

Malawi

National Service Act

Chapter 12:02

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Commenced on 10 April 1951

[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 Make Provision for Securing and Controlling the Enlistment of Persons for National Service during an Emergency and for Purposes connected therewith

1. Short title

- (1) This Act may be cited as the National Service Act.
- (2) This Act shall come into operation and shall remain in operation during the existence in force of any Order made by the Minister under [section 3](#).

2. Appointment of Director of Manpower

The Minister may by notice published in the *Gazette* appoint a person to be Director of Manpower for the purposes of this Act.

3. Order subjecting citizens to the Act

The Minister may from time to time, by Order published in the *Gazette*, direct that, subject to [section 4](#), every citizen of Malawi—

- (a) who is at the date of that Order in Malawi or who thereafter enters Malawi; and
- (b) who was born in such year or years as may be specified in the Order, shall, on the date of the Order, or, as the case may be, on the date on which he first enters Malawi after the date of the Order, become liable to be called up for national service under this Act.

4. Exemption

No person shall be liable for service under this Act if he is under the age of 18 years or over the age of 60 years.

5. Registration for National Service

- (1) The Director of Manpower may by notice and in such other manner as he shall deem sufficient require such classes of persons who have become liable for service under this Act as he shall specify in such notice to furnish at such time and place in such manner and to such authority or person as shall be specified in such notice such particulars as shall be specified.
- (2) Any person who fails to comply with the requirements of any notice issued under subsection (1) shall be guilty of an offence against this Act.
- (3) Every person who furnishes the particulars required by subsection (1) shall be registered by the Director of Manpower, together with the particulars relating to such person, in a Service Register which shall be kept by the Director of Manpower.

- (4) A person registered under this section shall be supplied with a Certificate of Registration which shall be in such form as the Director of Manpower shall determine.
- (5) A person registered under this section shall so long as he remains liable to service under this Act whenever requested by a police officer produce his Certificate of Registration:

Provided that if such person is not, at the time when he is requested to produce such Certificate, in possession thereof, he shall produce the same within seven days of being requested as aforesaid at such police station as the police officer may specify.
- (6) A person registered under this Act shall within seven days notify the Director of Manpower in writing of any change in his name, marital status, address or occupation.
- (7) Any person who fails to produce his Certificate of Registration as required in subsection (5), or who fails to notify a change of name, marital status, address or occupation as required by subsection (6), shall be guilty of an offence against this Act.

6. Medical examination

- (1) The Director of Manpower may require any person registered under [section 5](#) to present himself for and submit to medical examination at such time and place as may be notified.
- (2) Any person who fails to present himself for, or submit himself to, medical examination when required to do so in accordance with subsection (1) shall be guilty of an offence against this Act.

7. Notice requiring registered persons to serve

- (1) The Director of Manpower may, by notice in writing (hereinafter referred to as a “duty notice”) require any person registered under [section 5](#) and passed medically fit for service to report for duty on such date and at such time and place and to such authority or person as may in such duty notice be specified.
- (2) The duty notice shall specify whether the service to be performed is full time or part time service. The Director of Manpower may by a further notice require any person performing part time service to perform full time service.
- (3) Subject to [section 9](#), a person upon whom a duty notice is served shall be deemed, as from the date specified in the notice, to have been taken for service for a term beginning on that day and ending on such date as the state of public emergency proclaimed under [section 1 \(2\)](#) has passed:

Provided that the Minister may by order extend the period of service of any persons or classes of persons specified in such order to a date fixed in such order.

8. Constitution and powers of National Service Tribunal

- (1) The Minister may by notice published in the *Gazette* provide for the constitution of a National Service Tribunal (hereinafter referred to as “the Tribunal”), which shall consist of not less than five members to be nominated by the Minister.
- (2) The powers of the Tribunal may be exercised at any meeting at which not less than three members are present.
- (3) The Tribunal shall have the same powers as the High Court for compelling the attendance of persons before it, and to take evidence on oath.
- (4) Parties to proceedings before the Tribunal may be represented by a legal practitioner.

9. Appeals against obligation to serve

- (1) A person upon whom a duty notice has been served, or his employer (if any), may within 14 days of the date of receipt of the notice appeal to the Tribunal against the obligation to perform full or part time service under this Act.
- (2) Pending the hearing of the appeal the duty notice shall be of no effect.

10. Appeals before the Tribunal

- (1) On the hearing of any appeal the Tribunal may—
 - (a) reject the appeal, in which case the Tribunal may make such orders as may be necessary to secure the services of the person to whom the appeal relates;
 - (b) uphold the appeal and grant to such person a certificate of exemption from service for such period and subject to such conditions as may be deemed fit; or
 - (c) make such order as shall appear to it to be just.
- (2) The determination of the Tribunal shall not be called in question in any court of law.

11. Remuneration of Tribunal and witnesses and costs

- (1) Members of the Tribunal shall receive such remuneration as the Minister may approve.
- (2) A witness whose attendance has been required by the Tribunal shall receive the same travelling and subsistence allowances as a witness before the High Court.
- (3) Costs in any proceedings before the Tribunal shall be at the complete discretion of the Tribunal.

12. Nature of service under this Act

- (1) Any person registered under [section 5](#) and liable for and not exempted from service under this Act may be required to serve in such place and in such manner, other than in the armed forces of Malawi, as the Director of Manpower may require:

Provided that this subsection shall not apply to any person who has volunteered and been accepted for service with the armed forces of Malawi, or, who being on a reserve, has been called up for such service.
- (2) All persons required to serve under subsection (1) shall if required to serve as an employee of a private individual or company receive from such individual or company the same privileges, pay and allowances as are usually afforded or paid in respect of the services being performed.
- (3) A person serving under this Act shall diligently and faithfully perform the services required of him. Any person who contravenes this subsection shall be liable to a fine of £100 and to imprisonment for six months.

13. Transfer from one form of service to another

- (1) Any person serving under this Act may be required by the Director of Manpower to serve in such other capacity, not being service with the armed forces of Malawi, as the Director of Manpower may specify in writing.
- (2) Any person who fails to comply with a requirement made by the Director of Manpower under subsection (1) shall be liable to a fine of £100 and to imprisonment for six months.

14. Employers to give particulars of employees

- (1) Every person who employs in Malawi any person between the ages of 18 and 60 years shall, on or before a date to be specified by the Director of Manpower by notice published in the *Gazette*, send to the Director of Manpower particulars in writing of—
 - (a) the full name and age of every such employee; and
 - (b) the full name and age of every person who, prior to being required to perform full time service under this Act or being enlisted for full time service in the armed forces of Malawi, was employed by him.
- (2) Every person who after the said specified date takes into his employment any person between the ages of 18 and 60 years, or dismisses or releases or loses from his employment any such employee, shall within seven days of such event send written notice thereof to the Director of Manpower, giving full particulars of every person so entering or leaving his employment.
- (3) Any person who fails to comply with the requirements of subsection (1) or (2) shall be guilty of an offence against this Act.

15. Co-operation of employers

- (1) It shall be the duty of every employer to give all proper facilities to any person in his employ to enter upon and carry out any service for which he is liable under this Act.
- (2) An employer shall be liable to a fine not exceeding £100 if he—
 - (a) terminates the employment of any person employed by him by reason of any duties or liabilities which that person is or may become liable to perform or discharge by virtue of this Act, or in order to evade the obligation of [section 16](#);
 - (b) by words, conduct or otherwise directly or indirectly compels, induces or prevails upon, or attempts so to do, any person in or seeking his employment to refrain from doing any service for which he is liable under this Act.
- (3) In any prosecution under this section if the Court is of opinion that there is reasonable cause to believe that the duties or liabilities aforesaid caused or contributed to the termination of the employment or other alleged penalization, or that the employment was terminated in order to evade the obligation aforesaid, the employment shall be deemed to have been terminated or the penalization effected by reason of such duties or liabilities or in order to evade such obligation, unless the employer proves the contrary.
- (4) In addition to any other penalty the Court may order an employer convicted of an offence against this section to pay to the person whose employment has been terminated a sum not exceeding an amount equal to three months' remuneration at the rate last payable by the employer.
- (5) Where an employee has been taken or accepted for full time service under this Act his employment shall not be deemed to have been terminated by his employer within the meaning of this section.

16. Reinstatement in employment

- (1) It shall be the duty of every employer of—
 - (a) any person required to serve under this Act; or
 - (b) any person who, being on any Reserve of the armed forces of Malawi, has been called up for full time service in such armed forces,

to reinstate such person in his employment at the termination of his service under this Act or in the armed forces of Malawi as the case may be, under conditions which are not less favourable to such persons than those under which he would have been employed had he not been required to serve under this Act or in the armed forces of Malawi.

- (2) If any employer fails to comply with this section he shall be liable to a fine of £100 and in addition the court may order him to pay to the person whom he has failed to reinstate a sum not exceeding an amount equal to three months' remuneration at the rate at which his remuneration was last payable to him by the employer:

Provided that it shall be a defence for the employer to prove that the person formerly employed by him did not before the expiration of one month after the termination of such service as aforesaid, apply to the employer for reinstatement, or that having been offered reinstatement by him, he failed, without reasonable excuse to present himself for employment at the time and place notified to him by the employer or that by reason of a change of circumstances (other than the engagement of some other person to replace him)—

- (a) it was not reasonably practicable to reinstate him; or
- (b) his reinstatement in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been called from his employment for any service referred to in subsection (1) was impracticable, and that the employer has offered to reinstate him in the most favourable occupation and under the most favourable conditions reasonably practicable.
- (3) For the purpose of securing the fair adjustment of contracts of service or apprenticeship in force between employer and employees when the employees are or were called from their employment for any service referred to in subsection (1), the Minister may make Regulations relieving the parties to such contracts of all or any of their obligations thereunder in respect of the period of that service, and may also make Regulations modifying such contracts by extending the period of service or apprenticeship thereunder by a period not exceeding the period of the said service, and adapting the terms of the contracts in relation to any such extension.
- (4) In relation to any person called from his employment for any service referred to in subsection (1), references in this section to an employer shall be construed as including references to any person for the time being carrying on the undertaking or service in which he was employed when so called as aforesaid, or carrying on any undertaking or service with which that undertaking or service has been amalgamated or in which it was comprised on the date on which he was so called as aforesaid.
- (5) This section shall bind the Government.

17. False statement and forgery

Any person who—

- (a) in giving any information for the purposes of this Act knowingly or recklessly makes any statement which is false in a material particular; or
- (b) with intent to deceive—
- (i) forges or uses, or lends or allows to be used by any other person, any certificate under this Act; or
- (ii) makes or has in his possession any document so closely resembling any certificate under this Act as to be calculated to deceive,
- shall be liable to a fine of £50 and to imprisonment for three months.

18. Penalty

Any person guilty of an offence against this Act for which no special penalty is provided shall be liable to a fine of £50 and to imprisonment for three months.

19. Rules

- (1) The Minister may make Rules for carrying this Act into effect.
- (2) In particular, and without prejudice to the generality of the foregoing power, such Rules may provide that persons employed or engaging in the occupations specified in such Rules (to be known as “reserved occupations”) shall, subject to such conditions and exceptions as may be prescribed, continue in such occupations.
- (3) In making Rules under this section the Minister may provide that any contravention thereof shall be an offence punishable with a fine of £200 and imprisonment for twelve months.