

Malawi

Commissions of Inquiry Act

Chapter 18:01

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Commissions of Inquiry Act
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Commissions of Inquiry Act

Chapter 18:01

Commenced on 27 March 1914

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

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to Enable the President to Issue Commissions of Inquiry with Special Powers

1. Short title

This Act may be cited as the Commissions of Inquiry Act.

2. Power to issue Commissions of inquiry into matters of public nature, etc.

- (1) The President may issue a Commission under his hand and the public seal of Malawi appointing one or more Commissioners and authorizing such Commissioner or Commissioners to inquire into any matter in which an inquiry would be for the public welfare.

Particulars of Commissions

- (2) Every such Commission shall specify the subject, nature and extent of the inquiry, and may contain directions in the following matters—
 - (a) in what manner the Commission shall be executed;
 - (b) if there be more Commissioners than one which of them shall act as chairman;
 - (c) what number of them shall constitute a quorum;
 - (d) the place and time where and within which the inquiry shall be made and the report thereof rendered;
 - (e) whether or not the inquiry shall be held in public, with reservation nevertheless to the Commissioners to exclude any person or persons if they deem fit for the due conduct of the inquiry, the preservation of order or for any other reason;
 - (f) and generally for the better giving effect to the purpose of the inquiry.

3. Power to appoint fresh Commissioners and to alter and revoke Commissions

In case any Commissioner shall be or become unable or unwilling to act or shall die, the President may appoint another Commissioner in his place; and any Commission issued under this Act may be altered as the President may deem fit by any subsequent Commission issued by the President, or may be revoked altogether by a notification to that effect published in the *Gazette*.

4. Commissions not affected by change of President

No Commission issued under this Act shall lapse by reason of, or be otherwise affected by, the absence of the President issuing the same, or by his ceasing to hold office whether as a result of his death or for any other reason.

5. As to oath of office by Commissioners

It shall be the duty of the Commissioner appointed under this Act to make and subscribe an oath or affirmation in the form in the Schedule, which oath or affirmation may be taken before the President, or before such person as the President may appoint and shall be deposited by the Commissioner with the Registrar of the High Court.

6. Power to appoint Secretary— his duties

The President may appoint a Secretary to attend the sittings of the Commission, to record their proceedings, to keep their papers, summon witnesses and minute their testimony, and generally to perform such duties connected with such inquiry as the Commissioners shall prescribe.

7. Duties of Commissioners defined

It shall be the duty of the Commissioners, after taking such oath or making such affirmation, to make a full, faithful, and impartial inquiry into the matter specified in the Commission, to conduct such inquiry in accordance with the directions (if any) contained therein; to report in due course to the President, in writing, the result of such inquiry, and also, if required, to furnish to the President a full statement of the proceedings of the Commission, and of the reasons leading to the conclusions arrived at or reported.

8. Division of opinion of Commissioners

If the Commissioners shall, in any case, be equally divided on any question that arises during the proceedings of the Commission, the Chairman of the Commission shall have a second or casting vote.

9. Commissioners' power to regulate proceedings

The Commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before them, and as to the times and places for their sittings, not inconsistent with their Commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their Commission.

10. Power to summon and examine witnesses and privilege of Commissioners from suit

The Commissioners acting under this Act shall have the powers of the High Court to summon witnesses, and to call for the production of books, plans and documents and to examine witnesses, and parties concerned on oath, and no Commissioner shall be liable to any action or suit for any matter or thing done by him as such Commissioner. All summonses for the attendance of witnesses or other persons or the production of documents may be in the form given in the Schedule, and shall be signed by one of the Commissioners, and oaths and affirmations may be administered by one of the Commissioners or by their Secretary.

11. False evidence

Any witness who shall wilfully give false evidence in any such inquiry concerning the subject matter of such inquiry shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

12. Duty of witnesses summoned:***Expenses of witnesses***

- (1) All persons summoned to attend and give evidence, or to produce books, plans, or documents at any sitting of any such Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey a summons issued from the High Court, and shall be entitled to like expenses as if they had been summoned to attend at such Court on a criminal trial, if the same shall be allowed by the Commissioners, but the Commissioners may disallow the whole or any part of such expenses in any case if they think fit. Orders for the payment of such witnesses shall be made as nearly as may be as orders are made for the payment of witnesses in the High Court, and shall be paid in such manner as the President may direct.

Penalty for contumacy, insult or interruption of proceedings

- (2) Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the Commission without the permission of the Commissioners, or refusing without sufficient cause to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by or with the concurrence of the Commissioners, or refusing or omitting without sufficient cause to produce any books, plans or documents in his possession or under his control, and mentioned or referred to in the summons served on him, and every person who shall at any sitting of the Commission wilfully insult any Commissioner, or the Secretary, or wilfully interrupt the proceedings of the Commission, shall be liable to a fine of £50:

Provided always, that no person giving evidence before the Commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.

13. Appearance of legal practitioner

Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by a legal practitioner at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in manner aforesaid.

14. Commissions, etc., to be published in *Gazette*

Every Commission under this Act, and all alterations thereof or revocation of such Commission, shall be published in the *Gazette*, and shall take effect from the date of such publication.

15. As to proceedings for penalties

No proceedings shall be commenced for any penalty under this Act except by the direction of the Director of Public Prosecutions.

Form of oath or affirmation to be taken by a Commissioner (Section 5)

I having been appointed under a Commission issued by the President and dated the day of 19... to be a Commissioner to inquire into the matters specified in the said Commission, do swear (or do solemnly and sincerely affirm) that I will faithfully, fully, impartially, and to the best of my ability discharge the trust, and perform the duties devolving upon me by virtue of the said Commission.

(In the case of an oath here add)

So help me God.

.....

Commissioner

Taken before me this day of..... 19...

Summons to a witness (Section 10)

To A. B. (name of person summoned, and his calling and residence, if known).

YOU ARE HEREBY summoned to appear before the Commissioners appointed by the President to inquire (state briefly the subject of inquiry) at (place) upon the day of 19...., at o'clock, and to give evidence respecting such inquiry.

(If the person summoned is to produce any documents add) And you are required to bring with you (specify the books, plans and documents required).

Given under the hand of Commissioner, this day of 19.....