

Malawi

## Immigration Act

### Chapter 15:03

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# Malawi

## Immigration Act

### Chapter 15:03

Commenced on 1 January 1964

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to regulate the entry of persons into Malawi, to prohibit the entry into Malawi of undesirable persons, to make provision for the deportation from Malawi of undesirable persons and to provide for matters incidental to the foregoing**

### Preliminary

#### 1. Short title

This Act may be cited as the Immigration Act.

#### 2. Interpretation

In this Act, unless inconsistent with the context—

“**Chief Immigration Officer**” means any person appointed as a Chief Immigration Officer in terms of [section 3](#);

“**dependent relative**”, in relation to any person, means his child, step-child, adopted child, grandchild, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, great nephew, or great niece, or any such relative of his spouse, who by reason of infirmity of mind or body, is wholly dependent upon such person, and is living with such person;

“**Deputy Chief Immigration Officer**” means any person appointed as a Deputy Chief Immigration Officer in terms of [section 4](#);

“**immigration officer**” means any person appointed as an immigration officer in terms of [section 3](#) and includes a Chief Immigration Officer and Deputy Chief Immigration Officer;

“**magistrate**” means a Resident Magistrate or a magistrate of the first or second grade;

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

“**police officer**” means a member of the Malawi Police Force established under the Police Act;

*[Cap. 13:01]*

“**police force**” means the Malawi Police Force established under the Police Act;

*[Cap. 13:01]*

“**prison**” means a prison established under the Prisons Act.

*[Cap. 9:02]*

### 3. Appointment of immigration officers

- (1) The Minister may appoint any person in the public service of Malawi to be a Chief Immigration Officer, Deputy Chief Immigration Officer or an immigration officer, by whatever suitable title designated, for the purposes of this Act.

*[24 of 1972]*

*[30 of 1991]*

- (2) The Minister may confer all or any of the powers and impose all or any of the duties of an immigration officer upon any person in the public service of Malawi or upon any police officer.

*[12 of 1992]*

*[19 of 1992]*

*[19 of 1995]*

- (3) Any immigration officer shall, in the discharge of his functions, the exercise of his powers or the performance of his duties under this Act, be subject to the general or special directions of the Minister.

## Part I – Immigration generally

### 3A. Disciplinary regulations

The Minister may make regulations for the disciplinary control of immigration officers and such regulations may be made to apply generally, or may make separate provisions for different ranks of immigration officers.

*[27 of 1990]*

### 4. Prohibited immigrants

- (1) Subject to this Act, the following persons shall be prohibited immigrants and their entry into or presence within Malawi shall be unlawful—
- (a) any person deemed by the Minister on economic grounds, or on account of standard or habits of life, to be an undesirable inhabitant or to be unsuited to the requirements of Malawi;
  - (b) any person who is unable, by reason of deficient education, to read and write any one of any class of language as may be prescribed by the Minister by regulation to the satisfaction of an immigration officer;
  - (c) any person who at the time of his entry is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession, for his own use, of sufficient means to support himself and such of his dependants as he brings or has brought with him into Malawi;
  - (d) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or dumb and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person gives security to the satisfaction of the Minister for his permanent support in Malawi, or for his removal therefrom whenever required by the Minister;
  - (e) any person who is infected, afflicted with or suffering from a prescribed disease, unless he is in possession of a permit issued by the Minister, or any person authorized by the Minister,

to enter and remain in Malawi issued upon prescribed conditions and complies with such conditions;

- (f) any person who, not having received a free pardon, has been convicted of any offence prescribed by the Minister as an offence for the purposes of this section;
  - (g) any prostitute or homosexual, or any person, male or female, who lives or has lived on or knowingly receives or has received any part of the earnings of prostitution or homosexuality, or has procured men or women for immoral purposes;
  - (h) any person who, from information received through any official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to Malawi;
  - (i) any person who, after the date of commencement of this Act, has been deported from or ordered to leave Malawi; or
  - (j) the wife and the children under the age of eighteen years and any other dependants of a prohibited immigrant.
- (2) This section shall not apply to any person who is a citizen of Malawi.
- (3) If an immigration officer is of the opinion that any person who has entered Malawi, including any person who entered Malawi before the date of commencement of this Act, and who is not a citizen of Malawi, has become or is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession, for his own use, of sufficient means to support himself and such of his dependants as he has brought into Malawi, including dependants brought into Malawi by him before the date of commencement of this Act, the Chief Immigration Officer may apply to the Minister for a declaration that such person is a prohibited immigrant.
- (4) Before making any application in terms of subsection (3), the Chief Immigration Officer shall notify the person concerned of his intention to do so, and shall enquire of him as to whether or not he has any representation which he wishes to make to the Minister. Any such representations shall be reduced to writing and signed by the person concerned. The Chief Immigration Officer shall then make application to the Minister for a declaration and shall forward with the application any such representations as may have been made. On such application the Minister may declare the person concerned to be a prohibited immigrant and the decision of the Minister shall be final and conclusive and not subject to appeal to any Court.
- (5) Whenever the Minister exercises any power conferred upon him by this section, he shall cause written notice of that fact to be transmitted to the Chief Immigration Officer who shall notify the immigration officer and the person concerned.

## 5. Production of identity documents

Any person entering Malawi who fails on demand by an immigration officer to produce to him an unexpired passport or other valid document of identity of a class recognized by the Minister—

- (a) which was issued to him on behalf of the Government of Malawi or of any other Government recognized by the Government of Malawi; and
- (b) which contains a personal description of him, the name of the country in which he was born and the date of his birth and containing such other information as the Minister may from time to time require by regulation. The Minister may by regulation require different information from different classes of persons; and
- (c) which, except when a visa is dispensed with in pursuance of an arrangement to which the Government of Malawi is a party, bears the visa or endorsement of a person authorized by the Government of Malawi to place visas or such endorsements upon passports or such other documents,

shall be a prohibited immigrant unless he is proved to be a citizen of Malawi.

## 6. Exemptions by Minister

- (1) Notwithstanding anything to the contrary contained in this Act, the Minister may in his discretion and on such terms as may be prescribed by him—
  - (a) exempt any person, or any class of person, from [section 4\(1\)](#) (a), (b), (c), (d) or (f) or any two or more of the said paragraphs; or
  - (b) direct an immigration officer to issue a temporary permit to any such person as is described in the aforesaid paragraphs.
- (2) If any person exempted by the Minister from all or any of the provisions specified in subsection (1) (a) fails to comply with the prescribed conditions of his exemption, the Minister may withdraw such exemption and thereafter [section 8](#) shall apply in relation to such person.

## 7. Prohibition of entry of prohibited immigrant

Subject to this Act, no prohibited immigrant shall be allowed to enter or remain in Malawi and any immigration officer may cause any prohibited immigrant entering or found within Malawi to be removed therefrom.

## 8. Appeals

- (1) Whenever leave to enter Malawi is withheld by an immigration officer, or whenever any person is detained, restricted or arrested as a prohibited immigrant, notice of that fact and the grounds of refusal, detention, restriction or arrest shall be given by the immigration officer in writing to such person.
- (2) Every person to whom such notice has been given may appeal to the nearest magistrate's court, and such appeal shall be heard by the magistrate presiding at such court. Notice of any such appeal shall be filed not later than three days after such notice has been given.
- (3) Pending the hearing of any appeal, no warrant shall be issued for the removal of any person as a prohibited immigrant, but if any appeal is dismissed the magistrate shall forthwith issue a warrant for the removal of the prohibited immigrant.
- (4) A magistrate's court may, of its own motion, and shall, at the request of the appellant or of an immigration officer, reserve for the decision of a judge of the High Court any question of law which arises upon an appeal heard before such magistrate's court, and shall state such question in the form of a case stated for the opinion of such Court by transmitting such case stated to the registrar thereof. For the purposes of this subsection a question of law includes a question as to whether or not a person is a citizen of Malawi or is a person deemed to belong to Malawi.
- (5) The case stated in the manner described in subsection (4) may be heard by and argued before a judge of the High Court at any convenient time, and such judge may call for further information to be supplied by the magistrate if he deems such information necessary, and may give such answer on such case, supplemented by such information, if any, and may make such order as to the cost of the proceedings as he may think fit.

## 9. Jurisdiction of courts

- (1) Notwithstanding [section 8](#) and subject to this section, no appeal shall lie against a decision made by the Minister under [section 4](#) (1) (a) or (h) or [section 4](#) (4) unless such appeal is directed solely to the identity of the person affected by the decision.
- (2) Any person affected by a decision made under [section 4](#) (1) (h) may, within twenty-four hours of being served with the notice referred to in [section 9](#) (1) make representations in writing addressed to the Minister against such decision, who may confirm or reverse that decision.



- (3) No person referred to in subsection (2) shall be given any information or have the right to demand any information as to the grounds for any decision referred to therein or for the confirmation of any such decision if the Minister certifies it is not in the public interest to give such information.
- (4) A certificate issued by the Minister under subsection (3) shall be conclusive.
- (5) No person shall have the right to be heard before or after a decision is made under [section 4](#) (1) (a) and no person affected by any such decision shall have the right to be furnished with any information as to the grounds for such decision.
- (6) No information on which a decision under [section 4](#) was made shall be required to be disclosed in any court if the Minister certifies that its disclosure is not in the public interest, and the adequacy of the grounds for any decision under [section 4](#) (1) (a) or (h) or [section 4](#) (4) shall not be questioned in any court.

## 10. Removal of prohibited immigrants

- (1) If notice of appeal is not filed against the orders of an immigration officer within three days from the day that such orders shall have been given, and if any prohibited immigrant refuses to obey the directions of an immigration officer to leave Malawi, [section 15](#) shall apply in relation to the prohibited immigrant.
- (2) Where a prohibited immigrant has been ordered to leave Malawi and is removed therefrom the following provisions shall have effect—
  - (a) the prohibited immigrant shall pay all the costs and expenses (if any) of, or occasioned by, his removal;
  - (b) where a person wishing to enter Malawi is, on arrival, refused entry because he is a prohibited immigrant or for any other reason, the airline, shipping company, transport company or other carrier, conveyor or transporter by which such person was carried, conveyed or transported to Malawi shall as soon as may be, on the direction of an immigration officer to that effect, carry, convey or transport such person out of Malawi, at the expense of such airline, shipping company, or other carrier, conveyor or transporter.

## 11. Place of entry by prohibited immigrant

No prohibited immigrant who is permitted by or under this Act to enter or re-enter Malawi shall enter or re-enter Malawi at any port of entry other than that through which his entry or re-entry has been authorized by an immigration officer.

## 12. Persons who are not prohibited immigrants

The following persons or classes of persons shall not be prohibited immigrants for the purpose of this Act—

- (a) any member of any regular naval, military or air forces while on duty in the service of the Government of Malawi; or
- (b) any person duly accredited to the Republic of Malawi by or under the authority of the Government of any sovereign state, or any person employed in the legation chancellery or office of any such first mentioned person, or the wife or infant child of any such first mentioned person or of any such persons employed, provided that the name of any such person is included in the list compiled by the Minister under the Immunities and Privileges Act; or

*[Cap. 16:01]*

- (c) any person, other than a person described in [section 4](#) (1) (d), (e), (f), (g) or (h) who enters Malawi—
  - (i) under any convention with the Government of a neighbouring territory or state; or

- (ii) in accordance with any scheme of recruitment and repatriation approved by the Minister, and who complies with such conditions as may be fixed by the Minister.

### **13. Persons required to appear before immigration officer**

- (1) Any person who wishes to enter Malawi shall, on arrival at the border or, if travelling by air, on arrival at an airport within Malawi, present himself immediately to the nearest immigration officer, or if it is impracticable so to present himself immediately on arrival by reason of the distance of the nearest immigration officer from the border or airport, as the case may be, such person shall present himself to the nearest immigration officer within twenty-four hours of such arrival.
- (2) The immigration officer may require every such person—
  - (a) to make and sign a declaration in the prescribed form; and
  - (b) to produce documentary or other evidence relative to his claim to enter or remain in Malawi; and
  - (c) to submit to any examination or test to which he may lawfully be subjected under this Act; and
  - (d) if he is suspected of being infected or afflicted with any physical infirmity which under this Act would render him a prohibited immigrant, to submit to examination by a Government medical officer or such other medical practitioner as may be designated by the Minister.
- (3) Any person found in Malawi who is suspected of being a prohibited immigrant or to have entered Malawi in contravention of this Act may be required to appear before an immigration officer and to submit to an examination as is described in subsection (2).

### **14. Detention of suspected prohibited immigrant**

- (1) Any person suspected of being a prohibited immigrant may be detained by an immigration officer for such reasonable period, not exceeding fourteen days, as may be required for the purpose of making enquiries as to such person's identity or antecedents.
- (2) Such person may during such period be detained in the nearest convenient prison or gaol unless he or such sureties as may be approved by the Chief Immigration Officer enter into a recognizance for an amount so approved and deposits such sum, if any, as may be fixed by the Chief Immigration Officer to satisfy any judgment which may be given on the recognizance.

The conditions of the recognizance shall be that such person shall appear within such period and before such person as may be prescribed in the recognizance and shall report himself to an immigration officer at such times as may be fixed in the recognizance, and the recognizance may contain such other conditions, in relation to such appearance and reporting, as the Chief Immigration Officer deems fit to impose.

- (3) Upon breach of any conditions of the recognizance any court of competent jurisdiction may, upon application by the Minister, give judgment against such person or his sureties in accordance with the recognizance, and such person may be arrested and detained in the nearest convenient prison or gaol until such enquiries have been completed or, if he is found to be a prohibited immigrant, until he is removed from Malawi.

### **15. Detention of prohibited immigrant pending deportation**

- (1) Any prohibited immigrant who has been ordered to leave Malawi may be detained in the nearest convenient prison or such other place of custody as may be authorized by the Minister as a place of custody for the purposes of this section pending the completion of arrangements for his removal from Malawi.

- (2) The officer in charge of any prison or such other place of custody as may be authorized by the Minister as a place of custody for the purposes of this section shall receive into custody any prohibited immigrant or suspected prohibited immigrant when required in writing by an immigration officer so to do.
- (3) Any person so detained and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

## **16. Prohibited immigrant subject to the Act despite entry into Malawi**

No person shall be exempt from this Act or be allowed to remain in Malawi—

- (a) by reason only that he had not been informed that he could not enter or remain in Malawi; or
- (b) by reason only that he had been allowed to enter or remain in Malawi through oversight, misrepresentation, or a contravention of this Act; or
- (c) owing to the fact that it had not then been discovered that he was a prohibited immigrant or not a citizen of Malawi.

## **17. Temporary permits**

- (1) An immigration officer may issue a temporary permit to any prohibited immigrant, other than a prohibited immigrant as described in [section 4](#) (1) (a) or (h), and shall, if so directed by the Minister, issue a temporary permit to any prohibited immigrant authorizing him to enter Malawi for temporary residence therein or to travel through Malawi upon such conditions as may be prescribed by the Minister.
- (2) The Chief Immigration Officer may cancel a temporary permit—
  - (a) if the holder thereof fails to comply with any of the prescribed conditions under which the permit was issued; or
  - (b) if in his opinion the object of entry into Malawi as declared by the holder thereof when the permit was issued has been completed or is not being or can no longer be pursued; or
  - (c) if, in his opinion, the holder thereof has become, or is likely to become, a charge upon the public funds,and shall, if he does cancel the permit, notify the holder thereof accordingly.
- (3) Upon notification of cancellation of a temporary permit the holder of such permit shall no longer be authorized to remain in Malawi and the Chief Immigration Officer shall cause that person to be removed therefrom, and any deposit made as a condition of issue of the permit may be confiscated by the Chief Immigration Officer.

## **18. Powers of search, etc.**

For the purpose of exercising his powers and carrying out his duties under this Act, an immigration officer may—

- (a) without a search warrant, enter upon and search any aircraft, ship, train, or vehicle in Malawi;
- (b) question, within the scope of his functions under this Act, any person who desires to enter or leave Malawi or who he believes is a prohibited immigrant;
- (c) require the captain, or other officer in charge, of an aircraft, the master of a ship, the guard or conductor of a train, or the person in charge of a vehicle arriving from any place outside Malawi to furnish a list of all persons in the aircraft, ship, train, or vehicle, as the case may be, together with such other information as may be prescribed, and the person concerned shall comply with such requirements.

## 19. Evidence

- (1) The burden of proving that a person is a citizen of Malawi or that he has not entered or remained in Malawi in contravention of this Act shall lie upon such person.
- (2) A certificate or written statement under the hand of an immigration officer shall, in any proceedings under this Act or in any criminal proceedings in respect of a contravention of this Act be *prima facie* evidence of the facts stated therein, and it shall not be necessary to tender oral evidence of such facts, unless the court before which the proceedings are held so directs; in which event an adjournment shall be allowed sufficient to enable the officer whose oral evidence is required to attend.
- (3) Any order, warrant, permit, certificate or other document which may be issued under this Act shall be valid and effectual if signed by an immigration officer or any officer in the public service authorized by the Minister by notice published in the *Gazette* so to do, and, when so signed, shall be accepted for all purposes as having been issued in accordance with this Act.

## 20. Certificates of identity

The Chief Immigration Officer may issue a certificate of identity to any person who is lawfully resident in Malawi and who, desiring to proceed thereout with the intention of returning thereto, is for any reason apprehensive that he will be unable to prove on his return that he is not a prohibited immigrant.

## Part II – Residence and other permits

## 21. Restrictions on immigration

- (1) Notwithstanding anything contained in Part I and subject to the exemptions provided in subsection (2), and to the powers to exempt conferred by [section 23](#), no person shall enter, be or remain in Malawi unless he is in possession of a current permanent residence permit, or a current temporary residence permit, a current business residence permit or a current temporary employment permit.

[21 of 1987]

- (2) Subsection (1) shall not apply to a person who—
  - (a) is in possession of a valid visitor's permit issued to him under [section 26](#);
  - (b) is in possession of a valid student's permit issued to him under [section 31](#);
  - (c) is such a person as is described in [section 12](#) (a), (b) or (c);
  - (d) passes through Malawi in direct transit to a destination outside Malawi if the period of transit does not exceed seven days; and
  - (e) on the date of commencement of this Act is the holder of a valid temporary permit or other authority, issued under any law in force at that time, but the exemption by the section conferred shall subsist only during the period of the validity of such permit or other authority.

[21 of 1987]

- (3) Any person who contravenes subsection (1) may, whether he is prosecuted for such contravention or not, be treated as a prohibited immigrant.
- (4) Any person who is convicted of a contravention of subsection (1) and is not treated as a prohibited immigrant shall leave Malawi within fourteen days of the conviction or, if he undergoes imprisonment in respect of such contravention, within fourteen days of his release. Any person who by failing to leave Malawi fails to comply with this subsection shall, if such failure be due to

his own neglect, omission, refusal or default, be liable to further prosecution for contravention of subsection (1).

*[21 of 1987]*

## **22. Permanent residence permit**

- (1) An application for a permanent residence permit shall be made to the Minister in such form as the Minister may prescribe.
- (2) The Minister shall consider and deliberate upon every application made to him and may take into consideration any additional information relating to an applicant as he may have obtained from any other source, and shall take into account the reputed reliability of such source.
- (3) The Minister may, in his discretion, issue a permanent residence permit to any person who has applied therefor and who is in the opinion of the Minister a desirable immigrant.
- (4) A permanent residence permit may be issued to a person who is already within Malawi.
- (5) A permanent residence permit shall be issued in such form as the Minister may prescribe.
- (6) A permanent residence permit shall cease to be valid if the person to whom it was issued has remained outside Malawi for a continuous period of twelve months or more since the date of issue of such permanent residence permit.

## **23. Exemptions from section 21 (1)**

- (1) The Minister may, by order, exempt any person, subject to such conditions as in his discretion he may deem fit to impose, from all or any of the provisions of [section 21](#) (1).
- (2) Any order made under this section may be proved in any court by the production of a copy of such order certified under the hand of the Minister, and the court shall take judicial notice of such signature.

*[21 of 1987]*

## **24. Temporary residence permit**

- (1) An immigration officer may, on the application of a person who has complied with all the prescribed requirements, issue to such person a temporary residence permit which shall be subject to such conditions as the Minister may prescribe and shall be valid for such period as may be stated therein but which shall not in any event exceed six months.
- (2) A person to whom a temporary residence permit is issued in terms of subsection (1) and who is accompanied by his wife and any of his children under the age of eighteen years, may be issued with a single permit in respect of himself, his wife and such children.
- (3) A person who is refused a temporary residence permit by an immigration officer shall have the right of appeal to the Minister, and the Minister in his discretion may issue or refuse such permit, and the Minister's decision in such circumstances shall be final and conclusive.
- (4) The Minister may extend by renewal the period of validity of a temporary residence permit, or vary or amend the conditions relating to such permit:

Provided that any extension of a temporary residence permit authorized under the terms of this subsection shall not extend the validity of such permit beyond a period of twelve months from the date of its original issue.

- (5) Except with the permission of the Minister, an immigration officer shall not issue a temporary residence permit to any person who is a prohibited immigrant, or to any person who fails to produce to him an unexpired passport or other document of identity which complies with [section 5](#).

- (6) In circumstances which the Minister may deem appropriate a temporary residence permit may be issued to a person who is already in Malawi.

#### **24A. Business residence permit**

- (1) The Chief Immigration Officer or such other immigration officer as may be authorized by him in that behalf, if he is so authorized generally or specially by the Minister, may, on the application of a person who wishes to reside in Malawi for the purpose of carrying on a business, practising a profession or engaging in an occupation, for gain, profit or reward, as a self-employed person or a partner or a proprietor of that business, professional practice or occupation, issue to that person a business residence permit authorizing him, together with his wife and children under the age of eighteen years and dependant relatives, and subject to such conditions as may be prescribed, to reside in Malawi, within such area as the Minister may specify, for the purpose of carrying on, practising or engaging in such business, profession or occupation.
- (2) A business residence permit shall—
- (a) be valid for a period of five years from the date of issue and thereafter may, on the application of the holder, be renewed from time to time for successive periods of five years;
  - (b) be in such form as may be prescribed;
  - (c) be subject to payment by the applicant of the fee prescribed to be payable for the issue or renewal of such permit; and
  - (d) be subject to such other conditions as may be prescribed.
- (3) The Minister may, without assigning any reason, refuse to issue to any person a business residence permit or to renew the business residence permit issued to any person.
- (4) Where the Minister refuses to issue or renew a business permit in respect of a person who is resident in Malawi then, unless that person is otherwise entitled under this Act to reside in Malawi, he shall not be entitled to remain in Malawi for a period longer than six months after such refusal or the expiry of his permit.
- (5) A holder of a business residence permit shall not, during the validity of his permit be eligible for a temporary residence permit.

*[21 of 1987]*

#### **25. Temporary employment permit**

- (1) The Chief Immigration Officer or such other immigration officer as may be authorized by him in that behalf, may, if he is so authorized generally or specially by the Minister, issue on the application of a person who wishes to reside within an area of Malawi specified by the Minister, for the purpose of engaging in an occupation specified by the Minister, a temporary employment permit authorizing him, together with his wife and children under the age of eighteen years and dependent relatives, and subject to such conditions as may be prescribed, to reside within that area for the purpose of engaging in that occupation for a period of not less than six months or more than two years.
- (2) The Minister may, from time to time, upon application, renew a temporary employment permit issued under subsection (1) for a similar period or similar periods if he is satisfied that the holder of the permit is still engaged in the employment for which the permit was issued at the date of expiry of such permit.
- (3) The Chief Immigration Officer may cancel a temporary employment permit (whether renewed or not) if the holder thereof—
- (a) engages in an occupation other than the occupation specified in such permit;

- (b) whilst engaging in the occupation specified in such permit changes employment without the prior permission of the Chief Immigration Officer;
- (c) without the prior permission of the Chief Immigration Officer resides in Malawi elsewhere than within the area specified in such permit; or
- (d) ceases to be engaged or employed in the occupation specified in the permit.

[9 of 1970]

[13 of 1974]

## 26. Visitor's permit

- (1) An immigration officer may, on the application of a person who wishes to enter Malawi as a *bona fide* tourist or visitor, issue to such a person a visitor's permit which shall be in such form and subject to such conditions as the Minister may prescribe and which shall be valid for a period not exceeding three months.
- (2) Section 25 shall, with the necessary adaptations or modifications, apply to the issue, extension and amendment of a visitor's permit.

## 27. Permit holders not exempted from provisions of other Parts

Neither a permanent residence permit, a temporary residence permit, a business residence permit nor a temporary employment permit shall exempt the holder thereof from compliance with any other provisions of this Act or with any regulations made hereunder.

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## 28. Cancellation of permit

- (1) The Minister may cancel a permanent residence permit in any of the following circumstances—
  - (a) if the application for the permit contained any information which is false in any material particular;
  - (b) if the holder of the permit, or his agent, furnished any information in connexion with the application for the permit which is false in any material particular;
  - (c) if, without the permission of the Minister, the holder of the permit engages in Malawi in any occupation other than the occupation stated in his permit;
  - (d) if the holder of the permit does not take up his residence in Malawi within six months of the date of issue of the permit;
  - (e) if the holder of the permit absents himself from Malawi for a longer continuous period than six months before becoming a person deemed to belong to Malawi,and shall cancel any such permit if the holder thereof becomes a prohibited immigrant.
- (2) The Minister shall state to the holder thereof the reasons for the cancellation of any permanent residence permit.
- (3) The Minister may at any time cancel a temporary residence permit or a business residence permit.

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- (4) If a permit is cancelled in terms of this section, the Minister shall cause written notice of such cancellation to be served on the holder of the permit, and shall state in such notice the date upon which such permit shall become void and shall be surrendered.

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## 29. Production of document

- (1) A police officer or an immigration officer may demand from any person whom he suspects on reasonable grounds of living or being in Malawi illegally the production of his permanent residence permit, temporary residence permit, business residence permit or temporary employment permit.
- (2) If such person fails to produce any such permit or to satisfy such officer that he is not required to be in possession of any such permit in terms of this Part, such officer may arrest such person without warrant.

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- (3) Any person arrested under subsection (2) may, without prejudice to any prosecution under this Act, be detained pending the making of enquiries as to his national status and identity, and while so detained shall be deemed to be in legal custody.
- (4) If any person to whom a permanent residence permit, a temporary residence permit, a business residence permit or a temporary employment permit has been issued fails or neglects to produce such permit within seventy-two hours of such officer demanding its production, he shall be guilty of an offence.

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## 30. Presumptions

In any proceedings for an offence under this Part against a person alleged in the charge to be a person who requires to be in possession of a permanent residence permit, a temporary residence permit, a business residence permit or a temporary employment permit, that person shall be deemed not to be in possession of such permit unless he proves the contrary.

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## 31. Permit to attend educational institutions

- (1) The Chief Immigration Officer may issue to any person who by reason of this Part cannot lawfully enter or remain in Malawi, a temporary permit (in this section referred to as a “student’s permit”) authorizing him, upon prescribed conditions, to enter and reside in Malawi for the purpose of attending any educational institution approved by the Minister.
- (2) [Section 17](#) (2) shall, *mutatis mutandis*, apply in relation to a student’s permit issued in terms of subsection (1).
- (3) Upon notification of the cancellation of a student’s permit, [section 18](#) (3) shall apply to the person concerned, and any deposit made as a condition of issue of the permit may be confiscated.

## 32. Power to delegate

- (1) The Minister may from time to time, by order in writing, delegate to any public officer all or any of the functions conferred upon him under this Part.
- (2) Any person to whom any function is delegated under subsection (1) shall exercise such function subject—
  - (a) to such conditions as the Minister may impose;
  - (b) to such general or special directions as may be given by the Minister; and
  - (c) to any regulations made in that behalf by the Minister.



## Part III – General

### 33. Re-entry of prohibited immigrant

- (1) If any person after being restricted from entering or having been removed from or ordered to leave Malawi, if found within Malawi, he may be arrested without warrant and shall be liable—
  - (a) to imprisonment with hard labour for three months; and
  - (b) to be removed at any time from Malawi by warrant issued by the Chief Immigration Officer.
- (2) If a person has been sentenced to imprisonment for a contravention of subsection (1), he may be removed from Malawi before the expiration of his sentence and upon removal the said sentence shall terminate.
- (3) The serving of any such sentence or the removal of any prohibited immigrant from Malawi shall not relieve the prohibited immigrant from the operation of this Act and if he returns to Malawi after any such removal he shall be subject to subsection (1).

### 34. Misuse of documents

Any person who—

- (a) is in unlawful possession of or makes use of any permanent residence permit, temporary residence permit, business residence permit, temporary employment permit, student's permit, passport or other document of identity belonging to another; or
- (b) delivers his permanent residence permit, temporary residence permit, temporary employment permit, student's permit, passport or other document of identity to any other person for use by such other person,

shall be liable to a fine of K500 or to imprisonment for twelve months.

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### 35. Forgery of documents

If any person forges or unlawfully alters any permanent residence permit, temporary residence permit, business residence permit, temporary employment permit, student's permit, passport or other document of identity, he shall be liable to imprisonment for five years.

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### 36. Aiding and abetting, unlawful entry

- (1) Any person who—
  - (a) aids or abets any person whose entry into or presence within Malawi is contrary to this Act to enter or remain within Malawi; or
  - (b) aids or abets any person who has been ordered to be removed from Malawi in terms of this Act to evade the order; or
  - (c) harbours any person who has been ordered to be removed from Malawi in terms of this Act, shall, whether or not the person so aided, abetted or harboured as aforesaid is under the age of seven years, be liable to a fine of K500 or to imprisonment for twelve months.
- (2) Any person who commits any fraudulent act or makes any false representation by conduct, statement or otherwise for the purpose of facilitating or assisting the entry of himself or any other person into Malawi, contrary to this Act, shall be liable to the penalties prescribed in subsection (1).

### 37. Other Offences

Any person who—

- (a) for the purposes of entering Malawi or of remaining therein in contravention of this Act or any other law or of assisting any other person so to enter or remain, whether or not such person is under the age of seven years—
  - (i) makes a false statement verbally or in writing or in any declaration on a prescribed form;
  - (ii) forges any permit, certificate or document, other than any document mentioned in [section 35](#), or who uses any such permit, certificate or document knowing it to be forged;
  - (iii) utters or uses any permit, certificate or document, other than any document mentioned in [section 35](#), which has not been issued by any lawful authority, or which he is not entitled to use;
- (b) fails to comply with or contravenes the conditions under which any permit, certificate or other document has been issued to him under this Act;
- (c) hinders or obstructs any police or immigration officer in the execution of his duties under this Act;
- (d) contravenes or fails to comply with any provisions of this Act for the contravention whereof or failure to comply wherewith no penalty is specially provided,

shall be guilty of an offence and liable to a fine of K500 or to imprisonment for twelve months.

### 38. Saving

Every permit, warrant, direction, certificate, notice or other document and every order of deportation and every security that was issued, made, granted or given under any law in force prior to the date of commencement of this Act, and was valid immediately prior to that date, shall be given effect as if issued, made, granted or given under this Act:

Provided that any permit issued by a former Government that granted permanent residence to a person who is not a citizen of Malawi or a Commonwealth citizen, shall cease to be valid on the 6th July, 1967, but may, on application by the holder, be replaced by a permanent residence permit issued under this Act.

### 39. Deportation

- (1) The Minister may, if he thinks fit, in any such case as is mentioned in subsection (2), make an order (in this Act referred to as a “deportation order”) requiring any person (not being a citizen of Malawi) to leave and to remain thereafter out of Malawi.
- (2) A deportation order may be made in the case of a person not being a citizen of Malawi in the following circumstances, that is to say—
  - (a) if any court certifies to the Minister that that person has been convicted either by that court, or by an inferior court from which the case of that person has been referred for sentence or brought by way of appeal, of any offence for which the court has power to impose a sentence of imprisonment and that the court recommends that a deportation order be made in the case of that person; or
  - (b) if the Minister is satisfied that it is in the interests of defence, public safety, public order, public morality or public health to make a deportation order against that person.
- (3) Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before any higher court and that court certifies to the Minister that it does not concur in the recommendation, that recommendation shall be of no effect, but without prejudice to the power of the Minister to make a deportation order under subsection (2) (b).

#### 40. Regulations

- (1) The Minister may make regulations for any matter which may be prescribed and generally for the better carrying out of the objects and purposes of this Act.
- (2) Without derogation from the generality of the foregoing, such regulations may prescribe —
  - (a) the powers and duties of an immigration officer;
  - (b) the steps to be taken to prevent the entrance of prohibited immigrants into Malawi;
  - (c) the ports of entry and the times, places and conduct of the enquiry or examination, medical or otherwise, of persons entering or desiring to enter Malawi or who, being found in Malawi, are suspected of being prohibited immigrants;
  - (d) the procedure for and the manner of detention of prohibited immigrants and unlawful residents pending their removal from Malawi, and the procedure for and the manner of such removal;
  - (e) further certificates and permits which may be issued for the purposes of this Act and—
    - (i) the conditions upon which any such certificate permit may be used;
    - (ii) the circumstances under which it may be cancelled or withdrawn;
    - (iii) the fees payable therefore;
  - (f) the conditions under which prohibited immigrants may be allowed to pass through Malawi while journeying or being conveyed to a place outside Malawi;
  - (g) the form of warrants, permits, certificates or other documents issued or used or of declarations to be made or of the records to be kept for the purposes of this Act and the particulars to be inserted in any such document or declaration;
  - (h) the procedure for the deportation of persons in respect of whom a deportation order has been made, and the manner of detention of such persons pending their removal from Malawi, and the procedure for and the manner of such removal.
- (3) Any such regulations may prescribe penalties for a contravention thereof or failure to comply therewith not exceeding a fine of K200 or, in default of payment, imprisonment for a period not exceeding twelve months or such imprisonment without the option of a fine.

#### 41. Delegation of powers

The Chief Immigration Officer may, subject to the prior approval of the Minister in each case, delegate in writing to the Deputy Chief Immigration Officer any or all of the powers conferred upon the Chief Immigration Officer by this Act.

#### 42. Repatriation of alien women

- (1) Where any woman who is not a citizen of Malawi becomes married to or cohabits with a man in Malawi, and such marriage or cohabitation comes to an end, it shall be the duty of the man concerned, and any other person responsible for bringing such woman into Malawi, to repatriate the woman to the country from which she was brought.
- (2) In any case in which a man shall fail to repatriate a woman in accordance with subsection (1), such man may be ordered by an immigration officer, or by any other person authorized by the Minister, to repatriate the woman within such period as may be specified by such immigration officer or other authorized person.

- (3) Any person who has been ordered to repatriate a woman under subsection (2) and who has failed to do so within the time specified in the order shall be liable to a fine of K40 and to imprisonment for three months.
- (4) Any person convicted under subsection (3) may be required, in addition to any other penalty, to pay to the Government such expenses as may be incurred by the Government in repatriating the woman concerned, and any such sum shall be a civil debt recoverable in the Courts.
- (5) An immigration officer may, as a condition of entry, require a deposit from any person bringing an alien woman into Malawi against the possible cost of repatriating her to her place of origin.

#### **43. Person absent from Malawi for two years to report return**

- (1) Where any person, whether or not he is a citizen of Malawi or a student, returns to Malawi after having been absent therefrom for a continuous period of two years or more, he shall report the fact of his absence and his return to an immigration officer, or to the District Commissioner or Chief of the area in which he normally resides or intends to reside.
- (2) It shall be the duty of every Chief, Sub-Chief and Village Headman or, in the absence of the Village Headman the person performing the duties of the Village Headman, to report within 24 hours to the District Commissioner or, in the case of a Sub-Chief, Village Headman or acting Village Headman, to the Chief, having jurisdiction in his area, the name of every person residing or taking up residence in his area, who to his knowledge, or who he has reason to believe, has returned to Malawi after an absence of two years or more.
- (3) Any Chief or other person who fails to comply with the requirements of subsection (1) or subsection (2) shall be liable to a fine of K40 and to imprisonment for three months.

*[23 of 1986]*