



GOVERNMENT OF MALAWI

# FOOD AND NUTRITION BILL

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## FOOD AND NUTRITION

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## FOOD AND NUTRITION

### An Act providing for the right to food and nutrition; labelling and fortification of food; provision of nutrition in schools; the establishment of the National Nutrition Council and the Food and Nutrition Fund; and for connected matters

#### PART I PRELIMINARY

Short title and commencement	<p><b>1.</b> This Act may be cited as the Food and Nutrition Act, 201 [...] and shall come into force on such date as the Minister may appoint by notice published in the <u>Gazette</u> and the Minister may appoint different dates for the coming into force of different parts or provisions of the Act.</p>
Interpretation	<p><b>2.</b> In this Act, unless the context otherwise requires—</p> <p>“article” includes—</p> <ul style="list-style-type: none"><li>(a) any food, drug, cosmetic, device or chemical substance and any labelling or advertising materials in respect thereof;</li><li>(b) anything used for the preparation, preservation, packing or storing of any food, drug, cosmetic, device or chemical substance;</li></ul> <p>“bio-fortification” means development of micronutrient-dense foods using best traditional breeding practices and modern biotechnology;</p> <p>“Council” means the National Nutrition Council established under section 56;</p> <p>“food” means safe, edible and nutritious substances, acceptable within a given culture, originating from a biological source and includes water, any beverage, food additive material, condiments, in processed form or not, which is fit for human consumption and further includes food additive material, food raw material and other materials used in the processing and preparation of such edible substance or beverage;</p> <p>“fortify” means addition of nutrient through a process of chemical manipulation of the food in order to mitigate the dietary deficiency in a food article and includes iodization of salt; fortification has a corresponding meaning;</p> <p>“health claim” means a claim that links a food constituent with a disease;</p>

“label” includes any legend, work or mark attached to, included in, belonging to or accompanying any food;

“learner” includes a person pursuing education at secondary school level;

“nutrient claim” means a claim that uses approved wording to describe the nutrient values of foods.

## PART II RIGHT TO FOOD AND NUTRITION

Right to food and  
adequate nutrition

**3.** (1) Every person shall have a right to food and adequate nutrition.

(2) For purposes of enforcing the right referred to in subsection (1), any person may bring an action in the High Court to—

(a) prevent or stop any act or omission which is deleterious or injurious to the enjoyment of the right to food and adequate nutrition or likely to accelerate unsustainable depletion of food resources;

(b) procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to the enjoyment of the right to food and adequate nutrition for which the public officer is responsible under any written law;

(c) require that any on-going project or other activity be subjected to an audit in accordance with this Act.

(3) Any person who has reason to believe that his or her right to food and adequate nutrition has been violated by any person may, instead of proceeding under subsection (2), file a written complaint to the Minister outlining the nature of his or her complaint and particulars, and the Minister shall, within thirty days from the date he receives the complaint, institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Minister has taken or shall take to restore the claimant’s right to food and adequate nutrition, including instructing the Attorney General to take such legal action on behalf of the Government as the Attorney General may deem appropriate.

(4) Subsection (3) shall not be construed as limiting the right of the complainant to commence an action under subsection (2):

Provided that an action shall not be commenced before the Minister has responded in writing to the complainant or where the Attorney General has commenced an action in court against any person on the basis of a complaint made to the Minister.

Role of the

**4.** Nothing in this Act shall be construed as divesting the Council of the

Council	powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection of the right to food and adequate nutrition and the conservation and sustainable utilization of food resources or limiting such powers, functions, duties or responsibilities.
Necessary measures	<b>5.</b> In fulfilling its obligations under this Part, the State shall, depending on the resources, available within and outside Malawi, including through international cooperation and assistance, take necessary measures to immediately realize the right to food.
Specific obligations	<p><b>6.</b> (1) The State, working alone or through international or local collaboration, shall undertake all necessary measures by making sufficient budgetary allocation to the Ministry every financial year.</p> <p>(2) Pursuant to subsection (1) above, the State, through the Department responsible for nutrition, shall—</p> <ul style="list-style-type: none"> <li>(a) develop, adopt and implement policy and measures to— <ul style="list-style-type: none"> <li>(i) prevent and control the most common nutrition disorders among women, men, boys, girls in Malawi;</li> <li>(ii) increase access to timely and effective management of the most common nutrition disorders among women, men, boys, girls in Malawi with emphasis on vulnerable groups;</li> <li>(iii) create an enabling environment for the effective implementation of nutrition services and programmes;</li> <li>(iv) promote the broadening of the food base by encouraging dietary diversity; and</li> <li>(v) enhance and institutionalize food and nutrition aid programmes. <ul style="list-style-type: none"> <li>(i) develop and update from time to time, dietary guidelines, and raise public awareness on dietary practices that are consistent with adequate nutrition, including consumption of cereals, starchy roots and tubers, legumes, oil seeds, fats and oils, leafy and non-leafy vegetables, fruits, foods of animal origin, whether they be indigenous or not.</li> </ul> </li> </ul> </li> <li>(b) facilitate access to local and international markets to diversity in available or accessible food;</li> <li>(c) promote access to ethically sound, safe and acceptable advanced technological means in food production, processing and distribution that advocate the use of the most effective seed varieties, fertilizers, pesticides and other agricultural inputs that are sustainable and environmentally friendly;</li> <li>(d) undertake social protection of vulnerable groups to improve their access to food and adequate nutrition;</li> <li>(e) ensure that precautionary measures are taken to mitigate emergencies in relation the unavailability of food and adequate nutrition;</li> <li>(f) promote nutrition education through development and adoption of curricula for schools that is nutrition responsive; and</li> <li>(g) promote scientific research, technological advances and training in food and nutrition security.</li> </ul>

Responsibility of non-State actors **7.** Notwithstanding that Government has the primary responsibility to ensure the realization of the right to food and adequate nutrition, non-state actors, including individuals, families, local communities, non-governmental organizations and other entities in the private sector shall respect the right of every person to food and adequate nutrition as set out in this Act.

Inconsistent provisions in other written laws **8.** Where a written law on the protection and management of the right to food and adequate nutrition or the conservation and sustainable utilization of food resources is inconsistent with any provision of this Act, that written law shall be invalid to the extent of the inconsistency.

### PART III GENERAL PROVISIONS ON FOOD

Prohibition against sale or offer of unwholesome, poisonous or adulterated food **9.** Any person who sells or offers for human consumption, any food that—  
(a) has in it or upon it, any poisonous or harmful substance;  
(b) is unwholesome or unfit for human consumption;  
(c) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased substance or foreign matter;  
(d) is adulterated; or  
(e) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions,  
commits an offence and is liable, on conviction, to a fine of K1,000,000 and imprisonment for seven years.

Instructions on preservation **10.** Any person who sells or offers for human consumption, any food that is capable of rapidly perishing unless especially preserved shall on the label of that food, specify the manner in which the food shall be preserved in order to prevent compromising the wholesomeness of the food.

Deception **11.** Any person who labels, packages, treats, processes, sells or advertises any food in contravention of this Act, or in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, commits an offence and is liable, on conviction, to a fine of K1,000,000 and imprisonment for seven years.

Standards of labels, foods **12.** (1) The Minister, in consultation with the Director of the Council, shall prescribe standards of labels or food, by Notice published in the *Gazette*.  
(2) Where a standard has been prescribed for any food, any person who sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed packages,



standard, commits an offence and is liable, on conviction, to a fine of K2,000,000 and imprisonment for ten years.

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|---|---|
| Prohibition against sale of food not of nature, substance or quality demanded | <b>13.</b> Any person who sells to the prejudice of the purchaser any food which is not of the nature, or is not of the substance, or is not of the quality, of the article demanded by the purchaser commits an offence and is liable, on conviction to a fine of K500,000 and imprisonment for three years.   |
| Preparation of food under unsanitary conditions                               | <b>14.</b> Any person who sells, prepares, packages, conveys, stores or displays for sale any food under unsanitary conditions commits an offence and is liable, on conviction, to a fine of K500,000 and imprisonment for three years.   |
| Unsanitary manufacture, etc., of food   | <b>15.</b> A person shall not manufacture, prepare, preserve, package, process or store for sale any food under unsanitary conditions.  |
| Prohibited advertising and labelling  | <b>16.</b> A person shall not advertise or label any food offered for sale or otherwise, to the general public, as a treatment, preventative or cure for any of the diseases, disorders or abnormal physical states, except in accordance with this Act.  |
| Regulations   | <b>17.</b> (1) The Minister, in consultation with the Council, may make regulations— <ul style="list-style-type: none"><li>(a) declaring that any food or class of food is adulterated, if any prescribed substances or class of substances is present therein or has been added thereto or extracted or omitted therefrom;</li><li>(b) respecting—<ul style="list-style-type: none"><li>(i) the labelling and packing and the offering, exposing and advertising for sale of food, including to children and other members of society who have insufficient capacity to make well informed dietary choices;</li><li>(ii) the size, dimensions and other specifications of packages of food;</li><li>(iii) the sale or the conditions of sale of any food; and</li><li>(iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser thereof from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or to purchaser;</li></ul></li><li>(c) prescribing standards of composition, strength, potency, purity, quality or other property of any food;</li></ul> |

- (d) respecting the importation or exportation of food in order to ensure compliance with this Act and any regulations made thereunder;
- (e) prescribing a health claim or nutrient claim that may be made on foods;
- (f) respecting the method of production, preparation, preserving, packing, storing, conveying and testing of any food in the interests of, or for the prevention of injury to the health of the consumer, user or purchaser;
- (g) respecting the carriage of goods subject to the provisions of this Act, including the licensing of vehicles used in such carriage;
- (h) requiring person who sell food to maintain such books and records as the Council considers necessary for the proper enforcement and administration of this Act and any regulations made thereunder;
- (i) providing for the analysis of food for the purposes of this Act or for any other purpose and prescribing a tariff of fees to be paid for such analysis and for prescribing methods of analysis;
- (j) providing for the taking of samples of any article for the purposes of this Act or for any other purpose;
- (k) exempting any food from all or any of the provisions of this Act and prescribing the conditions of such exemption.

(2) Where any regulations made under this Act or under the Public Health Act prohibit or restrict the addition of any preservative or other ingredient or material to any food, the addition of such preservative, ingredient or material, if made in contravention of the regulations, shall, for the purposes of this Act, be deemed to render the food injurious to health.

(3) Where any regulations made under this Act or under the Public Health Act prescribes the composition of any article of food intended for sale, or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, the purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded an article complying with the provisions of the regulations as regards the presence or amount of any constituent, ingredient or material specified in the regulations.

(4) The Minister, after consultation with the Council, may make regulations generally for carrying any of the purposes or provisions of this Act into effect.

Inspection of  
animals by  
authorized  
officers  
  
Powers of  
authorized  
officers

**18.** An authorized officer may, for the purposes of this Act, inspect any animal intended for slaughter and may seize and examine any meat which he considers to be unfit for consumption.

**19.** (1) An authorised officer may, at any hour reasonable for the proper performance of his duty—

(a) enter any premises where he believes any article to which this Act or any regulations made hereunder apply is prepared, preserved, packaged, stored or conveyed, examine any such article and take samples thereof, and examine anything that he believes is used or capable of being used for such preparation, preservation, packaging or storing or conveying;

(b) stop or search or detain any aircraft, ship or vehicle in which he believes that any article subject to the provisions of this Act is being conveyed and to examine any such article and take samples thereof for the purposes of this Act;

(c) open and examine any receptacle or package which he believes contains any article to which this Act or any regulations made thereunder apply;

(d) examine any books, documents, or other records found in any place mentioned in subsection (1) (a) of this section that he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act or any regulations made hereunder apply and make copies thereof or take extracts therefrom;

(e) seize and detain for such time as may be necessary any article by means of or in relation to which he believes any provision of this Act or any regulations made thereunder has been contravened.

(2) An authorized officer acting under this section shall, if so required, produce his authority.

(3) Any owner, occupier or person in charge of any premises entered by an authorized officer pursuant to subsection (1)(a) of this section, or any person found therein, who does not give to the authorized officer all reasonable assistance in his power and furnish him with such information as he may reasonably require, commits an offence.

(4) Any person who obstructs or impedes any authorized officer in the course of his duties or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent the due execution by the authorized officer of his duty under this Act or any regulations made hereunder commits an offence.

(5) Any person who knowingly makes any false or misleading statement either verbally or in writing to any authorized officer engaged in carrying out his duties under this Act or any regulations made thereunder, commits an offence.

(6) An authorized officer shall release an article seized by him under this Act when he is satisfied that all the provisions of this Act and any regulations made thereunder with respect thereto have been complied with.

(7) Where an authorized officer has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction thereof, the article may be destroyed or otherwise disposed of as the authorised officer may direct.

(8) Where a person has been convicted of an offence under this Act or any regulations made hereunder, the court may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the convicted person or found with such article, be forfeited, and upon the order being made, the articles and things may be disposed of as the court may direct.

(9) Where any article has been seized under the provisions of subsection (1)(e) of this section and the owner thereof has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the authorized officer may direct.

(10) Any article seized under this Act may, at the option of an authorized officer, be kept or stored in the premises where it was seized or may, at the direction of an authorized officer, be removed to any other proper place; and any person who removes, alters or interferes, in any way, with articles seized under this Act without the authority of an authorized officer commits an offence.

(11) An authorized officer may submit any article seized by him or any sample taken by him to a public analyst for analysis or examination; and a public analyst shall as soon as practicable analyse or examine any sample sent to him in pursuance of this Act and shall give the authorized officer a certificate specifying the result of the analysis or examination and such certificate shall be in such form as may be prescribed by the Minister on the advice of the Board.

(12) In this section, “premises” includes a street, open space, place of public resort, or bicycle or other vehicle utilised for the preparation, preservation, packaging, storage or conveyance of any article.

Power of Chairperson of Council **20.** The Chairperson of the Council, in relation to any matter appearing to him to affect the general interests of the consumer, and any other person authorized in writing by the Minister so to do, may direct a public officer to procure for analysis samples of any food, and thereupon that officer shall have all the powers of an authorized officer under this Act and this Act shall apply as if the officer were an authorized officer.

Duty of local council to enforce Act **21.** (1) It shall be the duty of every local council to exercise the powers with which it is vested as the case may be, in its special circumstances, reasonably practicable so as to provide proper safeguards for the sale of food, in a pure and genuine condition, and in particular to direct its officers to procure samples for analysis.

(2) If the Minister is of the opinion that a council has failed to execute or enforce any of the provisions of this Act in relation to any article and that its failure affects the general interests of the consumer, the Minister may by order empower an officer to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article mentioned in the order.

(3) The expenses incurred under an order made pursuant to this section shall be recoverable by the Minister from the council and the amount so recovered shall be treated as expenses incurred by the council under this Act.

Power of Minister  
to obtain  
particulars of  
certain food  
ingredients

**22.** (1) The Minister may direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of substances of any class to which this Act applies to furnish to him, within a period of time specified in the direction, particulars so specified of the composition and use of any substance sold or for sale in the course of that business or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made thereunder may require the following particulars to be furnished in respect of any substance, that is to say—

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as aforesaid, is injurious to, or in any other way affects health;
- (d) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

(3) Particulars furnished in accordance with a direction under this section, and information relating to any individual business obtained by means of the particulars shall not, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

- (a) in accordance with regulations made by the Minister, so far as may be necessary for the purposes of section ...;
- (b) for the purposes of any proceedings for an offence against the order or any report of those proceedings, and any person who discloses any particulars or information in contravention of this subsection commits an offence.

PART IV  
LEGAL PROCEEDINGS

- Power of court to order licence to be cancelled **23.** On the conviction of any person for any offence under this Act or any regulations made thereunder, the court may, in addition to any other penalty which it may lawfully impose, cancel any licence issued under any written law, or any regulations made thereunder, to the person.
- Prosecution **24.** (1) An authorized officer may take out proceedings for an offence under this Act or the regulations before any magistrate having jurisdiction in the place where any article sold was actually delivered to the purchaser or where the sample was taken.  
  
(2) In any proceedings under this Act, the contents of any container appearing to be intact and in the original state of packing by the manufacturer thereof shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.
- Penalties **25.** (1) A person who commits an offence under this Act for which no special penalty is provided shall be liable—  
  
(a) in the case of a first offence, to a fine not exceeding one million Kwacha or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;  
  
(b) in the case of a subsequent offence, to a fine not exceeding five million Kwacha or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.  
  
(2) In any prosecution under this Act, the summons shall state the particulars of the offence or offences alleged and shall not be made returnable in less than fourteen days from the date on which it is served.
- Certificates of analysis and presumptions **26.** In any proceedings under this Act—  
  
(a) a certificate of analysis purporting to be signed by a public analyst shall be accepted as *prima facie* evidence of the facts stated therein:  
  
Provided that—  
  
(i) the party against whom it is produced may require the attendance of the public analyst for the purposes of cross-examination; and  
  
(ii) the certificate of a public analyst shall not be received in evidence unless the party intending to produce it has, before the trial given to the party against whom it is intended to be produced, reasonable notice of the intention together with a copy of the certificate;

(b) evidence that a package containing any article to which this Act or any regulations made thereunder apply bore a name, address or registered mark of the person by whom it was manufactured or packed shall be *prima facie* evidence that such article was manufactured or packed, as the case may be, by that person;

(c) any substance commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption;

(d) any substance commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that substance and any substance commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;

(e) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use.

## PART V LABELLING OF FOOD

Prohibition of  
sale of unlabelled  
food

**27.** A person shall not sell a manufactured, processed or pre-packed food, unless a label has been affixed or applied to that food.

Declarations  
to be included  
on food labels

**28.** The label applied to food shall carry—

(a) on the main panel—

- (i) the brand or trade name of that food (if any);
- (ii) the common name of the food;
- (iii) in close proximity to the common name, a correct declaration of the net contents in terms of weight, volume or number in accordance with the usual practice in describing the food;

(b) grouped together on any panel—

- (i) a declaration by name of any preservatives used in the food;
- (ii) a declaration of permitted food colour added to the food;
- (iii) a declaration of any artificial or imitation flavouring preparation added to the food;
- (iv) in the case of a food consisting of more than one ingredient, a complete list of their acceptable common names

in descending order of their proportions, unless the quantity of each ingredient is stated in terms of percentages or proportionate compositions;

(vi) any other statement required under the provisions of this Act to be declared on the label; and

(vii) nutrient content of the food presented according to rules governing Nutrition Facts Panel;

(c) on any panel, the name and address of the manufacturer, packer or distributor of the food; and

(d) storage instructions.

Labelling information not to appear at bottom of container

**29.** Notwithstanding section 28 of this Act, the information required to appear on the label shall not be placed at the bottom of any food container.

Manner of displaying common names and declaration of net contents

**30.** For the purposes of section 28 (a) of this Act,—

(a) a common name consisting of more than one word shall be deemed to be clearly and prominently displayed on the main panel of the label if each word, other than articles, conjunctions or prepositions, is in identical type and identically displayed; and

(b) a declaration of net contents including each numeral in any indicated fraction on a package of food shall be deemed to be clearly and prominently displayed thereon if it is in bold face type.

Label declarations to appear clearly on both the inner and outer label

**31.** Where both the inner and the outer labels are used on a package of food, the label declarations required by this Act to appear thereon shall appear on both the inner and outer labels.

Restriction on reference to the Act on the label or in advertisement

**32.** A person shall not make any reference to the Act in a food label or advertisement for food unless the reference is specifically required under this Act.

Food sold in bulk exempt from requirements of label declarations

**33.** Sections 31 and 32 shall not apply to food sold in bulk or packaged from bulk at the place where the food is retailed.

Exemptions of label declaration from indicating the presence of sulphurous acid in certain foods

**34.** The Minister shall, by Order published in the Gazette, exempt the indication of certain acids, salts or artificial flavourings in certain foods, liquors and some alcoholic beverages.



Mode of making declarations of certain content in food

**35.** (1) The Council shall prescribe the mode of declaring conditions and standards on labels and advertisements of certain foods.

(2) The mode of declaration shall, at a minimum, include:

- (a) implication of special dietary use of certain foods;
- (b) content of sugar, carbohydrates or starch;
- (c) content of calories;
- (d) content of sodium in certain dietary food, in grams per 100 grams or on a percentage basis.

Restriction on the sale of food containing non-nutritive sweetening agents

**36.** A person shall not sell or offer for human consumption food containing a non-nutritive sweetening agent, unless—

- (a) that food meets the requirements for prescribed special dietary needs;
- (b) the label carries a statement indicating a special dietary use; or
- (c) the food has been approved by the Council in accordance with this Act.

Composition of standardised food

**37.** (1) Where a standard for a food is prescribed under this Act—

- (a) that food shall contain only the ingredients included in the standard for that food;
- (b) each ingredient shall be incorporated in the food in the quantity within the limits prescribed for that ingredient; and
- (c) if the standard includes an ingredient to be used as a food additive for a specified purpose, that ingredient shall be a food additive set out in any of the tables contained in the Second Schedule for use as an additive to that food for that purpose.

(2) Where a standard for a food is not prescribed under this Act—

- (a) the food shall not contain any food additive except the food additives set out in any of the tables contained under this Act for use as additives to that food for the purpose set out in those tables; and
- (b) that food additive shall be incorporated in the food in a quantity within the limits prescribed for that food and food additive in those tables.

Components of food ingredients

**38.** (1) Where an ingredient of a food has more than one component, the name of all the components shall be included in the list of ingredients, except where such an ingredient is a food for which a standard has been established and such standard does not require a complete list of the ingredients.

(2) The list of ingredients shall show nutrient and non-nutrient content of the food in a prescribed manner and in descending order of predominance by weight.

Country of origin of food to be declared on the label	<p><b>39.</b> (1) A person shall not sell, offer for human consumption or import food into Malaŵi unless the country of origin of a food is declared on the label.</p> <p>(2) Where a food undergoes processing in a second country and such processing changes its nature, the country in which the processing was done shall, for the purpose of subsection (1), be considered to be the country of origin.</p> <p>(3) The Council shall prescribe the approved languages for use on food labels.</p>
Label declaration for irradiated food	<p><b>40.</b> A person shall not sell, offer for human consumption or import food into Malaŵi, as the case may be, unless the food which has been treated with ionizing radiation has been so designated on the label.</p>
Prohibition of misleading grade designations	<p><b>41.</b> A person shall not use a grade designation on a label of food unless the grade designation is readily understood, not misleading or deceptive.</p>
Labelling of certain dates and prohibition on sale of certain foods	<p><b>42.</b> (1) For the purposes of this Act, a food manufacturer, producer, distributor or person packaging or repackaging food shall indicate on the container or label of the food, the last day, month and year on which the food shall expire, lose its best state or be used by pursuant to this Act.</p> <p>(2) A person shall not sell, offer for human consumption or distribute any food after the expiry, best before or use-by date.</p> <p>(3) The Council shall develop comprehensive guidelines regulating the indication of the dates on foods.</p>
False labelling	<p><b>43.</b> A person who knowingly places a label or causes a label to be placed on food or a container of food which he knows does not describe the food or the contents of the container of food commits an offence and is, upon conviction, liable to a fine of K1,000,000 and imprisonment for seven years.</p>
Altering or forging labels	<p><b>44.</b> A person who knowingly alters or forges a label placed on food commits an offence and is, upon conviction, liable to a fine of K1,000,000 and imprisonment for seven years.</p>

PART VI  
FORTIFICATION OF FOOD

Food to be fortified	<p><b>45.</b> (1) Food may, before it is sold or distributed to the public or used in the manufacture or processing of other food for human consumption, be fortified to such specification as the Minister may, by Order published in the Gazette, prescribe.</p>
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(2) The Order made under subsection (1) may further prescribe the manner of labelling, packaging, storing, transporting or otherwise treating fortified food.

(3) In prescribing the specifications for fortification of food, the Minister may prescribe the specifications for bio-fortifying food at the time of production.

Registration

**46.** Every person who is engaged in the business of food fortification in accordance with this Act shall register such particulars thereof as the name and address of the business and every change thereof and for this purpose the Minister shall keep and maintain an appropriate register.

Restriction on fortification of food

**47.** (1) A person shall not fortify food or permit or cause any other person to fortify food nor continue to do so after the expiry of a period of ninety days from the date of commencement of this Act otherwise than in accordance with this Act and unless that person is registered under section 46.

(2) The Minister may, once only, extend the period prescribed in subsection (1) by a further period not exceeding a period so prescribed and shall cause notice of the extension to be published in the Gazette.

Inspection

**48.** (1) The Minister may in writing appoint any public officer to be an inspector for the purposes of this Act.

(2) Every inspector shall be furnished with a certificate verifying his appointment and authorizing him to exercise the powers conferred on an inspector.

(3) When an inspector seeks to exercise power conferred under this Act, he shall, if requested by any person in relation to whom the power is sought to be exercised, produce to that person his certificate issued under subsection (2).

(4) An inspector may, for the purposes of this Act—

(a) without previous notice, at any time during business hours, enter upon any premises in or upon which any food is or is reasonably suspected to be fortified or intended to be sold or distributed to the public;

(b) inspect and take samples of any such food or any material or substance in or on such premises used or suspected to be intended for use in the fortification of food and open any package or container in or on such premises which contains, or he reasonably suspects to contain, any quantity of any such food, material or substance;

(c) inspect any operations carried out in or upon any such premises in connexion with the fortification of food;

(d) at any time require any person to produce there and then or at a time and place to be fixed by the inspector any book, notice, record, list or other document which relates to the fortification, sale or distribution of food and is in the possession or custody, or under the control, of that person or of any other person on his behalf;

(e) examine any such book, notice, record, list or document and make copies of, or take extracts from any such book, notice, record, list or document which relates to the fortification, sale or distribution of food and require from any person an explanation of any entries therein and seize any such book, notice, record, list or document which, in the opinion of the inspector, may afford evidence of any offence under this Act;

(f) in regard to any matter which is being investigated by the inspector, question, either alone or in the presence of any other person, as the inspector thinks fit, every person whom he finds on the premises which he has entered under this subsection or who he has reasonable grounds for believing is, or has been employed on any such premises, or is in possession, custody or control of anything referred to in this subsection;

(g) order any person referred to in paragraph (d), (e) or (f) to appear before him at a time and place fixed by him, and at such time and place question that person concerning any matter which is being investigated by him pursuant to this Act.

(5) Any person who is in charge of any premises referred to in this section shall, at all times, furnish such facilities as are required by an inspector for the purpose of exercising his powers under this section and shall not obstruct or hinder an inspector while exercising such powers.

Offences

**49.** (1) Any person who contravenes the provisions of this Act for which a penalty has not been prescribed, commits an offence and shall be liable—

(a) for a first offence, to a fine of K500,000 and to imprisonment for three years;

(b) for a second or subsequent offence, to a fine of K1,000,000 and to imprisonment for five years;

(c) if the offender is a legal person or a registered entity under a written law, in addition to any penalty provided under this Act, to revocation of any licence under which the offender is registered.

Regulations

**50.** The Minister may make regulations for giving effect to the provisions of this Part.

## PART VII NUTRITION IN SCHOOLS

Nutritional  
requirements of

**51.** (1) A head of a school shall ensure that food and drink provided for learners in attendance at the school which—

food and drink  
in schools

(a) is provided on the premises; and  
(b) is allowed to be provided on the premises,  
complies with nutritional requirements specified by the Minister under regulations.

(2) Regulations provided under subsection (1) may, in particular, include provision for or in connection with—

- (a) specifying particular foods or drinks which satisfy, or fail to satisfy, nutritional requirements specified in the regulations;
- (b) specifying circumstances where food or drink may be provided to a learner even if it does not satisfy nutritional requirements specified in the regulations,
- (c) requiring that drinking water be made available for every learner, free of charge, on the premises of—

- (i) a public school, or
- (ii) a hostel provided and maintained by the school for learners.

(3) Regulations under subsection (1) may make different provision for different purposes and for different descriptions of learners.

(4) The matter referred to under this section does not apply to food and drink provided for learners in attendance at a school which—

- (a) is not provided on the premises by the school; and
- (b) is—
  - (i) brought onto the premises by a learner; or
  - (ii) provided as part of a social, cultural or recreational activity would comply with nutritional requirements specified by the Minister.

(5) In this Part, “learner” includes persons studying at secondary school level.

School meals  
and snacks

**52.** (1) A school which provides food and drink to learners may—

- (a) provide any food or drink free of charge; or
- (b) charge learners for any food or drink.

(2) The head of a school may exercise the power conferred by subsection (1)(a) in relation to—

- (a) learners who satisfy such conditions as the school thinks fit;
- (b) the provision of food or drink at other times of the day (other than in the middle of the day) as he thinks fit.

(3) Where, by virtue of subsection (2)(b), a school charges for a particular food or drink, it shall charge the same price for the same quantity of the food or drink.”.

(5) In this section, “school lunch” means anything provided under subsection (1)(a) in the middle of the day which the school considers appropriate for consumption as a meal at that time of day.

Promotion of  
school meals

**53.** (1) The Minister shall—

- (a) promote the availability of school meals in public schools and other educational establishments; and
- (b) encourage learners in attendance at those schools and other educational establishments to consume school meals.

(2) In particular, the Minister shall take reasonable steps to ensure that every learner who is entitled to receive school meals free of charge, receives the meals.

(3) The Minister may enter into an agreement with any person to provide school meals on terms and conditions he may deem fit.

Protection of  
identity of learners  
receiving free  
school lunches

**54.** (1) This section applies where a school lunch is provided for a learner free of charge by virtue of section 53.

(2) The head of a school shall take reasonable steps to ensure that any learner who is receiving a school lunch free of charge cannot be identified by any person other than an authorized person as a learner who receives a school lunch free of charge.

(3) The head of a school shall take reasonable steps to ensure that—

- (a) a teacher in the school;
- (b) any person (other than a teacher) who is—
  - (i) employed (whether by the school or by another person) in the school; or
  - (ii) working there on an unpaid basis; or
- (c) any other person employed by the school,

does not disclose to any person other than an authorized person, the fact that a learner receives school lunches free of charge.

(4) In this section, an “authorized person” means—

- (a) a parent of the learner;
- (b) a person mentioned in subsection (3) who is authorized by the school to have access to information about a learner’s entitlement to receive school lunches free of charge.

Delegation to  
heads of schools

**55.** —Where applicable, the Minister shall delegate to the heads of schools power to enter into an agreement for the provision by another person of—

- (a) food or drink to educational facilities; or
- (b) services relating to the provision of the food or drink.

PART VIII  
NATIONAL NUTRITION COUNCIL

Establishment of  
National  
Nutrition Council

**56.** — (1) There is hereby established the National Nutrition Council (hereafter referred to as the “Council”).

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall be capable of—

- (a) acquiring, holding and disposing of real and personal property;
- (b) suing and being sued in its own name; and
- (c) doing or performing all such acts and things as bodies corporate may by law do or perform.

Powers and  
functions

**57.** The powers and functions of the Council shall be to—

- (a) promote the respect for the right to food and adequate nutrition and the protection, development and attainment of food and adequate nutrition;
- (b) monitor, investigate, research, educate, lobby, advise and report on issues concerning the right to food and adequate nutrition including—

- (i) monitoring and evaluating policies and practices of organs of State, statutory corporations, civil society, individuals, private companies and businesses, and other stakeholders;
- (ii) evaluating Acts of Parliament, customary laws or any other law,
- (iii) recommending to Parliament the adoption of new legislation that would promote the right to food and adequate nutrition, and
- (iv) investigating any other food and nutrition-related issues; and

(c) liaise with the Minister responsible for education to develop curricula for primary and secondary schools on age-appropriate, gender-sensitive food and adequate nutrition information;

(d) make rules for the promotion and marketing of infant and young child foods;

(e) design and implement programmes for public awareness of this Act and, for that purpose, the Council shall specifically:

- (i) develop programmes aimed at promoting food and nutrition to all persons;
- (ii) develop programmes that create awareness of fundamental human rights related to food adequate nutrition;
- (iii) promote dissemination and accountability of duty bearers of rights conferred by this Act;
- (iv) develop programmes that promote awareness of risks and challenges involved in the enjoyment of rights related to food and nutrition;
- (v) enlist services of traditional leadership, non-governmental organizations in disseminating information and in the conduct of any other activities connected with the programmes.

Chairperson

**58.** (1) The Council shall consist of five members who shall—

- (a) have a record of commitment to the promotion of the right to food and adequate nutrition; and
- (b) be persons with knowledge or experience with matters of food and adequate nutrition.

(2) The following shall be *ex-officio* members of the Council—

- (a) the Director General of the Malawi Bureau of Standards;
- (b) the Executive Secretary of the Human Rights Commission;
- (c) the Secretary responsible for Nutrition or his designated alternate;
- (d) the Secretary responsible for Gender and Children or his designated alternate;
- (e) the Secretary responsible for Agriculture or his designated alternate;
- (f) the Secretary responsible for Local Government or his designated alternate;
- (g) the Secretary responsible for Education or his designated alternate;
- and
- (h) the Secretary responsible for Health or designated alternate.

Members of the Council

**59.** – (1) Members of the Council, other than *ex-officio* members, shall be appointed by the President.

(2) At the first meeting of the Council, members shall elect a Chairperson and Deputy Chairperson of the Council.

(3) The Chairperson shall preside at all meetings of the Council and in his or her absence at any meeting, the Deputy Chairperson shall preside at that meeting, and if both the Chairperson and the Deputy Chairperson are absent at a meeting, the members present shall elect one from among their number to preside at that meeting.



(4) The Executive Director of the Council shall be the Secretary to the Council and shall attend meetings of the Council or any committee of the Council to record minutes of the meetings and to take part in the deliberations subject to the directions of the Council or committee but shall not be entitled to vote.

(5) Where in any meeting the deliberations of the Council or of a committee of the Council concerns the Chief Executive Officer or any officer of the Council designated to attend the meeting, the Council or the committee, as the case may be, may exclude the Chief Executive Officer or such officer from the meeting.

Tenure and  
vacancy

**60.** (1) A person appointed to the Council, other than an *ex-officio* member, shall hold office as a member of the Council for a period of four (4) years and may be eligible for reappointment for one (1) more term.

(2) A vacancy in the office of an appointed member shall occur, if the member—

- (a) dies;
- (b) is adjudged bankrupt;
- (c) has physical or mental incapacity;
- (d) is sentenced under any written law to a term of imprisonment without an option of a fine;
- (e) ceases to possess the qualification necessary as a prerequisite to appointment;
- (f) is absent from three (3) consecutive meetings of the Council, of which he has had notice; or
- (g) resigns in accordance with subsection (3).

(3) An appointed member may at any time resign his office by giving one (1) month written notice to the Minister.

(4) A vacancy in the membership of the Council shall be filled, for the remainder of the term, by the appointment of a new member:

Provided that if the remaining period is less than six (6) months, the vacancy may not be filled until the expiry of the period.

Invited persons

**61.** The Council may, in its discretion at any time and for any period, invite any person to attend any meeting of the Council and take part in the deliberations of the Council, but the invited person shall not be entitled to vote at any meeting.

Meetings of the  
Council

**62.** (1) The Council shall meet, at least once every three months, at a place and at a time determined by the Chairperson.

(2) An ordinary meeting of the Council shall be convened upon giving a written notice of at least fourteen days to the members.

(3) The Chairperson—

(a) may, at his own instance, convene an extraordinary meeting of the Council; or

(b) shall at the written request of three or more members and within seven days of the request, convene an extraordinary meeting of the Council,

at a place and at a time appointed by him.

Procedure and  
quorum

**63.** (1) The Council may regulate its own procedure the procedure of any of its committees having regard to the principles of transparency, openness and public participation..

(2) The quorum of the Council shall be five members.

(3) The validity of any of the proceedings of the Council shall not be affected by a vacancy in the membership of the Council or by a defect in the appointment of a member, or by reason that a person not entitled to do so took part in any proceedings.

(4) The decision of the majority of the members of the Council present at a meeting shall be the decision of the Council, and in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.

(5) The Council shall from time to time by notice in the *Gazette* make known the particulars of the procedure which it has determined in terms of subsection (1).

Independence of  
the Council

**64.** The Council shall be an independent national institution and shall not be subject to the authority or direction of any body or person including all organs of the Government.

Remuneration

**65.** Members of the Council shall be paid an allowance determined by the Minister from time to time.

Secretariat of the  
Council

**66.** The Secretariat of the Council shall consist of the Executive Director and other members of staff of the Council appointed under this Act.

Executive  
Director

**67.** (1) There shall be the office of the Executive Director of the Council who shall be the chief executive officer of the Council and shall perform duties assigned to his office by the Council from time to time.

(2) The Executive Director shall be appointed by the Council, on terms and conditions determined by the Council.

(3) The Executive Director shall be a person who has a qualification in food and nutrition and has practiced within the profession of food and nutrition for at least ten years.

(4) The Executive Director shall hold office for a period of three years and may be re-appointed.

Duties of  
the Executive  
Director

**68.** (1) Subject to the general and special directions of the Council, the Executive Director shall be responsible for the day to day management of the Council and shall exercise executive and administrative control over the staff of the Council.

(2) The Executive Director or any other officer of the council that the Executive Director may designate, shall attend meetings of the Council or of any committee of the Council and may address the meetings but shall not vote on any matter.

(3) A person presiding at any meeting referred to in subsection (2) may, for good reason, require the Executive Director or the officer referred to in that subsection, to withdraw from the meeting.

Removal of  
Executive  
Director

**69.** (1) The Council may remove the Executive Director from office, on the following grounds—

- (a) misconduct;
- (b) incompetence;
- (c) physical or mental incapacity;
- (d) bankruptcy; or
- (e) where he is otherwise unable or unfit to discharge the functions of his office.

(2) The Council shall only remove the Executive Director from office upon giving him a reasonable opportunity to be heard.

Staff

**70.** (1) The Council may appoint other officers of the Council, subordinate to the Executive Director, as the Council considers necessary for the proper discharge of the functions of the Council under the Act and who shall be officers in the public service.

(2) The Council may, by directions in writing, delegate to the Executive Director, the appointment of junior officers of the Council as specified in the directions.

(3) The Executive Director shall report to the Council, at its regular meetings or as the Council may request, every appointment made pursuant to subsection (2).

(4) The staff of the Council under subsection (1) shall be appointed by the Council on such terms and conditions as the Council shall determine.

Interference

**71.** –(1) No organ of the Government and no member or employee of an organ of the Government nor any other person or body of persons, shall interfere with, hinder or obstruct the Council, any committee of the Council, any member of the Council or of such committee or of the staff of the Council or any person duly authorized to act in the service of the Council the exercise of its or his or her powers or the performance of its or his or her duties and functions.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable to a fine of K1,000,000 and to imprisonment for five years;

Funding for the Council

**72.** (1) The funds of the Council shall consist of:

- (a) sums appropriated by Parliament for purposes of the Council;
- and
- (b) money raised by the Council by way of fees, donations, subscriptions, gifts or charges.

(2) The Council shall apply its funds to enable it to exercise its powers and perform its duties and functions and so as to ensure its independence and impartiality and may invest any surplus of its funds.

(3) Any donation made under subsection (1)(b) shall not jeopardize or compromise the independence and impartiality of the Council.

Accounting and auditing  
Cap. 37:01

**73.** (1) The Council shall keep and maintain proper books and records of account of its funds and property and shall in every respect comply with the Public Finance Management Act.

(2) The accounts of the Council shall be examined and audited annually by the Auditor General or an auditor appointed by the Council and approved by the Auditor General, but the Minister may direct that the accounts of the Council be examined and audited at any time.

## PART IX ESTABLISHMENT OF THE FOOD AND NUTRITION FUND

Establishment of the Food and Nutrition Fund

**74.** There is hereby established a Fund to be known as the Food and Nutrition Fund (in this Act otherwise referred to as the “Fund”) which shall comprise of:

- (a) sums appropriated by Parliament for the purposes of the Fund;
- (b) advances made to the Fund under section 76;
- (c) all fines and penalties payable or imposed under this Act;

- (d) a levy created under section 80;
- (e) money or other assets received for the purposes of the Fund by way of voluntary contributions or donations; or
- (f) money realized from any services provided by the Council.

Objects of the Fund	<b>75.</b> The objects for which the Fund is established shall be the advancement of access to quality food and nutrition in Malawi.
Advances to the Fund	<b>76.</b> If in any financial year, the income of the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for Finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for Finance may determine.
Application of the Fund	<b>77.</b> Without derogation from the generality of section 75, the fund may be applied for the purposes of: <ul style="list-style-type: none"> <li>(a) the administrative expenses of the Council, the secretariat and the Human Rights Commission in the discharge of its duties and responsibilities under this Act; and</li> <li>(b) meeting any expenses arising from the establishment and maintenance of the Fund; and</li> <li>(c) any purpose which the Council considers to be in the interest of the objects of this Act.</li> </ul>
Keeping of the Fund	<b>78.</b> All sums received for the purposes of the Fund shall be paid into a bank account held by the Council and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Council.
Surplus funds	<b>79.</b> Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Council be invested in such manner as the Council may determine, after consulting with the Minister responsible for Finance.
Levy	<b>80.</b> The Minister may, from time to time, upon the recommendation of the Council and approval of the National Assembly, by order published in the <i>Gazette</i> , impose a national food levy on such products, and at such rates, as the Minister may from time to time determine.
Fund to vest in Minister	<b>81.</b> The Fund shall be vested in the Minister and, pursuant to this Act and the Public Finance Management Act and Public Audit Act, shall be administered in accordance with his directions.

PART X  
MISCELLANEOUS

Saving of Public  
Health Act and  
Dangerous Drugs  
Act  
Cap. 34:01  
Cap. 35: 02

**82.** The provisions of this Act shall be in addition to and not in derogation of the provisions of the Public Health Act and the Dangerous Drugs Act.

Minister's power  
to amend Schedule

**83.** The Minister may, by order, amend any Schedule to this Act.

Regulations

**84.** (1) The Minister, after consultation with the Council, may make regulations—

(a) declaring that any food or class of food is adulterated if any prescribed substances or class of substances is present therein or has been added thereto or extracted or omitted therefrom;

(b) respecting—

(i) the labelling and packing and the offering, exposing and advertising for sale of food;

(ii) the size, dimensions and other specifications of packages of food;

(iii) the sale or the conditions of sale of any food; and

(iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser thereof from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or to purchaser;

(c) prescribing standards of composition, strength, potency, purity, quality or other property of any food;

(d) respecting the importation or exportation of food in order to ensure compliance with this Act and any regulations made thereunder;

(e) respecting the method of preparation, preserving, packing, storing, conveying and testing of any food in the interests of, or for the prevention of injury to the health of the consumer, user or purchaser;

(f) respecting the carriage of goods subject to the provisions of this Act, including the licensing of vehicles used in such carriage;

(g) requiring person who sell food to maintain such books and records as the Council considers necessary for the proper enforcement and administration of this Act and any regulations made thereunder;

(h) providing for the analysis of food for the purposes of this Act or to for any other purpose and prescribing a tariff of fees to be paid for such analysis and for prescribing methods of analysis;

- (j) providing for the taking of samples of any article for the purposes of this Act or for any other purpose;
- (k) exempting any food from all or any of the provisions of this Act and prescribing the conditions of such exemption.

(2) Where any regulations made under this Act or under any other law prohibit or restrict the addition of any preservative or other ingredient or material to any food, the addition of such preservative, ingredient or material, if made in contravention of the regulations, shall, for the purposes of this Act, be deemed to render the food injurious to health.

(3) Where any regulations made under this Act or under any other law prescribes the composition of any article of food intended for sale, or prohibit or restrict the addition of any preservative or other ingredient or material to any such article, the purchaser of such article shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded an article complying with the provisions of the regulations as regards the presence or amount of any constituent, ingredient or material specified in the regulations.

(4) The Minister, after consultation with the Council, may make regulations generally for carrying into effect of any of the purposes or provisions of this Act.