

Malawi

Legal Education and Legal Practitioners Act Chapter 3:04

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Malawi

Legal Education and Legal Practitioners Act

Chapter 3:04

Commenced on 12 April 1965

[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.]

[20 of 1965; 46 of 1963; 4 of 1967; 37 of 1967; 45 of 1967; 25 of 1968; 23 of 1970; 38 of 1971; 13 of 1974; 5 of 1974; 9 of 1977; 8 of 1980; 13 of 1980; 4 of 1981; 34 of 1981; 26 of 1990; 12 of 1991; 14 of 1997; 9 of 2004; 25 of 2010; G.N. 137/1966; G.N. 166/1967; G.N. 263/1969; G.N. 144/1971; G.N. 65/1986]

An Act to establish a Council of Legal Education and to provide for its functions and responsibilities; to establish criteria for the admission of persons to practise before the courts of Malawi as legal practitioners, and to provide for the professional discipline of legal practitioners; to establish the Malawi Law Society as a body corporate and to make provision for its objects and membership; to make comprehensive provision in relation to notaries public and for matters incidental thereto and connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Legal Education and Legal Practitioners Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Council**” means the Council of Legal Education established by [section 3](#);

“**Director**” means the Director of the Institute;

[25 of 2010]

“**Institute**” means the Malawi Institute of Legal Education under Part IIA;

[25 of 2010]

“**legal practitioner**” mean a person who has been admitted to practise the profession of the law before the High Court, or before any court subordinate thereto, and whose name has been inscribed upon the Roll;

“**Malawi Law Examination**” means the examination in the local laws, practice and procedure of Malawi to be set by the Council from time to time in accordance with [section 10](#);

“**Registrar**” means the Registrar of the High Court;

“**Roll**” means the Roll of Legal Practitioners maintained by the Registrar on which is inscribed the name of every person admitted to practise as a legal practitioner, and, save for the purposes of subsections (4) and (5) of [section 11](#), includes the Supplementary Roll;

“**Supplementary Roll**” means the Roll opened under subsection (4) of [section 11](#).

[26 of 1990]

Part II – The Malawi Council of Legal Education

3. Establishment of Council of Legal Education

There is hereby established a Council of Legal Education which shall be a body corporate to be styled “the Malawi Council of Legal Education”, with perpetual succession and a common seal, with power to hold land and to sue and be sued in its corporate name.

4. Functions of the Council

The functions of the Council shall be—

- (a) to make regulations for the syllabus and curriculum of legal education in, and for attendance at, a Law School or Schools in Malawi;
- (b) to establish, conduct, regulate, manage, control and supervise courses of legal education in Malawi;
- (c) to conduct, regulate, manage, control and supervise the holding of examinations in law in Malawi, and, in particular, to set the examination papers for and make arrangements for invigilation at such examinations, and to provide for the marking of the examination papers;
- (d) to advise and make recommendations to the Minister generally on matters relating to legal education and the requisite qualifications for the admission and enrolment of legal practitioners;
- (e) to perform such other functions and deal with such matters relating to legal education as the Minister may, in writing, from time to time, direct.

5. Members of the Council

The Council shall consist of the Chief Justice of Malawi, who shall be chairman of the Council, and the following other members, that is to say—

- (a) the Attorney General or a representative appointed by him;
- (b) a Justice of Appeal or a Judge of the High Court, to be appointed by the Chief Justice;
- (c) a magistrate of a subordinate court in Malawi, to be appointed by the Chief Justice;
- (d) two persons in the legal service of the Government, to be appointed by the Minister;
- (e) the chairman of the Malawi Law Society;
- (f) a legal practitioner to be nominated by the Malawi Law Society and appointed by the Minister; and
- (g) two law teachers in Malawi, to be appointed by the Minister.

[33 of 1980; 14 of 1997]

6. Tenure of members

Any person appointed to the Council shall hold office as a member of the Council for such period not exceeding four years as may be specified in his instrument of appointment unless he sooner resigns, or is removed from office, or ceases to have the qualification necessary as a prerequisite to appointment. At the conclusion of any person’s term of office, he shall be eligible for reappointment.

7. Procedure of Council

The quorum of the Council shall be five, and the Council may regulate its own procedure; and the validity of any of the proceedings of the Council shall not be affected by any vacancy in the membership of the

Council or by any defect in the appointment of a member, or by reason that a person not entitled to do so took part in any proceedings.

8. Powers of Council

The Council shall have power to do such things as it considers expedient for the carrying out of its responsibility, but no remuneration or allowance shall be paid to any member of the Council in respect of his office:

Provided that the Minister may from time to time authorize the payment of travelling and other allowances to members of the Council at the same rate as the like allowances are payable to officers in the service of the Government.

Part IIA – The Malawi Institute of Legal Education

8A. Establishment of the Institute

- (1) There is hereby established an institute to be known as the Malawi Institute of Legal Education (in this Part otherwise referred to as the “Institute”).
- (2) The Institute shall be subject to the general or special directions of the Council in carrying out its functions.

[25 of 2010]

8B. Functions of the Institute

- (1) The functions of the Institute shall be to provide practical legal training in courses approved by the Council for purposes of the practice of law in Malawi, and such training shall be at post-graduate level.
- (2) Without prejudice to the generality of subsection (1), the functions of the Institute shall be to—
 - (a) set minimum education entry qualifications, to be approved by the Council, for persons to enroll at the Institute;
 - (b) organize and conduct courses of instruction for the acquisition of legal knowledge and skills by persons seeking to be admitted as legal practitioners;
 - (c) set and conduct, on behalf of the Council, the Malawi Law Examinations;
 - (d) organize and conduct courses in legislative drafting;
 - (e) organize and conduct courses for public officers with a view to promoting their general understanding of the law in Malawi;
 - (f) organize and conduct courses for continuing legal education; and
 - (g) perform such other functions as the Council may, from time to time, direct in writing.
- (3) All courses offered by the Institute shall be approved by the Council.

[25 of 2010]

8C. Fees and charges

- (1) The Institute may charge and receive such fees and other charges as the Council shall approve for any courses and other training programmes or activities offered by the Institute.

- (2) All persons enrolled with the Institute for any course or attending any programme or activity offered by the Institute shall be liable to pay to the Institute the fees or charges for such course, programme or activity, and for any services or facilities offered by the Institute.

[25 of 2010]

8D. Director of the Institute

- (1) There shall be the office of Director of the Institute, which shall be a public office.
- (2) The Director shall be appointed by the Council on such terms and conditions of service as the Council shall determine.
- (3) The Director shall be a person who has knowledge of law and has had experience and has shown capacity in the field of law.

[25 of 2010]

8E. Duties of the Director

Subject to the general and special directions of the Council, the Director shall be responsible for the management of the Institute and shall exercise executive and administrative control over the other staff of the Institute.

[25 of 2010]

8F. Other staff of the Institute

- (1) The Council may appoint such other officers of the Institute, subordinate to the Director, as the Council considers to be necessary for the proper discharge of the functions of the Institute and who shall be officers in the public service and appointed on such terms and conditions of service as the Council shall determine.
- (2) The Council may, by directions in writing, delegate to the Director the appointment of officers of the Institute of such junior ranks as the Council shall specify in such directions, and the Director shall report to the Council, at its regular meetings or as the Council may request, every appointment made pursuant to this subsection.

[25 of 2010]

8G. Consultants and instructors of the Institute

- (1) The Council may engage persons to serve as consultants to the Institute on such terms and conditions of service as the Council shall determine.
- (2) The Council shall engage persons as consultants to the Institute under subsection (1) on account of their knowledge, experience or competence in relation to the work of the Institute and shall assign to such persons tasks for the discharge of the functions of the Institute.

[25 of 2010]

8H. Funds of the Institute

- (1) The funds of the Institute shall consist of—
 - (a) such sums as shall be appropriated by Parliament for the purposes of the Institute; and
 - (b) such moneys as may, with the approval of the Council, be raised by the Institute by way of fees, donations, subscriptions, gifts or charges.

- (2) The Institute shall apply its funds for the purposes of its functions and may invest any surplus of its funds in the manner approved by the Council.

[25 of 2010]

8I. Books of accounts and audit

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

[Cap. 37:02]

- (2) The accounts of the Institute shall be examined and audited annually by auditors appointed by the Council, but the Council may direct that the accounts of the Institute be examined and audited at any time.

[25 of 2010]

Part III – Admission to practise

9. Admission to practise

- (1) No person shall practise as a legal practitioner in Malawi, unless he has been admitted to practise in accordance with this Act.
- (2) Where, pursuant to [section 11A](#), a person is admitted to practise subject to the conditions imposed by subsection (2) of that section, such person shall not practise as a legal practitioner, unless he, at all material times, complies with such conditions.
- (3) Subject to [section 11](#) and [section 12](#) (3), no person may apply for admission to practise as a legal practitioner, unless he qualifies for admission in accordance with subsection (4).
- (4) A person may be admitted to practise as a legal practitioner if he is a citizen of Malawi or has resided in Malawi for a continuous period of not less than three months immediately before the date of the filing of his petition for admission under [section 12](#), and—
- (a) he holds a degree in law awarded by the University of Malawi; or
 - (b) has been admitted to practise as a member of the profession of law in England and Wales, Scotland, Northern Ireland or the Republic of Ireland and has passed the Malawi Law Examination; or
 - (c) subject to subsection (5) and to [section 9A](#), he holds a foreign law qualification as defined in subsection (6).
- (5) a person who holds a foreign law qualification, shall not be eligible to be admitted to practise law in Malawi, unless—
- (a) he is a citizen of Malawi;
 - (b) the foreign law qualification was obtained from a jurisdiction that applies, as its prevailing basic system of law—
 - (i) the Common Law or a legal system founded wholly or in part on the Common Law; or
 - (ii) Roman-Dutch Law as applied and practised in countries of Southern Africa, and in respect of which he studied, in the English language, at least all the subjects specified in the First Schedule;

[First Schedule]

- (c) in the jurisdiction from which the foreign law qualification was obtained, he is either—
 - (i) admitted to practise the profession of law and is not under any disciplinary charge for professional misconduct; or
 - (ii) eligible to practise the profession of law, unless, although otherwise eligible, he is denied such eligibility solely on the ground that he is not a citizen or a resident of, or does not owe allegiance to, or solely to, the country or territory of that jurisdiction;
- (d) he has resided in Malawi for a continuous period of not less than three months immediately before the date of the filing of his petition for admission; and
- (c) he has passed the Malawi Law Examination.

[Please note: numbering as in original.]

- (6) For the purposes of this Part, a foreign law qualification is a law qualification obtained from a jurisdiction other than Malawi and which is or includes, an undergraduate degree in law.
- (7) The Minister may, on the advice of the Council, amend the First Schedule by Order published in the *Gazette*.

[9 of 2004]

9A. Conditions for recognition of a foreign law qualification

- (1) Subject to subsection (2), no foreign law qualification shall be recognized as a qualification for the admission of the holder to practise as a legal practitioner in Malawi, unless it is so recognized by the Council upon the Council being satisfied that—
 - (a) it was obtained pursuant to a course of undergraduate study, with a university or similar institution, that is designed to last at least three academic years;
 - (b) it is, as assessed by the Council, comparable in scope to the undergraduate degree in law awarded by the University of Malawi or otherwise to be of the appropriate scope for the training of a person to qualify him to practise the profession of law; and
 - (c) it constitutes qualifying training towards eligibility for admission to practise the profession of law in the jurisdiction from which it was obtained.
- (2) In assessing a foreign law qualification for purposes of its recognition, the Council shall consider—
 - (a) the subjects of law studied;
 - (b) the content and duration of the courses of study that led to the award of the law degree;
 - (c) the basic system of law applied in the jurisdiction from which the degree was obtained;
 - (d) whether the applicant was admitted to practise the profession of law in the jurisdiction from which the qualification was obtained, and, if not, whether he fulfilled all the eligibility requirements for admission to practise the profession of law in that jurisdiction save only as otherwise provided in [section 9](#) (5) (c) (ii); and
 - (e) other matters of proficiency as may appear to the Council to be relevant.

[9 of 2004]

10. Malawi Law Examination

- (1) Every person who seeks to be admitted to practise law in Malawi and who has petitioned to be so admitted, other than a person qualified under [section 9](#) (4) (a), [section 11](#) or [section 12](#) (3), shall be required to take the Malawi Law Examination and his petition for admission shall not be heard

- unless the Council has certified in writing to the Registrar that he has passed the Malawi Law Examination.
- (2) The Malawi Law Examination shall be set, conducted and managed by the Council, and for that purpose the Council shall—
 - (a) develop a syllabus in respect of which candidates are to be examined and shall make such syllabus generally available, and the Council may review such syllabus from time to time; and
 - (b) make available to every candidate, at least thirty days before the date of the examination, a copy of the syllabus for the examination.
 - (3) The Council may enlist the services of any person, body or institution with relevant expertise to assist it with the development of the syllabus referred to in subsection (2) and the setting, conduct or management of the Malawi Law Examination.
 - (4) Every candidate of the Malawi Law Examination shall before taking the examination pay to the Council such fee as may be prescribed, and the receipt of the Council issued to the candidate in respect of payment of examination fee shall be attested in the petition for the admission of the candidate.
 - (5) Any examination fee paid by a candidate shall not be refundable whether the candidate has passed or failed the examination.
 - (6) After a candidate has written the Malawi Law Examination, the Council shall arrange for the marking of the candidate's answers to determine whether the candidate has passed or failed the examination.
 - (7) The marking of a candidate's answers in the examination shall—
 - (a) be ordinarily done by the person or persons who set the examination or, in the absence of the person or persons who set the examination, be done by any other competent person appointed by the Council; and
 - (b) follow a marking scheme developed by the person or persons who set the examination and approved by the Council.
 - (8) A candidate who has failed the Malawi Law Examination and who disputes his failure may appeal to the Council to have his answers re-marked and the Council shall thereupon arrange for the answers to be re-marked within a reasonable time either by the person or persons who first marked the answers or by any other competent person or persons appointed by the Council for that purpose.
 - (9) A candidate who has failed the Malawi Law Examination may repeat taking the examination for not more than four times subsequent to the first attempt.

[9 of 2004]

11. Admission to practise of legally qualified public officers

- (1) Any person who—
 - (a) holds a degree in law awarded by the University of Malawi or has been admitted to practise as a member of the profession of law in England and Wales, Scotland, Northern Ireland and the Republic of Ireland; and
 - (b) has been in active employment, in a judicial or legal capacity, in the Judicial Department, Attorney General's Chambers, Department of Lands, the office of the Ombudsman, the Human Rights Commission, the Law Commission or other Department of Government

performing legal duties on behalf of the Government for a period of or for periods amounting in all to one year,

may, on making application to the Chief Justice in that behalf, be admitted by the Chief Justice, after consultation with the Council, to practise as a legal practitioner.

- (2) Every application under subsection (1) shall be by petition addressed to the Chief Justice and verified by affidavit of the applicant and shall be made within ninety days of the date of completing the qualifying period specified in that subsection:

Provided that the Chief Justice may hear an application made out of time upon good cause being shown by affidavit of the applicant as to why the application was not made within the period allowed in this subsection.

- (3) Every person who, before the commencement of this subsection, was admitted, or was entitled to apply for admission, under subsection (1) as legal practitioner shall, without further procedure and notwithstanding the actual date of admission in the case of an admitted person, be deemed to have been admitted to practise in Malawi as a legal practitioner and to have signed the Roll of the date of his first appointment in a judicial or legal capacity by which he became eligible for admission under subsection (1).
- (4) The Registrar shall open a Supplementary Roll on which he shall inscribe, in chronological order of the dates of their first appointments in the public service in judicial or legal capacity the names of all persons who are deemed under subsection (3) to have been admitted to practise as legal practitioners and any such person shall be entitled at any time to affix his signature in the Supplementary Roll against his name.
- (5) The inscription of a person's name on the Supplementary Roll pursuant to subsection (4) shall supersede, in all respects, the inscription of his name on the Roll.
- (6) Save as provided in subsections (4) and (5) the Roll and the Supplementary Roll shall be read as one for all purposes of this Act.
- (7) Nothing in subsection (3) shall be construed to have reinstated onto the Roll the name of a person struck off the Roll under [section 21](#).

[26 of 1990; 12 of 1991; 9 of 2004]

11A. Conditional admission to practise

- (1) Where an application for admission to practise as a legal practitioner is made by a person, not being a person who possesses the qualifications set out in [section 11](#) or [section 12](#) (3), the Chief Justice may, subject to the other provisions of this Act, admit such person to practise as a legal practitioner and, unless the Chief Justice is of the opinion that such person has, for a period of not less than two years prior to the date of such application, practised as a qualified lawyer in—
- (a) a country, state or territory which applies, as its prevailing basic system of law, the Common Law or a legal system founded wholly or in part on the Common Law; or
 - (b) a country of Southern Africa which applies, as its prevailing basic system of law, the Roman-Dutch Law,
- such admission shall be a conditional admission for the purposes of this Act and subsection (2) shall apply.
- (2) Subject to the other provisions of this Act, where any person has been admitted to practise as a legal practitioner and his admission is conditional, he may not practise as a legal practitioner—
- (a) except as the employee—
 - (i) of a prescribed legal practitioner; or

- (ii) of a firm of legal practitioners of which at least one partner is a prescribed practitioner; or
 - (iii) in the legal department of a local authority, such department having a prescribed legal practitioner at its head; and
- (b) unless while so practising he is under the general guidance, supervision and control of—
- (i) the prescribed legal practitioner referred to in paragraph (a) (i); or
 - (ii) the partner referred to in paragraph (a) (ii) or a partner of his in the same firm who is a prescribed legal practitioner; or
 - (iii) the head of the legal department referred to in paragraph (a) (iii),
- as the case may be.

For the purposes of this subsection, a prescribed legal practitioner is a legal practitioner of at least three years' standing whose own admission is not conditional:

Provided however that no legal practitioner shall be a prescribed legal practitioner while he is exercising, or attempting to exercise, the guidance, supervision and control referred to in paragraph (ii) over more than two legal practitioners whose admission is conditional.

- (3) Any legal practitioner whose admission to practise is conditional under this section may, by motion within the relevant admission proceedings, apply to the Chief Justice for the removal of the conditions attaching to his admission by virtue of subsection (2), and upon satisfactory proof being adduced, whether by way of affidavit or otherwise as directed by the Chief Justice, that the applicant has, since the date of his admission, been actively employed for a continuous period of not less than twelve months in compliance with subsection (2), the Chief Justice shall order the removal of the said conditions and thereupon the admission to which they relate shall cease to be conditional.
- (4) For the purposes of this section, the expression "a qualified lawyer" means any person whose right to practise the profession of law in the State in question is, in such State, equally as unlimited as that of a legal practitioner in Malawi.

[38 of 1971; 13 of 1974; 9 of 2004]

12. Procedure on applications for admission to practise

- (1) Application for admission to practise as a legal practitioner shall be made by petition, to be verified by an affidavit of the petitioner which shall be heard by the Chief Justice in open court.
- (2) The Chief Justice may make rules generally regulating the procedure for the admission to practise of any person and more particularly concerning the form of any petition, the affidavit or other annexures required to be filed with any petition, and their form, the procedure on the hearing of a petition, the order to be made after a hearing, the oath or oaths to be taken by any person admitted to practise.
- (3) Notwithstanding the foregoing provisions of this section, the Chief Justice may, without formality, admit to practise as a legal practitioner for the purpose of any specific cause or causes, any person who, in the opinion of the Chief Justice—
- (a) has sufficient legal knowledge and qualifications;
 - (b) is of good character;
 - (c) has come to Malawi for the purpose of appearing in such cause or causes; and

(d) has paid the prescribed fee,

and any such person shall for the purposes of this Act be deemed to be a legal practitioner for the period required to appear in such cause or causes.

[9 of 2004]

12A. Reciprocal recognition to practise the profession of law

Notwithstanding the other provisions of this Part, recognition to practise the profession of law in Malawi may be granted to any person on the basis of, and in accordance with, any bilateral or multilateral agreement entered into in writing between Malawi and any other country or any group of countries providing for the reciprocal recognition of persons admitted to practise the profession of law in one country to be admitted to practise in the other country or in any country in such group of countries.

[9 of 2004]

Part IV – Articled clerks

13. ***

[Repealed by Act [No. 9 of 2004](#)]

Part V – Notaries public

14. Interpretation

In this Part, the expression “to practise as a notary public” means to perform *mutatis mutandis* the functions and duties commonly performed by a notary public in England.

15. Appointment of notaries public

- (1) Any legal practitioner holding a licence to practise as such in Malawi may apply to the Chief Justice for a certificate entitling him to be and practise as a notary public.
- (2) In considering the application for such a certificate the Chief Justice shall have regard to—
 - (a) the requirements of the public and the number of notaries public already entitled to practise in Malawi and in the Districts in which such notaries public reside; and
 - (b) the length of time during which the applicant has been a legal practitioner,

and the granting of such a certificate shall be in the sole discretion of the Chief Justice:

Provided that such a certificate shall not be granted to a legal practitioner who has not held a licence to practise as such in Malawi for three years, unless the Chief Justice for good reason thinks fit so to do.

16. Certificate to practise as notary public

- (1) A certificate to practise as a notary public shall be in the form set out in Part I of the Fourth Schedule and shall entitle the person named therein, upon payment of the fee set out in Part II of the Fourth Schedule to practise as such until the 31st March next following the date of issue and to levy fees in accordance with Part III of the Fourth Schedule.
- (2) Every such certificate shall, on the expiry of its validity, be renewed by the Chief Justice for a period of one year, by endorsement thereon by the Registrar of the High Court, upon the application of the person named therein, and upon payment of the fee set out in Part II of the Fourth Schedule.

- (3) The granting of every certificate under this section and every renewal thereof shall be recorded in the Roll.
- (4) When a certificate granted under this section has been lost, destroyed or mutilated, it shall be replaced by a fresh certificate upon the application of the person named therein and upon payment of the fee set out in Part II of the Fourth Schedule.

[25 of 1968]

17. Jurat to state where and when oath, etc., is taken

Every notary public before whom any oath, affidavit, declaration or acknowledgment is taken or made shall state truly in the jurat or attestation at what place and on what date the oath, affidavit, declaration or acknowledgment is taken or made.

18. Suspension or cancellation

Any certificate granted under [section 16](#) may be suspended or cancelled by the Chief Justice in the event of a notary public ceasing to be entitled to practise as a legal practitioner in Malawi, or cancelled if, in the opinion of the Chief Justice, the notary public fails to carry out satisfactorily his duties as a notary public.

19. Penalty

- (1) Any person who shall hold himself out to be a notary public or who shall receive any fee or reward as a notary public, without being entitled to practise as such or perform duties as such, shall be liable to a fine of K200 and for a second or subsequent offence to a fine of K500 and to imprisonment for six months.
- (2) Nothing in this section shall be construed so as to exempt any person from any prosecution under any other law to which he would otherwise be liable:

Provided that no person shall be punished twice for the same offence.

20. Powers of Chief Justice

The Chief Justice may make rules for carrying out the purposes of this Part.

Part VI – Discipline

21. Disciplinary powers of High Court

- (1) The High Court, either of its own motion and after such inquiry as it thinks fit, or on an application made by the Attorney General, may make an order suspending any legal practitioner, or striking any legal practitioner off the Roll, or may admonish any legal practitioner in any of the following circumstances—
 - (a) if the legal practitioner has taken instructions in any cause or matter except from the party on whose behalf he is retained, or from some person who is the agent of such party;
 - (b) if he has been guilty of fraudulent or improper conduct in the discharge of his professional duty or has misled the Court, or allowed it to be misled in such manner as to cause the Court to make an order which he knew or ought to have known to be wrong and improper;
 - (c) if he has made or agreed to make any payment or has consented to the retention of the whole or any part of any fee paid or payable to him for his services, in consideration of any person procuring or having procured the employment, in any legal business, of himself or any other legal practitioner;

- (d) if he directly or indirectly has procured or attempted to procure the employment of himself as a legal practitioner through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given;
- (e) if, without the previous written consent of the Malawi Law Society, he has made any charges for professional services (where such are prescribed) other than those which have been prescribed as scale charges, or less than those prescribed as minimum charges;
- (f) if he has been adjudicated bankrupt;
- (g) if he has practised for one month after having been warned in writing by the Registrar that he has no annual licence to practise;
- (h) if he has been convicted of an offence punishable with imprisonment for a term of twelve months or more;
- (i) if he has been guilty of conduct tending to bring the profession of the law into disrepute; or
- (j) if he has failed to comply with any of the provisions of this Act or of any rules made under [section 36](#) (2) (c) or [section 44](#) (4) (a), (b), (c) or (d).

[4 of 1981]

- (2) If the Court, on an application under subsection (1), is satisfied that a legal practitioner has been guilty of dishonesty in connexion with his practice as a legal practitioner or a connexion with any trust of which he is a trustee, the Court may order that no payment shall be made without the leave of a judge by any banker named in the order out of any banking account in the name of the legal practitioner or his firm.
- (3) Whenever a legal practitioner is struck off the Roll or suspended under subsection (1) the Court may give such directions as it considers proper regarding the possession and control of deeds, wills, documents evidencing title to any property, books of account, records, vouchers or other documents in the possession or control of that legal practitioner or relating to any trust of which he is a trustee.
- (4) Any application to the Court made under this section shall be heard by the Chief Justice sitting alone or sitting together with such other judge or judges as he may direct, but no order shall be made suspending or striking off the Roll any legal practitioner without his being given reasonable opportunity of being heard and of calling witnesses.

[4 of 1981]

22. When legal practitioner may not practise

- (1) A legal practitioner whose name has been struck off the Roll shall not practise in Malawi.
- (2) A legal practitioner who has been suspended by an order made under [section 21](#) shall not practise in Malawi during the period of such suspension

23. Annual licence

- (1) Every legal practitioner shall on admission pay the admission fee prescribed in the Second Schedule and shall, in the year of his admission, and annually thereafter, take out an annual licence for which he shall pay the fee specified in the Second Schedule.
- (2) Every licence to practise shall expire on the 31st January next following the date of its issue, and every legal practitioner desirous of practising thereafter shall renew his licence.
- (3) No legal practitioner shall be entitled to practise unless he has had issued to him a current licence to practise.

- (4) The licence to practise of a legal practitioner has not been renewed for a period of six months after its expiry, such licence shall not be renewed except with the consent of the Chief Justice, to whom application may be made by the legal practitioner to whom the expired licence was issued, and such application shall be supported by affidavit stating the reasons why such licence was not timely renewed.
- (5) This section shall not apply to person permitted to practise as a legal practitioner under [section 12](#) (3) or to a person who is an *ex-officio* legal practitioner or deemed to be a legal practitioner under [section 38](#).

24. Unlawfully acting as a legal practitioner etc., an offence

- (1) Any person who is not, or who has ceased to be, entitled to practise as a legal practitioner before the courts of Malawi by virtue of this Act or any other written law, and who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, does any of the following acts—
 - (a) acts as a legal practitioner or, as such legal practitioner, serves out any process or commences, carries on or defends any action, suit or other proceeding in the name of any other person or in his own name, or does any act required by law to be done by a legal practitioner in any court;
 - (b) draws or prepares any instrument relating to real or personal estate or any proceeding in law or draws or prepares any document or caveat relating to land registration;
 - (c) does any other work in respect of which scale or minimum charges are laid down by the Legal Practitioners (Scale and Minimum Charges) Rules, or by any other rules for the time being in force prescribing or relating to charges for any services to be performed by a legal practitioner,shall be liable to a fine of £100.
- (2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.
- (3) This section shall not extend to—
 - (a) any public officer drawing or preparing instruments in the course of his duty;
 - (b) any person employed merely to engross any instrument or proceeding.
- (4) For the purpose of this section the expression “instrument” does not include—
 - (a) a letter or power of attorney not under seal;
 - (b) a transfer of stock containing no trust or limitation thereof;
 - (c) a letter written for the purpose of collection of monies;
 - (d) an undefended trade mark or patent application;
 - (e) a passport application.
- (5) Nothing contained in this section shall be deemed to limit the right of any person to appear on his own behalf before any court in any proceedings to which he is a party.

Part VII – The Malawi Law Society

25. Establishment of Malawi Law Society, vesting of assets and dissolution of the Nyasaland Law Society

- (1) There is hereby established a body corporate to be styled the Malawi Law Society (hereinafter referred to as “the Society”) with perpetual succession and a common seal, with power to hold lands and to sue and be sued in its corporate name.
- (2) All property and assets of every kind, whether real, chattel real or personal, of the Nyasaland Law Society shall, at the coming into operation of this section*, be vested in the Society without any further act, deed or other assurance and the Nyasaland Law Society shall, with effect from that date, automatically be dissolved.

*[*On the 12th April, 1965]*

26. Objects of Society

- (1) The objects for which the Society is established are—
 - (a) to represent, protect and assist legal practitioners as regards conditions of practice and otherwise;
 - (b) to present generally the views of legal practitioners and to sustain and preserve their rights and status;
 - (c) to engage in formal or informal activities designed to foster and extend the study of law, and for the benefit both of members of the Society or of other persons interested in the profession of the law;
 - (d) to protect and assist the public in Malawi on all matters touching, ancillary or incidental to the law;
 - (e) to acquire, hold, develop or dispose of properties of all kinds whether movable or immovable, and to derive capital or income therefrom, for all or any of the foregoing objects;
 - (f) to raise or borrow money for all or any of the foregoing objects in such manner and upon such security as may from time to time be determined by the Society;
 - (g) to invest and deal with moneys of the Society not immediately required in such a manner as may be determined by the Society;
 - (h) to do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them.
- (2) The Finance and Audit Act shall not apply to the Society until such time as the Minister may in his discretion direct.

[Cap 37:01]

27. Membership of the Society

The membership of the Society shall consist of the following—

- (a) all legal practitioners who are members of the Society by reason of [section 28](#);
- (b) all persons admitted to membership in the Society under [section 29](#);
- (c) all persons elected as honorary members of the Society under [section 30](#).

28. Every legal practitioner to be member of the Society

- (1) Every legal practitioner who has in force a licence to practise shall, without election or appointment, become a member of the Society from the date on which his licence was issued to him.
- (2) Every legal practitioner who is a member of the Society by reason of subsection (1) shall, subject to subsection (3), remain a member until his licence to practise has expired and has not been renewed.
- (3) When a legal practitioner who is member of the Society, by reason of subsection (1) has his name, whether at his own request or otherwise, removed from the Roll, he shall cease to be a member of the Society.
- (4) A legal practitioner who is a member of the society by reason of subsection (1), and who is suspended from practicing, shall not be entitled during the period of such suspension to any of the rights and privileges of membership.

29. Persons entitled to become members

- (1) The Attorney General, the Solicitor General and any person in the public service, other than a judge, having the qualifications required for admission as a legal practitioner, other than the passing of the Malawi Law Examination, shall, after applying for membership in the prescribed form, be admitted as a member of the Malawi Law Society during such time as they hold their office or appointment.
- (2) The Society may, from time to time elect to membership such other persons resident in Malawi who possess legal qualifications acceptable to the Society and who consent to be elected members.

30. Honorary members

The Society may elect as honorary members, either for life or for such period as it may deem appropriate, such persons whom it may think fit and who consent to such election.

31. Fees and subscription

The members of the Society shall pay to the Society such fees and subscription and at such times as may be prescribed by the Minister, after consultation with the Minister of Finance:

Provided that honorary members shall not be required to pay any subscription.

32. Resignation

No member of the Society who is a member by reason of [section 28](#) may resign from the Society so long as he has in force a licence to practise, but, except as aforesaid, any member may resign, or may be expelled upon such grounds as may be specified by the Society, after having been given a reasonable opportunity of answering any allegation made against him.

33. Cessation of membership

Any member of the Society, other than an honorary member, who ceases to qualify for membership shall automatically cease to be a member of the Society.

34. Election

An annual election shall be held by the Society not later than the 28th day of February in every year, at which election the Society shall elect such officers or committees from its members as may be deemed necessary.

35. Delegation of powers and functions

The Society may from time to time delegate all or any of its powers or functions to any one or more of its officers or to any committee of the Society.

36. Society's power to make rules

- (1) The Society may make rules prescribing anything which under this Part may be or is to be prescribed, and generally for the better carrying out of the purposes of this Part and the objects for which the Society is established.
- (2) Without prejudice to the generality of the foregoing powers and subject to [section 31](#), the Society may make rules dealing with any or all of the following matters—
 - (a) the annual and other subscriptions of the Society;
 - (b) the manner of application for membership of the Society;
 - (c) standards of professional conduct with which every legal practitioner is to comply;
 - (d) the grounds of expulsion of members of the Society and the procedure relating thereto;
 - (e) the resignation of members;
 - (f) the regulation of powers exercisable by any committee of the Society, and the delegation of powers;
 - (g) the manner of convening meetings of the Society and of committees, and quorums thereof, and the procedure relating thereto;
 - (h) the manner in which, and the conditions subject to which, any member not present at a general meeting may vote by proxy on any resolution before that meeting;
 - (i) the manner of election, removal and replacement of officers of the Society;
 - (j) the design, custody and use of the common seal;
 - (k) the classes of resolution at meetings of the Society and their effect;
 - (l) such other matters as may be deemed by the Society to be necessary for the proper conduct and regulation of its affairs.
- (4) The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under paragraph (e) of subsection (3). The Chief Justice may, from time to time, make rules of court for the purposes of this subsection.

[Please note: numbering as in original.]

[5 of 1976]

[9 of 1977]

37. Disciplinary Committee

- (1) There shall be a disciplinary committee of the Society which shall consist of the Solicitor General and two other members elected by the Society.
- (2) The disciplinary committee shall inquire into the conduct of legal practitioners—
 - (a) at the request of the High Court;
 - (b) on a complaint made by any person which indicates that there may be grounds on which the High Court could make an order under [section 21](#) against a legal practitioner.

- (3) For the purpose of any enquiry under subsection (2) the disciplinary committee shall have all the powers of Commissioners under sections 9 and 10 of the Commissions of Inquiry Act, and sections 11, 12 and 13 of that Act shall apply to proceedings before the disciplinary committee as though it were a Commission appointed under that Act, save that the legal practitioner into whose conduct an inquiry is being made shall not be entitled to his expenses of attending before the disciplinary Committee save as provided in subsection (5).

[Cap. 18:01]

- (4) If as a result of such inquiry the disciplinary committee considers that a *prima facie* case has been established on which the High Court might make an order under [section 21](#), the Committee shall report the matter to the Attorney General, who shall thereupon be empowered to apply for such an order. On such application, the High Court shall have jurisdiction to order that the costs of the inquiry shall be paid by the legal practitioner concerned.
- (5) If as a result of such inquiry the disciplinary committee considers that such a *prima facie* case has not been established it shall so report to the High Court or shall dismiss the complaint as may be appropriate. If the disciplinary committee considers that any complaint was frivolous or vexatious it may direct the complainant to pay the costs of the inquiry including the expenses of attendance of the legal practitioner against whom the complaint was made. Any such costs shall be assessed by the disciplinary committee, and no appeal shall lie from such assessment or from the order of the disciplinary committee directing the payment of costs.

Part VIII – Miscellaneous

38. *Ex officio* legal practitioner

- (1) Any person holding the office of Attorney General, Solicitor General, Chief Public Prosecutor, Parliamentary Draftsman, Principal State Advocate, State Advocate, Principal Legal Aid Advocate or Legal Aid Advocate in Malawi shall, so long as he holds such office, be *ex officio* a legal practitioner and entitled to practise before the courts of Malawi.
- (2) Every person appointed by the Attorney General to plead before the courts of Malawi on behalf of the Government in any cause or matter shall be deemed to be a legal practitioner for the purpose of such cause or matter.

[8 of 1980]

39. Legal practitioner is officer of Court

Every legal practitioner shall be deemed to be an officer of the High Court.

40. Legal practitioners not to practise in certain courts except in accordance with the Traditional Courts Act, etc.

Notwithstanding anything contained in this Act, no legal practitioner shall be entitled to practise before a court established under the Traditional Courts Act or any Act replacing that Act except in accordance with that Act or any Act amending or replacing it.

[Cap 3:03]

41. Order of precedence

Legal practitioners shall take precedence according to the dates they signed, or are deemed under [section 11 \(3\)](#) to have signed, the Roll:

Provided that the Attorney General and the Solicitor General shall take precedence before all other legal practitioners and in that order.

[26 of 1990]

[12 of 1991]

42. Legal practitioners list

- (1) The Registrar shall cause to be published in an issue of the *Gazette* appearing before the 31st March in each year a list (hereinafter referred to as “the legal practitioners list”) of all legal practitioners licensed to practise during that year.
- (2) The legal practitioners list shall include the name and address of every legal practitioner, the year in which he was admitted to practise in Malawi and such other biographical information dealing with the legal and educational background of the legal practitioner as the Chief Justice may direct.

43. Clerks to legal practitioners

- (1) Where—
 - (a) a person who is or was a clerk to a legal practitioner, not being himself a legal practitioner, has been convicted of an offence involving fraud or of any other offence in respect of any money or property belonging to or held or controlled by the legal practitioner by whom he is or was employed or any client of such legal practitioner; or
 - (b) it appears to the Attorney General that a person who is or was a clerk to a legal practitioner, not being himself a legal practitioner, has been a party to any act or default of such practitioner in respect of which an order has been made under [section 21](#),

an application may be made by summons returnable in Chambers by the Attorney General to the High Court, that an order be made directing that, as from a date to be specified in such order, no legal practitioner shall, in connection with his practice as a legal practitioner, take or retain such person into or in his employment, or remunerate such person, without the written consent of the Attorney General.

- (2) The High Court shall have power to make such order as is referred to in subsection (1), and to order the payment of costs by any party, but no such order shall be made against any person without his being given an opportunity of being heard and of calling witnesses.
- (3) Any application under this section may be heard by any judge.
- (4) Every order made under this section shall be filed with the Registrar, and the file shall be open to inspection by any legal practitioner without payment but shall not be open to inspection by any person other than a legal practitioner.
- (5) A clerk in respect of whom an order under subsection (1) has been made shall not be entitled to be employed by a legal practitioner in respect of his practice until the order expires or is revoked.

44. Rules

- (1) The Minister, in consultation with the Chief Justice may make rules for the better carrying out of this Act.
- (2) Without derogating from the generality of subsection (1) such rules may—
 - (a) prescribe both scale charges and minimum charges that may be levied by legal practitioners; and
 - (b) provide for the taxation of costs and the remuneration of legal practitioners.

- (3) For the avoidance of doubt, subsection (1) shall not derogate from [section 7](#) (which empowers the Council to regulate its own procedure) the proviso to sections (which empowers the Minister to authorize the payment of certain allowances to the Council), [section 9](#) (2)(a) (which empowers the Minister to prescribe certain educational institutions), [section 12](#) (2) (which empowers the Chief Justice to make rules generally regarding the procedure for the admission to practise of any person), [section 36](#) (which empowers the Society to, make certain rules) or [section 42](#) (2) (which empowers the Chief Justice to give certain directions in connexion with the preparation of legal practitioners list).
- (4) The Minister may make rules—
- (a) as to the opening and keeping by legal practitioners of accounts at banks for client's money;
 - (b) as to the keeping by legal practitioners of accounts containing particulars and information as to moneys received, held or paid by them for or on account of clients;
 - (c) requiring the production by a legal practitioner of his books of account, bank passbooks, bank statements, statements of account, vouchers and any other necessary documents at any time on request by an officer of the Society for the inspection of a person nominated by the Society or by the disciplinary committee constituted under [section 37](#);
 - (d) as to the regular audit of the accounts to be kept by legal practitioners and the furnishing of reports thereof; and
 - (e) for the purposes of protecting the interests, affairs or property of any person in the event of any legal practitioner bound by any professional duty or responsibility in respect of such interest, affairs or property, becoming precluded, or absenting himself, from the practice of his profession without having performed or discharged such duty or responsibility and having made no adequate provision for the performance or discharge thereof,

and, without derogation from the generality of the foregoing, such rules may confer on the Society or any committee thereof such rights of access to, and production and possession of, such things as may be specified in the rules and may provide for the delegation of any of the rights, powers or duties of the Society, or of such committee, to any member of the Society, any Law Officer or any nominee of any Law Officer.

[4 of 1981]

- (5) The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case maybe, by rules made under paragraph (e) of subsection (4); and the Chief Justice may, from time to time, make rules of court for the purposes of this subsection.

[4 of 1981]

45. Savings

- (1) All mortgages, bonds, charges, agreements, contracts, or other instruments, and all commercial arrangements subsisting immediately before the date of the coming into operation of [section 25](#), shall be of as full force and effect against, or in favour of, as the case may be, the Society and enforceable as fully and effectually as if, instead of the Malawi Law Society, the Society had been named therein and had been a party thereto.
- (2) Any legal proceedings or cause of action pending or subsisting immediately before the date of the coming into operation of [section 25](#) by or against the Malawi Law Society may be continued or enforced by or against the Society as they could have been continued or enforced by or against the Malawi Law Society had this Act not been passed.

- (3) Any person entitled, at the date of the coming into force of this Act, to practise as a notary public under the Commissioners for Oaths and Notaries Ordinance, 1960 (now repealed) shall be deemed to have been admitted to practise as a Notary Public under this Act.

[26 of 1960]

- (4) Any person admitted to practise under the Legal Practitioners Rules (now revoked) or under the rules which these Rules replaced shall be deemed to have been admitted to practise under this Act.

[G.N. 61/1959]

- (5) All orders made under the Legal Practitioners Rules (now revoked) shall be deemed to be orders made under this Act.

First Schedule (Section 9 (5))

Minimum subjects for a qualifying foreign law qualification

- (a) Civil Procedure;
- (b) Criminal Procedure;
- (c) Criminal Law;
- (d) The Law of Evidence;
- (e) The Law of Torts;
- (f) The Law of Contracts;
- (g) Legal Systems and Methods;
- (h) Constitutional and Administrative Law.

[9 of 2004]

Second Schedule (Section 23)

<i>Subject</i>	K	t
1. On admission to practise as legal practitioner	50	00
2. Annual licence to practise	10	50

Third Schedule

[Repealed by Act [No. 9 of 2004](#)]

Fourth Schedule (Section 16 (1))**Part I – High Court of Malawi***[34 of 1981]***Certificate to practise as a notary public in Malawi**

It is hereby certified that _____ has this day been admitted to practise as a notary public in Malawi from the date hereof to the 31st March next.

Fee paid:

_____, 20 _____

Chief Justice

Renewed until the _____, 20 _____

Fee paid: _____, 20 _____

Registrar

Part II – Fees payable for certificates (Section 16 (1), 2 and (4))

		K	t
1.	Fee payable on the granting of a certificate to practise as a notary public	10	00
	Provided that where the applicant holds or has held a certificate issued under section 4 of the Commissioners for Oaths and Notaries Ordinance (repealed by this Act) the fee shall be	0	50
2.	Fee payable on each annual renewal of such certificate	0	50
3.	Fee payable on replacement of lost, destroyed or mutilated certificate	1	00

Part III – Fees for notarial acts (Section 16(1))

[34 of 1981]

		K	t
1.	For all protests, including drawing, engrossing and execution of the instrument of protest and duplicate, copies of bills, attending stamping and all incidental work, but excluding out-of-pocket expenses	15	00
2.	For noting any bill, including all attendances, drawing fees and notarial signatures, as follows—		
	If the bill is noted within the City of Blantyre (plus out-of-pocket expenses)	5	00
	If the bill is noted elsewhere	7	00
		per hour or part thereof	
	(plus 30t per kilometre travelling and other out-of-pocket expenses)		
3.	For administering an oath, or receiving a declaration or acknowledgment, with or without attestation of signature	1	50
4.	For every exhibit to an affidavit, declaration or acknowledgment	0	50
5.	For each signature attested by a notary public in any document	1	50

	not otherwise provided for		
6.	For certifying to a copy of any document or part of a document if not exceeding 100 words	1	50
7.	For every additional 100 words or fraction thereof, if the document or part of a document exceeds 100 words	0	50
8.	For affixing notary's signature and seal if required to any document not otherwise provided for in this table	1	50
9.	For every notarial public seal affixed to a document, packet or article, when no signature is required	1	50
10.	For any other notarial act not specified in this table	1	50

Order (Under sections 9 and 11)

It has been ordered in terms of sections 9 and 11 of the Act that the University of Malawi shall be an educational institution.

[G.N. 144/1971]