

Malawi

## Parliamentary Service Act

### Chapter 2:08

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1998/35/eng@2014-12-31

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PDF created on 21 February 2024 at 14:31.

*Collection last checked for updates: 31 December 2014.*

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# Malawi

## Parliamentary Service Act

### Chapter 2:08

Commenced on 4 December 1998

*[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.]*

*[35 of 1998]*

**An Act to establish a Parliamentary Service and a Parliamentary Service Commission, and to provide for matters incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Parliamentary Service Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Commission**” means the Parliamentary Service Commission established under [section 5](#);

“**Clerk**” means the Clerk of the National Assembly appointed under [section 16](#);

“**Deputy Speaker**” means a Deputy Speaker of the National Assembly;

“**employee**”, in relation to the Parliamentary Service, means a person employed therein, whether on the permanent staff (including any person employed on probation) or temporarily or as a wage worker; but does not include a person engaged under a contract of service entered into under [section 23](#);

“**officer**”, in relation to the Parliamentary Service, means an employee of the Parliamentary Service other than a person employed on probation or a temporary salaried employee or a wage worker;

“**Parliamentary Service**” means the service established under [section 3](#);

“**Standing Orders**” means the Standing Orders of the National Assembly;

“**Speaker**” means the Speaker of the National Assembly.

### Part II – Establishment of Parliamentary Service

#### 3. Establishment of Parliamentary Service

- (1) There is hereby established a service to be called the Parliamentary Service (in this Act otherwise referred to as the “Parliamentary Service”).
- (2) The Parliamentary Service shall be separate and independent from the Civil Service.

#### 4. Duties of the Parliamentary Service

- (1) The principal duties of the Parliamentary Service shall be to provide to the National Assembly and to Members of the National Assembly such administrative and support services as may be necessary or desirable to facilitate the efficient operation of the National Assembly and the efficient carrying out by Members of the National Assembly of their duties, and without prejudice to the generality of the foregoing the Parliamentary Service shall—
  - (a) provide professional impartial advice and support for the National Assembly;
  - (b) provide non-partisan and impartial advice and services to the National Assembly, its committees and Members of the National Assembly;
  - (c) exhibit the highest ethical standards;
  - (d) perform its functions with probity and be accountable for its actions to the National Assembly;
  - (e) establish cooperative workplace relations based on consultation and communication;
  - (f) provide a fair, flexible, safe and rewarding workplace;
  - (g) focus on achieving results and management performance;
  - (h) use the resources of the National Assembly properly and cost-effectively; and
  - (i) perform such other duties as may be conferred or imposed on it by or under this Act or any other written law, or by resolution of the National Assembly.
- (2) Nothing in this section limits the provision to the National Assembly and to Members of the National Assembly of administrative and support services by an instrument of the Government of Malawi, whether a Department, a corporation or an agency.

#### 5. Parliamentary Service code of conduct

- (1) Every employee shall, in the course of his employment—
  - (a) behave honestly and with integrity;
  - (b) act with care and diligence;
  - (c) treat everyone with respect and courtesy, and without harassment;
  - (d) comply with all laws of Malawi;
  - (e) comply with any lawful and reasonable direction given by a person in charge of the Department in which he is employed, and who has authority to give the direction;
  - (f) disclose, and take reasonable steps to avoid, any conflict of interest in connexion with his employment in the Parliamentary Service;
  - (g) maintain appropriate confidentiality about dealings that the employee has with the National Assembly and its Committees, Members of the National Assembly and other employees;
  - (h) not provide false or misleading information in response to a request for information that is made for official purposes;
  - (i) not make improper use of inside information, or the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for anyone else;
  - (j) at all times behave in a way that upholds the values, integrity and good reputation of the Parliamentary Service;

- (k) when on duty overseas, at all times behave in a way that upholds the good reputation of Malawi; and
  - (l) comply with any other requirement concerning personal conduct that is made by the Commission.
- (2) Any employee who contravenes subsection (1) shall be liable to—
  - (a) termination of employment;
  - (b) demotion;
  - (c) re-assignment of duties;
  - (d) reduction in salary; and
  - (e) deductions from salary, by way of fine.

### **Part III – Establishment of Parliamentary Service Commission**

#### **6. Establishment of Parliamentary Service Commission**

There is hereby established a commission to be called the Parliamentary Service Commission (in this Act otherwise referred to as the “Commission”) which shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do.

#### **7. Composition of the Commission**

- (1) Subject to [section 10](#), the Commission shall consist of—
  - (a) the Speaker, who shall be the Chairman of the Commission; and
  - (b) such number of other members of the National Assembly, not exceeding five, who shall be appointed, from time to time, by resolution of the National Assembly.
- (2) The Clerk shall be the Secretary of the Commission.
- (3) The powers of the Commission shall not be affected by any vacancy in its membership.

#### **8. Vacancy of office of Chairman**

- (1) Where the Speaker is incapable of acting as Chairman by reason of illness, absence or other sufficient cause any Deputy Speaker nominated by the Speaker to act as Chairman shall have, and may exercise, all the powers, functions, and duties of the Chairman of the Commission.
- (2) No act done by the Commission while a Deputy Speaker is acting for or in the place of the Speaker shall in any proceedings be questioned on the ground that the occasion for the acting Chairman to act for or in the place of the Speaker had not arisen or had ceased.

#### **9. Vacation of office by appointed members**

- (1) A member of the Commission who holds office by virtue of an appointment under [section 7](#) (1) (b) shall vacate office as a member of the Commission—
  - (a) if the National Assembly rescinds the resolution by which the member was appointed, or resolves to appoint to the Commission, in the stead of that member, another member of the National Assembly;
  - (b) upon the expiry of the term of the National Assembly;

- (c) if, before the term of the National Assembly expires, that member ceases to be a member of the National Assembly;
  - (d) if the member dies; and
  - (e) if the member resigns.
- (2) A member of the Commission who holds office by virtue of an appointment under [section 7](#) (1) (b) may, by notice in writing addressed to the Chairman of the Commission, at any time resign the office.

## 10. Membership of the Commission on expiration of the term of the National Assembly

- (1) On the expiration of the term of the National Assembly, the Commission shall, until the first meeting of the National Assembly after the general election of its members, consist of—
- (a) the person holding the office of Speaker or Deputy Speaker at the time of the expiration or, if there was at that time a vacancy in the office of Speaker or Deputy Speaker or if the person holding that office at that time dies, the person elected from among members of the Commission who held such office immediately before the expiration of the term of the National Assembly;
  - (b) all other members of the Commission who held such office immediately before the expiration of the term of the National Assembly.
- (2) On the expiration of the term of the National Assembly and until the first meeting of the National Assembly after the general election, the Chairman of the Commission shall be the person holding office as a member of the Commission under subsection (1) (a).

## 11. Functions of the Commission

- (1) The general functions of the Commission shall be—
- (a) to prepare its own budget and to exercise budgetary control over the Parliamentary Service;
  - (b) to determine the size and organization of the Parliamentary Service;
  - (c) to determine the services to be provided by the Parliamentary Service;
  - (d) to supervise the administration of the services performed by the Parliamentary Service;
  - (e) to establish such departments in the National Assembly as may be necessary for the efficient management of the National Assembly;
  - (f) to act on all financial and administrative matters in respect of the National Assembly, its services and its, staff and the Members of the National Assembly;
  - (g) to receive and consider recommendations regarding conditions of service for Members of the National Assembly;
  - (h) to appoint persons to hold office in Parliamentary Service, including the power to confirm appointments, promotions, disciplinary matters and removal of persons from office:  
Provided such removal shall be subject to the approval of the House;
  - (i) in exercise of its powers under paragraph (h), to base its employment decisions in the Parliamentary Service on merit.
- (2) For the purposes of subsection (1) (i), a decision relating to engagement or promotion is based on merit if—
- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process;



- (b) the assessment is based on the relationship between the candidate's work-related qualities and the work-related qualities genuinely required for the duties;
  - (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
  - (d) the assessment is the primary consideration in making the decision.
- (3) The Commission shall perform such other functions as are conferred or imposed on it by or under this Act or any other written law.
- (4) The Commission shall have such powers as are conferred on it by or under this Act or any other written law and such other powers as may be reasonably necessary to enable it to carry out its functions.
- (5) Notwithstanding anything in subsections (1), (3) and (4), the Commission shall have no role in relation to—
  - (a) business transacted at meetings of the National Assembly or meetings of Committees of the National Assembly; or
  - (b) any other proceedings in Parliament.

## 12. Meetings of the Commission

- (1) Meetings of the Commission shall be held at such times and places as the Commission or its Chairman may, from time to time, appoint.
- (2) The Chairman, or any three members, may at any time call a special meeting.
- (3) At all meetings of the Commission the Chairman shall preside and, if the Chairman or any Deputy Speaker nominated by the Speaker to act as chairman is absent, the members present shall elect one of their number to be the chairman of that meeting.
- (4) At any meeting of the Commission, the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, also have a casting vote.
- (5) At all meetings of the Commission four members shall form a quorum.
- (6) The Commission may, in its discretion, at any time and for any length of period, write any person to attend any meeting of the Commission for the purpose of assisting or advising the Commission in respect of any matter under consideration by the Commission.
- (7) Any person invited pursuant to subsection (6) may take part in the deliberations of the Commission, but shall not be entitled to vote on any matter at any meeting of the Commission.

## 13. Procedure of the Commission

Subject to this Act, the Commission may regulate its procedure and exercise its functions in such manner as it thinks fit.

## 14. Committees of the Commission

- (1) The Commission may, from time to time, appoint competent persons, whether members of the Commission or not, to be a committee or committees to assist the Commission on such matters within the scope of its functions as are referred to them by the Commission.
- (2) The power conferred by subsection (1) includes the power to appoint a committee having as its function or as one of its functions the function of consulting with, and giving advice to, the Commission on any matter affecting the staff of the Parliamentary Service:

Provided that no person employed in the Parliamentary Service shall be eligible to be appointed a member of a committee of the Commission.

- (3) Subject to this Act and to any general or special directions of the Commission, any committee appointed under this section may regulate its procedure in such manner as it thinks fit.

## **15. Remuneration and expenses of members, etc.**

- (1) Members of the Commission shall be paid from the funds of the Commission such allowances as the National Assembly shall determine.
- (2) The Commission may make provision for the reimbursement of any reasonable expenses incurred by a member of the Commission or a member of a committee of the Commission in connexion with the business of the Commission.

## **Part IV – Parliamentary staff**

### **16. Clerk of the National Assembly**

- (1) There shall be appointed, as an officer of the National Assembly, a Clerk of the National Assembly (in this Act otherwise referred to as the “Clerk”) who shall be appointed by the President on the recommendation of the Commission.
- (2) No person shall be appointed or reappointed as Clerk after that person has attained the age of sixty years.
- (3) The Clerk shall be the chief executive officer of the National Assembly and shall be responsible for the day to day management of the affairs of the National Assembly.
- (4) The Clerk shall without prejudice to the generality of subsection (3)—
  - (a) note all proceedings of the National Assembly; and
  - (b) carry out such duties and exercise such powers as may be conferred on the Clerk by this Act or any other written law, or by the Standing Orders, resolutions and practices of the National Assembly.
- (5) In carrying out the duties specified in subsection (4) the Clerk shall be assisted, particularly in relation to the duties required to be performed at the Table of the National Assembly, by a Deputy Clerk of the National Assembly and by such other Clerks as are necessary.
- (6) Subject to subsections (7) and (8), the Clerk shall, in carrying out the duties and exercising the powers conferred on the Clerk be under the direction of the Speaker of the National Assembly.
- (7) If during any period, other than the period between an expiration of the term of the National Assembly and the first meeting of the National Assembly after the general election of its members, there is no Speaker, the Clerk shall during that period be, in relation to the carrying out of the duties and the exercising of the powers referred to in subsections (3) and (4), be under the direction of the person appointed under [section 9](#) (1) (a).
- (8) On the expiration of the term of the National Assembly, the Clerk shall, until the first meeting of the National Assembly after the general election of its members, be, in relation to the carrying out of the duties and the exercising of the powers referred to in subsections (3) and (4), under the direction of—
  - (a) the person holding the office of Speaker at the time of the expiration of the term of the National Assembly; or
  - (b) if, at the time of the expiration, there is no Speaker, the person appointed in accordance with [section 10](#) (1) (a);

- (9) The Clerk shall not be eligible for election as a member of Parliament, unless he sooner resigns, and shall not, without the approval of the Speaker in each particular case, hold any office of trust or profit, other than that of Clerk, or engage in any occupation for reward outside the office of Clerk.
- (10) There shall be paid to the Clerk—
  - (a) a salary at such a rate as the Commission may, from time to time determine; and
  - (b) such travelling and other allowances and expenses as the Commission may, from time to time, approve.

## **17. Tenure of office of Clerk**

- (1) Subject to subsections (2) to (4), the Clerk shall hold office during good behaviour.
- (2) The Clerk may at any time resign the office by notice in writing addressed to the Speaker, or if there is no Speaker or the Speaker is absent from Malawi, to the President.
- (3) The Clerk may at any time be removed or suspended from office by the President upon the recommendation of the Commission for disability, bankruptcy, neglect of duty, or misconduct:  
Provided always that the Clerk shall have the right to be heard by the Commission.

## **18. Delegation of powers of Clerk**

- (1) On the occurrence from any cause of a vacancy in the office of Clerk, and in the case of absence from duty of the Clerk, and so long as any such vacancy or absence continues, the Deputy Clerk of the National Assembly or any other person for the time being performing, pursuant to the Standing Orders or by direction of the Speaker, the duties of the Clerk shall have and may exercise all the functions, duties, and powers of the Clerk.
- (2) The fact that the Deputy Clerk or any other person exercises any function, duty or power of the Clerk shall be conclusive evidence of the authority of the Deputy Clerk or other person to do so.

## **19. Appointment of other employees of the Parliamentary Service**

- (1) The Commission may, from time to time, appoint officers of the National Assembly and other employees of the Parliamentary Service subordinate to the Clerk as are necessary for the efficient and economical carrying on of the functions of the Parliamentary Service.
- (2) The officers and employees appointed under subsection (1) shall include—
  - (a) a Deputy Clerk of the National Assembly and the other Clerks required for the purposes of [section 16](#) (3);
  - (b) a Serjeant-at-Arms;
  - (c) a Chief Librarian;
  - (d) a Chief Editor of Hansard;
  - (e) a Chief Research Officer;
  - (f) a Chief Human Resource Officer;
  - (g) a Financial Controller; and
  - (h) a Chief Clerk of Committees.
- (3) The Clerk shall have power to appoint such other junior staff as the Commission may specify.

## **20. Salary and terms of conditions of service of employees**

Employees of the Parliamentary Service shall be paid such salary, remuneration and allowances and shall be employed on such conditions of service as may, from time to time, be determined by the Commission.

## **21. Retiring age**

No officer shall continue to serve in the Parliamentary Service after attaining the mandatory retirement age of sixty years.

## **22. Application of Cap: 1:03**

Save as in this Act expressly provided the Public Service Act, 1994, shall, with any necessary modifications, apply to employees in the Parliamentary Service in the same manner as they apply to employees in the public service.

## **23. Individual contracts of service**

Notwithstanding [section 20](#), the Commission may, in such circumstances as the Commission may determine, engage any person under an individual contract of service for such period and on such terms and conditions of service as the Commission may determine.

## **24. Employment of experts**

The Commission may engage any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connexion with the exercise of its functions, to make such inquiries or to conduct such research or to make such report as may be necessary for the efficient carrying out of any of its functions.

## **25. Provision of service**

The Commission may enter into contracts or arrangements for the execution or provision to the Commission or for Members of the National Assembly of any work or service, or for the supply to the Commission or Members of the National Assembly of any goods, stores or equipment, on and subject to such terms and conditions as may be agreed upon.

# **Part V – Financial provisions**

## **26. Funds of the Commission**

- (1) The funds of the Commission shall consist of—
  - (a) such sums as shall be appropriated by Parliament to the National Assembly for purposes of the Commission;
  - (b) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;
  - (c) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;
  - (d) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;
  - (e) such sums as are received by the Commission by way of voluntary contributions; and
  - (f) such sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or incorporated.

- (2) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purposes.

## **27. Books and other records of accounts, audit and reports of the Commission**

- (1) The Commission shall cause to be kept proper books and other records of accounts in respect of receipts and audit expenditures of the Commission in accordance with acceptable principles of accounting.
- (2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.
- (3) The Commission shall, as soon as practicable, but not later than six months after the end of the financial year of the Commission submit to the National Assembly an annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.
- (4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid before the National Assembly by the Speaker in accordance with the Finance and Audit Act

*[Cap. 37:01]*

- (5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

*[Cap. 37:01]*

## **28. Holdings of funds of the Commission**

- (1) All sums received for the purposes of the Commission shall be paid into one or more banking accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of cheques by such persons as are authorized in that behalf by the Commission.
- (2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

## **29. Financial year**

The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case not longer than eighteen months.

## **30. Annual report**

As soon as practicable after the end of each year ending with the 30th day of June, the Commission shall prepare and lay before the National Assembly a report of its operations during that year.

## **31. By-laws**

- (1) The Commission may make by-laws for the carrying into effect of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the Commission may make by-laws—
  - (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of members of staff of the Parliamentary Service;

- (b) prescribing the procedure for the appointment of members of the staff of the Parliamentary Service;
  - (c) respecting the code of conduct and discipline of members of staff of the Parliamentary Service; and
  - (d) respecting the administration and management of the funds of the Commission.
- (3) All by-laws made pursuant of this section shall be laid before the National Assembly at the next meeting of the National Assembly occurring after the expiry of fourteen days after the making of the by-laws or, if the National Assembly is not then in session, within fourteen days after the commencement of its next meeting.

## **Part VI – Transitional provisions**

### **32. Persons employed in the public service to become persons employed in the Parliamentary Service**

- (1) The person holding the office of Clerk immediately prior to the commencement of this Act shall be deemed to have been appointed to that office under [section 16](#) and the salary and allowances of that person shall, until amended or superseded, continue to be payable at the rates applicable immediately before that date.
- (2) Subject to this Act, every person, other than the Clerk, who immediately prior to the commencement of this Act is an employee or officer of the National Assembly, unless he opts not to continue serving with the National Assembly, shall become, on the commencement of this Act, without further appointment than this section, a person employed in the Parliamentary Service on and subject to the same terms and conditions of employment, including those applicable to salaries and allowances, as applied to that person immediately before the commencement of this Act.