

## LEGAL EDUCATION AND LEGAL PRACTITIONERS

## CHAPTER 3:04

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CHAPTER 3:04

LEGAL EDUCATION AND LEGAL PRACTITIONERS

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## CHAPTER 3:04

## LEGAL EDUCATION AND LEGAL PRACTITIONERS

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 Malaŵi as legal practitioners, and to provide for the professional discipline of legal practitioners; to establish the Malaŵi 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

20 of 1965  
46 of 1965  
4 of 1967  
37 of 1967  
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25 of 1968  
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137/1966  
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[12TH APRIL, 1965]

## PART I

## PRELIMINARY

1. This Act may be cited as the Legal Education and Legal Practitioners Act. Short title
2. In this Act, unless the context otherwise requires— Interpreta-  
tion
- “Council” means the Council of Legal Education established by section 3;
- “legal practitioner” means 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;
- “Malaŵi Law Examination” means the examination in the local laws, practice and procedure of Malaŵi 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.

## PART II

## THE MALAŴI COUNCIL OF LEGAL EDUCATION

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

Functions of  
the Council

4. 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 of the Minister generally on matters relating to legal education and the requisite qualifications for the admission and enrollment 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.

Members of  
the Council

5. 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 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;

33 of 1980

(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;

(g) two law teachers in Malawi, to be appointed by the Minister.

Tenure of  
members

6. 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. 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.

Procedure of Council

8. 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:

Powers of Council

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 III

#### ADMISSION TO PRACTISE

9.—(1) No person shall practise as a legal practitioner unless he has been admitted to practise in accordance with this Act.

Admission to practise 38 of 1971

(2) Where, pursuant to section 11A, a person is admitted to practise subject to the conditions imposed by subsection (2) of the said 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 13, no person may apply for admission to practise as a legal practitioner unless he—

(a) is either a citizen of Malawi, or has resided continuously in Malawi for a period of not less than three months immediately before the date of the filing of his petition for admission under section 12; and

(b) has a degree or diploma in law or legal studies from an educational institution prescribed in writing by the Minister, or has been admitted to practise as a member of the Bar, Solicitor, Advocate, Legal Practitioner, Law Agent, Writer to the Signet or Attorney in any one of the countries specified in the First Schedule; and

(c) has presented himself for and passed the Malawi Law Examinations:

Provided that paragraphs (b) and (c) shall not apply to any person who, in consequence of an examination in law or legal studies, has been awarded the degree of Bachelor of Laws by the University of Malawi.

(4) The Minister may by Order under his hand vary or amend the First Schedule either by addition or deletion.

Malaŵi Law  
Examination

**10.** The Malaŵi Law Examination shall be set and arranged by the Council, who, after the candidate has presented himself for the examination shall mark the candidate's answers and shall determine whether or not the candidate has passed.

Admission  
to practise  
of legally  
qualified  
public  
officers

**11.—(1)** Any person who—

(a) has a degree or diploma in law or legal studies from an educational institution prescribed in writing by the Minister, or who has been admitted to practise as a member of the Bar, Solicitor, Advocate, Legal Practitioner, Law Agent or Attorney in any of the countries specified in the First Schedule; and

(b) has been in active employment, in a judicial or legal capacity, in the Judicial Department, Attorney General's Chambers, Department of Lands 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 made under subsection (1) shall be by petition addressed to the Chief Justice and verified by the affidavit of the applicant.

Conditional  
admission to  
practise  
38 of 1971  
13 of 1974

**11A.—(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, section 12 (3) or section 13, 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 State which—

(a) is, or was at any time, a member State, or part of a member State, of the Commonwealth; and

(b) applies, as its prevailing basic system of law, the Common Law or a legal system founded on the Common 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—

(i) except as the employee—

(a) of a prescribed legal practitioner; or

(b) of a firm of legal practitioners of which at least one partner is a prescribed practitioner; or

(c) in the legal department of a local authority, such department having a prescribed legal practitioner at its head; and

(ii) unless while so practising he is under the general guidance, supervision and control of—

(a) the prescribed legal practitioner referred to in paragraph (i) (a); or

(b) the partner referred to in paragraph (i) (b) or a partner of his in the same firm who is a prescribed legal practitioner; or

(c) the head of the legal department referred to in paragraph (i) (c),

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.

12.—(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.

Procedure on applications for admission to practise

(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 a fee of twenty guineas in respect of each cause.

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.

## PART IV

### ARTICLED CLERKS

**13.**—(1) Any person who, having been articled for a period of not less than five years to a legal practitioner, shall have received from the Law Society in London a certificate that he has, subject to any special requirements of that Society applicable to him and to any exemptions granted, passed the examinations held by such Society which a person must have passed before he is qualified for enrolment as a solicitor in England and, having presented himself for and passed the Malawi Law Examination, may apply for admission to practise as a legal practitioner.

Articled  
clerks who  
may be  
admitted to  
practise  
23 of 1970

(2) No person shall (unless the Chief Justice for special reasons shall otherwise direct) be considered as having been articled within the meaning of subsection (1) unless the several requirements set out in the Third Schedule shall all have been complied with:

Provided that, where there has been a failure to comply with such requirements or any of them after the commencement of the articles of clerkship, the period served up to the time of such failure shall count towards the period to be served.

(3) Articles may be served with one or more legal practitioners but the requirements set out in the Third Schedule shall apply in respect to all articles of clerkship.

## PART V

### NOTARIES PUBLIC

**14.** 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.

Interpreta-  
tion

**15.**—(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.

Appoint-  
ment of  
notaries  
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.

Certificate to  
practise as  
notary  
public  
25 of 1968

**16.**—(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.

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

**17.** 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.

Suspension  
or cancella-  
tion

**18.** 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.

Penalty

**19.**—(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. The Chief Justice may make rules for carrying out the purposes of this Part. Powers of  
Chief Justice

## PART VI

### DISCIPLINE

21.—(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— Disciplinary  
powers of  
High Court  
4 of 1981

(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

4 of 1981

(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).

(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 in 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.

When legal  
practitioner  
may not  
practise

**22.**—(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.

Annual  
licence

**23.**—(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) Where 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 a 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.—**(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—

Unlawfully acting as a legal practitioner etc., an offence

(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,

Below p. 24

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

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

**25.**—(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.

Objects of Society

**26.**—(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;

\*On the 12th April, 1965.

(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.** The membership of the Society shall consist of the following— Membership of the Society

(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.—**(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. Every legal practitioner to be member of the Society

(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 a 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 practising, shall not be entitled during the period of such suspension to any of the rights and privileges of membership.

**29.—**(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 Malaŵi Law Examination, shall, after applying for membership in the prescribed form, be admitted as a member of the Malaŵi Law Society during such time as they hold their office or appointment. Persons entitled to become members

- (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.
- Honorary members**      **30.** 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.
- Fees and subscription**      **31.** 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.
- Resignation**      **32.** 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.
- Cessation of membership**      **33.** 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.
- Election**      **34.** 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.
- Delegation of powers and functions**      **35.** 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.
- Society's power to make rules**  
5 of 1976  
9 of 1977      **36.—(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.

37.—(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. Disciplinary  
Committee

(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 inquiry 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

*Ex officio*  
legal  
practitioner  
8 of 1980

**38.**—(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.

Legal practi-  
tioner is  
officer of  
Court

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

Legal practi-  
tioners not  
to practise in  
certain courts  
except in  
accordance  
with the  
Traditional  
Courts Act,  
etc.  
Cap. 3:03

**40.** 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.

Order of  
precedence

**41.** Legal practitioners shall take precedence according to the date of their signing the Roll:

Provided that—

(a) any *ex officio* legal practitioner in the service of the Government shall, for the purpose of this section, be deemed to have signed the Roll on the date of his appointment to an office in the service of the Government which, under section 38, entitles him to be *ex officio* a legal practitioner; and

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

42.—(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. Legal practitioners list

(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.—(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 Clerks to legal practitioners

(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 legal 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 connexion 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.

Rules  
4 of 1981

**44.**—(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;

(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 section 8 (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 of 1981

(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 thereon; 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.

(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 may be, 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.

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.

(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 may be, 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.

45.—(1) All mortgages, bonds, charges, agreements, contracts, Savings 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

##### RECOGNIZED QUALIFICATIONS

Member of the Bar, Solicitor, Legal Practitioner, Advocate, Law Agent or Attorney in any of the following—

- (a) England and Wales;
- (b) Scotland;
- (c) Northern Ireland;
- (d) Republic of Ireland;
- (e) Republic of Ghana;
- (f) Federation of Nigeria;
- (g) Zambia;
- (h) Jamaica;
- (i) Tanzania;
- (j) Zimbabwe.

s. 9 (2)  
G.N. 50/1984  
65/1986

#### SECOND SCHEDULE

s. 23

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

L.R.O. 1/1989

(Published 21st January, 2004)

Act

No. 9 of 2004

I assent

BAKILI MULUZI

PRESIDENT

14th January, 2004

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Replacement of s. 9 of Cap. 3:04
3. Insertion of new s. 9A into the principal Act
4. Replacement of s. 10 of the principal Act
5. Amendment of s. 11 of the principal Act
6. Amendment of s. 11A of the principal Act
7. Amendment of s. 12 of the principal Act
8. Insertion of new s. 12A into the principal Act
9. Repeal of s. 13 of the principal Act
10. Replacement of the First Schedule to the principal Act
11. Repeal the Third Schedule to the principal Act

**An Act to amend the Legal Education and Legal Practitioners Act**

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Legal Education and Legal Practitioners (Amendment) Act, 2003. Short title

2. The Legal Education and Legal Practitioners Act (hereinafter referred to as the "principal Act") is amended by repealing section 9 and substituting therefor the following new section— Replacement of s. 9 of Cap. 3:04

"Admission to practise 9—(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;

(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.

(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*."

3. The principal Act is amended by inserting therein a new section, as section 9A, as follows—

Insertion of new s. 9A into the principal Act

"Conditions for recognition of a foreign law qualification

9A.—(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.”.

Replacement of  
s. 10 of the  
principal Act

4. Section 10 of the principal Act is repealed and replaced with the following new section—

“Malawi Law  
Examination

10.—(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."

5. Section 11 of the principal Act is amended, in subsection (1)—

Amendment of s. 11 of the principal Act

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(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) in paragraph (b), by inserting, after the words “the Department of Lands”, the words, “, the Office of the Ombudsman, the Human Rights Commission, the Law Commission”.

6. Section 11A of the principal Act is amended by deleting subsection (1) and substituting therefor the following new paragraph—

Amendment of s. 11A of the principal Act

“(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 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.”.

Amendment of s. 12 of the principal Act 7. Section 12 of the principal Act is amended, in subsection (3), by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) has paid the prescribed fee.”.

Insertion of new s. 12A into the principal Act 8. The principal Act is amended by inserting therein a new section, as section 12A, as follows—

“Reciprocal recognition to practise the profession of law 12A. 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.”.

Repeal of s. 13 of the principal Act 9. Section 13 of the principal Act is repealed.

Replacement of the First Schedule to the principal Act 10. The First Schedule to the principal Act is repealed and replaced with the following new Schedule—

"FIRST SCHEDULE

s. 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."

II. The Third Schedule to the principal Act is repealed.

Repeal of the Third Schedule to the principal Act

Passed in Parliament this twelfth day of December, two thousand and three.

R. L. GONDWE  
Clerk of Parliament

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