

Malawi

Married Woman (Maintenance) Act

Chapter 25:05

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Married Woman (Maintenance) Act

Contents

1. Short title	1
2. Interpretation	1
3. Wife may apply for order	1
4. No order enforceable while wife resides with husband	2
5. Powers of magistrate	2
6. No order in favour of adulterous women	2
7. Court may vary or discharge order	2
8. Power to order interim payment when application is adjourned	3
9. Enforcement of orders for payment of money	3
10. Notice of change of address	3
11. Appeals	3
12. Forms and fees	3

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Chapter 25:05

Commenced on 29 July 1948

[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.]

[Repealed by [Marriage, Divorce and Family Relations Act \(Act 4 of 2015\)](#) on 3 July 2015]

An Act to provide for the protection and maintenance of married women and their children

1. Short title

This Act may be cited as the Married Women (Maintenance) Act, and shall not apply to cases in which the parties are married solely under customary law.

[11 of 1980]

2. Interpretation

In this Act—

“**court**” means the Resident Magistrate’s or a first or second grade subordinate court;

“**habitual drunkard**” means a person who is by reason of habitual intemperate drinking of intoxicating liquor or of habitual taking or using, except upon medical advice, of opium or other dangerous drugs, at times dangerous to himself or to others, or incapable of managing himself or his affairs.

3. Wife may apply for order

Any married woman whose husband—

- (a) shall have been convicted of an offence against her person under Chapters XXII or XXIV of the Penal Code and sentenced to pay a fine of more than K20 or to a term of imprisonment exceeding two months;
- (b) shall have deserted her;
- (c) shall have been guilty of persistent cruelty to her or to her children;
- (d) shall have been guilty of wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain;
- (e) while suffering from a venereal disease, and knowing that he was so suffering, insisted on having sexual intercourse with her; or
- (f) has compelled her to submit to prostitution, or has been guilty of such conduct as was likely to result and has resulted in her submitting herself to prostitution,

may apply to a court having jurisdiction in the place where any such conviction has taken place, or in which the cause or complaint shall have wholly or partly arisen, for an order or orders under this Act.

[Cap. 7:01]

4. No order enforceable while wife resides with husband

No order under this Act shall be enforceable and no liability shall accrue under any such order whilst the married woman with respect to whom the order was made resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband.

5. Powers of magistrate

The court to which any application under this Act is made may make an order or orders containing all or any of the provisions following—

- (a) a provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation);
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant;
- (c) a provision that the husband shall pay to the applicant personally, or for her use to any officer of the court or third person on her behalf, such monthly sum not exceeding K60, as the court shall, having regard to the means both of the husband and wife, consider reasonable;
- (d) a provision that the husband shall pay to the applicant personally, or to any officer of the court or third person on her behalf, such monthly sum not exceeding K8 for the maintenance of each child, committed to her custody under paragraph (b), until such child attains the age of sixteen years;
- (e) a provision for payment by the applicant or the husband, or both of them, of the costs of the court and such reasonable costs of either parties as the court may think fit.

[25 of 1968]

[11 of 1980]

6. No order in favour of adulterous women

No orders shall be made under this Act on the application of a married woman if it shall be proved that such married woman has committed an act of adultery, unless the court is satisfied that the husband has condoned or connived at, or by his wilful neglect or misconduct condoned to, such act of adultery.

7. Court may vary or discharge order

- (1) A court having jurisdiction in the place in which any order under this Act has been made may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time alter, vary or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made, so that the same shall not in any case exceed the monthly sum of K60.
- (2) If any married woman upon whose application an order shall have been made under this Act shall commit an act of adultery, such order shall upon proof thereof be discharged:

Provided that the court may, if the court thinks fit—

- (a) refuse to discharge the order if, in the opinion of the court, such act of adultery as aforesaid was condoned to by the failure of the husband to make such payments as in the opinion of the court he was able to make under the order, and
- (b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife, and that the husband shall pay to the wife or to any officer of the court or third person on her behalf, a monthly sum not exceeding K8 for the maintenance of each such child until the child attains the age

of sixteen years. In making such order the court shall have regard primarily to the interests of the children.

[11 of 1980]

8. Power to order interim payment when application is adjourned

- (1) Where, on the hearing of an application for an order of maintenance, the application is adjourned for any period exceeding one week, the court may order that the husband do pay to the wife or to an officer of the court or third person on her behalf a weekly sum, not exceeding such an amount as might be ordered to be paid under a final order, for the maintenance of the wife and any child or children of the marriage in her custody until the final determination of the case:

Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made.

- (2) Any such order may be enforced in like manner as if it were a final order of the court.

9. Enforcement of orders for payment of money

The payment of any sum of money directed to be paid by an order under this Act may be enforced in the same manner as the payment of money under an order of affiliation is enforced under section 5 (2) of the Affiliation Act.

[Cap. 26:02]

10. Notice of change of address

Any person for the time being under an obligation to make payments under an order made under this Act shall give notice in writing to the clerk of the court which made such order of any change of address, and any person failing to give such notice without reasonable excuse shall be liable to a fine of K10.

11. Appeals

An appeal shall lie from any order or the refusal of any order by a court under this Act to the High Court by the married woman or her husband in the same manner as in the case of any order made by a magistrate under and subject to the provisions of the Criminal Procedure and Evidence Code.

[Cap. 8:01]

12. Forms and fees

The Chief Justice may prescribe the forms to be used and the fees to be paid by any person applying for an order under this Act.