imprisonment for six months.

7. Power of seizure

(1) If a police officer has reasonable cause to believe that something which has been used, displayed, manufactured or imported contrary to this Act is to be found on any premises, he may require the person in charge or appearing to be in charge of the premises to allow him to enter the premises and to afford him all reasonable facilities for a search thereof, and if entry cannot within a reasonable period be so obtained the officer may without warrant enter the premises (using force if necessary) and search therein.

(2) If a police officer finds on any premises anything in respect of which he has reasonable cause to believe that an offence under this Act has been committed by any person, he may seize that thing, and where he does so shall bring it before a magistrate, who shall order it to be forfeited if he is satisfied that it has been used, displayed, manufactured or imported contrary to this Act, or else shall order it to be restored to the person from whom it was seized.

8. Power to revoke, etc.

Any permit issued by the Minister for the purposes of this Act may be given subject to such conditions as the Minister thinks fit, and the Minister may at any time at his discretion revoke any permit issued by him or vary the conditions thereof.

9. Regulations

The Minister may make regulations for the better carrying into effect of this Act and without prejudice to the generality of the foregoing may make regulations—

- (a) prescribing the occasions upon which, the persons by whom and the manner in which the National Flag or the Armorial Ensigns or any protected likeness may be flown or displayed, as the case may be;
- (b) prohibiting, controlling or restricting the use of any protected emblem, protected name, protected likeness or the protected colours;
- (c) regulating the manner in which application may be made to him for his permission under this Act, prescribing the form of any permit by which such permission may be given and fixing any fee or any royalty to be paid in respect of such application and licence;

10. Sanction to prosecute

No prosecution for an offence under this Act shall be instituted without the previous sanction in writing of the Director of Public Prosecutions.

11. Minister may amend Second Schedule

The Minister may, by order published in the *Gazette*, amend the Second Schedule to this Act.