

Malawi

## Prisons Act

### Chapter 9:02

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# Malawi

## Prisons Act

### Chapter 9:02

Commenced on 23 April 1956

*[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 provide for the establishment of Prisons within Malawi, for a Prison Service, for the discipline of Prison Officers, for the management and control of Prisons and Prisoners lodged therein, and for matters incidental thereto**

### Preliminary

#### 1. Short title

This Act may be cited as the Prisons Act.

#### 2. Interpretation

In this Act, unless inconsistent with the context—

“**convicted prisoner**” means any prisoner under sentence of a court or court-martial;

“**junior officers**” means a prison officer of one of the ranks of junior officers set out in the Schedule;

“**mechanical restraint**” means restraint by the use of handcuffs, leg irons, straight jacket, or any other form of restraint approved by the Minister;

“**medical officer**” means a medical officer appointed or nominated under [section 25](#);

“**officer in charge**” means the person appointed to be in charge of a prison under [section 9](#);

“**official visitor**” means a person appointed as such under [section 38](#);

“**penal diet**” means a punishment diet prescribed as a penal diet;

“**prison**” means any building or place declared to be a prison and includes a temporary prison established under [section 4](#);

“**prison officer**” means any officer of the prison service and includes any officer seconded to such service;

“**prisoner**” means any person, whether convicted or not, under detention in any prison;

“**prohibited article**” means any article which is not issued to any prisoner by authority of the officer in charge, with the approval of the Commissioner, or in accordance with this Act;

“**reduced diet**” means a punishment diet prescribed as a reduced diet;

“**senior officer**” means a prison officer of one of the ranks of senior officers set out in the Schedule;

“**subordinate officer**” means a prison officer of one of the ranks of subordinate officers set out in the Schedule and includes any person temporarily employed under [section 73\(5\)](#);

“**the service**” means the prison service established under this Act;

“**unconvicted prisoner**” means any person, not being a convicted prisoner, duly committed to custody under a writ, warrant, or order of any court, or any order of detention issued by any person authorized thereto by any Malawi law, or by order of a court-martial;

“**visiting justice**” means a visiting justice appointed under sections 34 and 35;

“**weapon**” means any firearm, baton, tear smoke, or such other instrument as may be prescribed;

“**young prisoner**” means a prisoner under the apparent age of 19 years and may, at the discretion of an officer in charge, include a prisoner whose apparent age does not exceed 20 years.

## Part I – Establishment of prisons

### 3. Establishment of prisons

The Minister may declare any building or place in Malawi to be a prison under this Act, and may declare that any such prison shall cease to be a prison.

### 4. Temporary prisons

Such provision shall be made as the Commissioner may direct for the shelter and safe custody in temporary prisons of such number of prisoners as the Commissioner may determine, and every such temporary prison shall be deemed to be a prison for the purpose of this Act.

## Part II – Constitution and administration

### 5. Establishment of service

There shall be established in Malawi a prison service.

### 6. Application of Act to serving prison officers

All the provisions of this Act shall extend to all persons who, immediately before the date of commencement of this section, were serving as members of any prison service or department established under the Prisons Ordinance, 1945 (now repealed) as if such persons had been appointed under this Act, and service under any such legislation, for the purposes of this Act, shall be deemed to be service under this Act.

[27 of 1945]

### 7. Commissioner of prisons and prison officers

There shall be a Commissioner of Prisons, hereinafter referred to as the Commissioner, who shall, subject to any general or special directions of the Minister, be responsible for the administration of this Act, and such prison officers as may be necessary for the administration of the prison service.

### 8. Officers

The service shall consist of the ranks set out in the Schedule and that Schedule may be varied by the Minister by notice published in the *Gazette*.

### 9. Appointment of prison officers

(1) The Commissioner shall appoint prison officers to be officers in-charge.

- (2) In any place where there is a prison but no prison officer has been appointed as officer in-charge thereof, such prison shall be in the charge of such person as the Minister may appoint and the person so appointed shall, in matters relating to the prison and prisoners, be subject to the orders and directions of the Commissioner and shall, subject to any express limitation which may have been imposed on him by the Commissioner, be deemed to be the officer in-charge of the prison and shall have all the powers conferred by this Act upon an officer in-charge.

#### **10. Liberty to resign**

- (1) Unless expressly permitted to do so by the Commissioner, no prison officer shall be at liberty to resign from the service except as may be provided by regulations.
- (2) Any member of the service whose period of service expires during a state of war, insurrection, disturbance of the public peace, or other emergency or apprehended emergency, may be retained and his services prolonged for such period as the Minister may direct.
- (3) If any prison officer withdraws himself from his official duties in contravention of this section, he shall be liable to a fine of K100.00 and to imprisonment for three months.

#### **11. Payments due to prison officers and other persons employed in prisons leaving the prison service may be set off**

A sum due to a prison officer or other person employed in prisons or to his estate by way of salary, refund of pension contributions, pension or any other benefit whatsoever may be set off against a sum payable to the Government by the prison officer or other person employed in prisons on or at the time of his retirement, resignation, loss of office, death, discharge or other termination of service, as the case may be.

#### **12. Minister may appoint committee of inquiry**

The Minister may, whenever he deems it necessary or desirable, appoint a committee of two or more persons of whom—

- (a) one shall be the Commissioner; and
- (b) the other or others shall be an officer or officers of the Public Service, to enquire into and report to him on the conduct, management or administration of any prison or any matter connected therewith or incidental thereto.

### **Part III – Powers and duties of prison officers**

#### **13. General powers and duties of Commissioner**

The Commissioner shall, subject to any orders or directions of the Minister, have the administrative command, superintendence, control, and direction of prisons and prison officers, and, for the exercise of these powers, may issue standing orders relating thereto. Notwithstanding the General Interpretation Act, standing orders issued in terms of this section need not be published in the *Gazette*.

[30 of 1991]

[33 of 1993]

[Cap. 1:01]

#### **14. Officer in-charge of a prison to supervise and control prison**

Every officer in-charge shall supervise and control all matters in connexion with the prison to which he is appointed and shall be responsible to the Commissioner for the conduct and treatment of prison officers and prisoners under his control and for the due observance by prison officers and prisoners of this Act.

#### **15. Powers and duties of prison officers**

Every prison officer shall exercise such powers and perform such duties as may be assigned to him in accordance with this Act and shall obey all lawful directions in respect of the execution of his office which he may receive from any officer senior to him in the service.

#### **16. Prison officers always available for duty**

Every prison officer shall be deemed to be available for duty at all times and may at any time be detailed for duty in any part of Malawi.

#### **17. Prison officers and prohibited activities**

- (1) No prison officer shall be concerned in any employment other than the duties assigned to him in accordance with this Act.
- (2) No prison officer shall accept any bribe, fee, gratuity, or reward from, or, without the permission of the Commissioner, have any business dealings with, prisoners, visitors to prisoners, persons he knows to be ex-prisoners, or friends of prisoners or ex-prisoners.
- (3) Except with the written consent of the Minister and in accordance with such directions as the Minister may give, no prison officer shall commit any act which is prescribed as being an act constituting active participation in politics.

#### **18. Punishment by subordinate officers**

No subordinate officer shall punish a prisoner unless lawfully ordered so to do by the Commissioner or by an officer in charge.

#### **19. Use of weapons by prison officers**

- (1) Subject to this section, a prison officer may use a weapon against—
  - (a) a prisoner who is—
    - (i) escaping or attempting to escape; or
    - (ii) engaged in a combined outbreak or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison; or
    - (iii) using violence to him or another prison officer or other person; and
  - (b) a person who—
    - (i) whilst assisting a prisoner to escape, is using violence to him or another prison officer or other person; or
    - (ii) is engaged in a combined break-in or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison or an inside door, gate, fence or wall of the prison; or

- (iii) whilst so engaged, is using violence to him or another prison officer or other person.
- (2) Resort shall not be had to the use of a weapon—
  - (a) as in subsection (1) (a) (i) is authorized, unless—
    - (i) the prison officer has reasonable grounds to believe that he cannot otherwise prevent the escape; and
    - (ii) the prison officer gives a warning to the prisoner that he is about to use the weapon against him; and
    - (iii) the warning given by the prison officer is unheeded;
  - (b) as in subsection (1) (a) (iii), (1) (b) (i) and (1) (b) (iii) is authorized unless the prison officer has reasonable grounds to believe that he or the other prison officer or other person, as the case may be, is in danger of suffering grievous bodily harm.
- (3) No prison officer shall in the presence of a prison officer senior to himself make use of a weapon as in subsection (1) is authorized, except on the orders of the senior prison officer.
- (4) The use of weapons in pursuance of this section shall be, as far as possible, to disable and not to kill.

## **20. Prison officers' power of arrest**

For the purpose of apprehending any person who may have escaped from lawful custody, every prison officer shall have the power to arrest such person and to convey him to a prison.

## **21. Prison officers' visits to cells**

- (1) No prison officer shall, except in the case of sickness or emergency, enter a prison cell or ward at night unless accompanied by another prison officer.
- (2) No male prison officer shall enter, a cell in which female prisoners are confined, unless accompanied by a female prison officer.

## **22. Power to take photographs and fingerprints of prisoners**

An officer in charge may cause statistics as to height, weight, and measurements, photographs, fingerprints, handprints, and footprints of any prisoner to be taken by any person whom he may designate for such purpose, and shall make such records as the Commissioner may determine.

## **23. Immunity for act done under authority of warrant**

Where the defence to any suit instituted against a prison officer is that the act complained of was done in obedience to a warrant purporting to be issued by a judge or a magistrate, the court shall, upon production of the warrant containing the signature of the judge or the magistrate, and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such prison officer.

## **24. Proof of signature not required**

No proof of the signature of such judge or magistrate as is mentioned in [section 23](#) shall be required unless the court has reason to doubt the genuineness thereof, and, where such signature is proved not to be genuine, judgment shall nevertheless be given in favour of such prison officer, if it be proved that, at

the time the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

## **Part IV – Appointment and duties of medical officers**

### **25. Medical officers**

- (1) The Minister may appoint as medical officer of a prison any medical practitioner who is registered as such in accordance with the law and where no such medical practitioner is available, may also appoint as medical officer of a prison any person who is licensed in terms of section 15 of the Medical Practitioners and Dentists Registration Act.

*[Cap. 36:01]*

- (2) In default of any appointment in terms of subsection (1), a Government medical officer resident at the place where such prison is situated and nominated for such duty by the Secretary for Health shall be a medical officer for such prison.

### **26. Duties of medical officers**

Subject to [section 14](#), the medical officer shall have the general care of the health of prisoners and shall visit the prison daily where practicable or when called upon by the officer in charge. He shall report to the officer in charge any circumstances connected with the prison or the treatment of prisoners which at any time appear to him to require consideration on medical or health grounds.

### **27. Medical inspection**

- (1) The medical officer shall, where practicable, ensure that every prisoner is medically examined on admission to and before discharge from a prison, and shall perform such other duties as may be prescribed, and shall ensure that a record is kept of the state of health of every prisoner.
- (2) Until he has been examined by the medical officer, every prisoner on admission shall, so far as possible, be kept apart from other prisoners.

### **28. Observation of prisoners charged with a capital offence**

The medical officer shall observe the mental condition of all prisoners under sentence of death or charged with a capital offence and, for this purpose, shall personally examine all such prisoners on every day on which he visits the prison, and shall furnish reports on such prisoners to the officer in charge in such form and at such times as may be prescribed.

### **29. Examination of prisoners in solitary confinement or in hospital**

The medical officer shall ensure that every prisoner under sentence of death, or charged with a capital offence, or in solitary confinement, or in hospital, is medically examined every day on which the medical officer visits the prison.

### **30. Officer in charge empowered to order prisoner to be examined**

Every officer in charge may order any prisoner to submit himself to medical examination as often as such officer thinks necessary.

### 31. Death of a prisoner

The medical officer shall, on the death of any prisoner otherwise than by lawful execution, record in a register to be kept for such purpose the following particulars, so far as they can be ascertained—

- (a) the day on which the deceased was sentenced;
- (b) the day on which he was admitted to prison;
- (c) the day on which he first complained of illness, or was observed to be ill;
- (d) the labour, if any, on which he was engaged on that day;
- (e) the scale of his diet on that day; Death of a prisoner
- (f) the day on which he was admitted to hospital;
- (g) the day on which the medical officer or his subordinate was first informed of the illness;
- (h) the nature of the disease;
- (i) when the deceased was last seen before death by the medical officer or his subordinate;
- (j) when the prisoner died and, in cases where a postmortem examination is made, an account of the appearance after death, together with any special remarks that may appear to the medical officer to be required; and
- (k) his opinion as to the cause of death.

### 32. Notification of death of prisoner

Upon the death of a prisoner, the officer in charge shall at once notify a magistrate or coroner and the medical officer of the prison and shall arrange for compliance with the law relating to inquests.

## Part V – Visiting justices, official visitors, ministers of religion and prisoners' aid societies

### 33. Judges may visit prisons

Judges of the High Court may visit and inspect any prison at any time and, while so doing, may inquire into any complaint or request made by a prisoner.

### 34. Ministers to be visiting justices

Ministers of Malawi Government shall be visiting justices of all prisons in Malawi.

### 35. Magistrates to be visiting justices in own areas

Magistrates shall be visiting justices of the prisons situated in the area in which they normally exercise jurisdiction.

### 36. Powers of visiting justices

- (1) Any visiting justice may at any time visit a prison in respect of which he is a visiting justice, and may—

- (a) call for all books, papers, and records relating to the management and discipline of the prison;
  - (b) visit every part of the prison and see every prisoner in confinement;
  - (c) inspect and test the quality and quantity of prisoners' food;
  - (d) ascertain, so far as possible, that the standing orders and regulations are observed;
  - (e) inquire into any complaint or request made by a prisoner.
- (2) A visiting justice who is a magistrate—
- (a) may, if requested by the Commissioner or the officer in charge, hear and determine a charge under [section 90](#) (1) (b); and
  - (b) for the exercise of such powers, may summon witnesses and administer oaths.

### **37. Visiting justice to record visit in prescribed book**

On completion of each visit, a visiting justice shall enter in a book to be kept for such purpose such remarks, suggestions, or recommendations for the information of the Commissioner as he may deem fit

### **38. Appointment of official visitors**

The Minister may appoint official visitors to any prison.

### **39. Duties of official visitors**

An official visitor shall—

- (a) at least once in every two months visit the prison to which he is appointed between such hours as may be prescribed;
- (b) visit all parts of the prison and see every prisoner in confinement, save that female official visitors may visit only those parts of each prison set aside for the detention of female prisoners;
- (c) inspect and test the quality and quantity of prisoners' food;
- (d) ascertain, so far as possible, that the standing orders and regulations are observed; and
- (e) inquire into any complaint or request made by a prisoner.

### **40. Official visitors to record visit in prescribed book**

On completion of each visit, an official visitor shall enter in a book to be kept for such purpose such remarks, suggestions, or recommendations for the information of the Commissioner as he may deem fit.

### **41. Ministers of religion may visit prison**

Ministers of religion, or other accredited representatives of any religious body recognized by the Minister whose visits are approved by the Commissioner, may at such hours and in such places as may be prescribed or as the officer in charge may permit—

- (a) be admitted to the prison to visit prisoners who may be desirous of their services; and
- (b) be permitted to hold religious services.

#### 42. Visits of probation officers and representatives of prisoners' aid society

A probation officer appointed as such under any law, or a representative of a prisoners' aid society who has obtained the written permission of the Commissioner, may be admitted to any prison at times to be arranged by the officer in charge.

### Part VI – Discipline of prison officers

#### 43. Offences against discipline by prison officers

- (1) Any prison officer, other than the Commissioner who—
  - (i) uses traitorous or disloyal words regarding the President;
  - (ii) is disrespectful in word, act, or demeanour to an officer senior to him in the service;
  - (iii) disobeys any lawful order including any standing order issued by the Commissioner in terms of [section 13](#);
  - (iv) contravenes or fails or neglects to comply with any provision of regulations with which it is his duty to comply;
  - (v) renders himself unfit for duty through drink or by the use of drugs;
  - (vi) habitually uses to excess intoxicating beverages or habit-forming drugs;
  - (vii) absents himself without leave or overstays his leave;
  - (viii) sleeps at his post, or leaves it before being lawfully relieved, except in fresh pursuit of any offender whom it is his duty to apprehend;
  - (ix) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;
  - (x) neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to arrest;
  - (xi) by his neglect or default—
    - (A) allows; or
    - (B) contributes to, the escape of any prisoner;
  - (xii) offers or uses unwarranted personal violence to any person in his custody;
  - (xiii) shows cowardice in the course of his duty;
  - (xiv) uses any weapon without just cause or order;
  - (xv) without cause, fails to appear or appears late at any parade or duty appointed by an officer senior to him in the service;
  - (xvi) pawns, sells, loses by neglect, makes away with, wilfully spoils or fails to report any damage to any arms, ammunition, accoutrements, clothing, any medal or decoration granted to him for service or good conduct, or any other public property;
  - (xvii) steals or destroys any property belonging or issued to a prison or prisoner;

- (xviii) is slovenly, inattentive, uncivil, or quarrelsome;
- (xix) without due authority, discloses or conveys any information concerning any investigation or matter relating to the service;
- (xx) malingers or feigns or wilfully produces any disease or infirmity or fails to report any disease or accident;
- (xxi) is guilty of misconduct or disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates any disease or infirmity or delays its cure;
- (xxii) incurs debt without any reasonable prospect, or intention, of paying the same, or, having incurred any debt, makes no reasonable effort to pay the same;
- (xxiii) without proper authority, demands from any person any article, carriage, or portorage;
- (xxiv) resists an escort whose duty it is to apprehend him or to have him in charge;
- (xxv) breaks out of, or leaves without lawful excuse, warders' lines, camp, or quarters;
- (xxvi) makes or signs any false report or statement in any official record or document, knowing or having reasonable ground to believe that the same is false;
- (xxvii) refuses or, by culpable neglect, omits to make or send a report or return which it is his duty to make or send;
- (xxviii) knowingly makes a false accusation against any other prison officer or prisoner, or wilfully suppresses any material facts, or makes or joins in making any anonymous complaint;
- (xxix) is unduly familiar with prisoners;
- (xxx) assists or connives with any prisoner in having or obtaining any prohibited article;
- (xxxi) with intent to cause any breach of this Act, holds correspondence or any intercourse with persons who have been discharged from prison or with their relatives or friends;
- (xxxii) being called upon by the Commissioner (duly authorized thereto by the Minister) to furnish a full and true statement of his financial position, fails to do so;
- (xxxiii) contravenes section [17](#), [18](#), [19](#) or [21](#);
- (xxxiv) is guilty of any neglect of duty; or
- (xxxv) is guilty of any other act, conduct, disorder, or neglect of duty to the prejudice of good order or discipline,  
shall be guilty of an offence against discipline.

*[Note: numbering as in original.]*

- (3) Nothing in this section shall be construed to exempt any prison officer from being proceeded against for any offence against any other law, so however that no such officer shall be punished twice for the same act or omission.

#### 44. Prison officer to have power to arrest

Any prison officer may arrest without warrant any prison officer, not being an officer of his own or of senior rank or grade, whom he suspects on reasonable grounds of having committed an offence under [section 43](#). A prison officer effecting an arrest under this section shall forthwith bring the accused before the officer in charge, who shall cause the case to be heard without undue delay and may order the remand of the accused in custody for so long as may reasonably be necessary.

#### 45. Confinement of arrested prison officer

Until such time as his case is heard in accordance with this Act, any prison officer arrested under this Act may be confined in any prison quarters allocated for prison or guardroom purposes, or, if no other suitable quarters are available, in any prison quarters set apart for the detention of prisoners awaiting trial.

#### 46. Power to try junior prison officers

- (1) The Commissioner, or a senior officer authorized by the Commissioner, may inquire into any alleged offence against discipline by a prison officer who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, the offender may be punished by—
  - (a) admonition;
  - (b) reprimand;
  - (c) severe reprimand;
  - (d) stoppage of pay where there has been absence without leave, or loss by negligence of or injury to public property;
  - (e) fine not exceeding a month's pay;
  - (f) reduction in rank;
  - (g) dismissal, subject to any regulation;
  - (h) the punishment set out in paragraph (a) or (b) and the punishment set out in paragraph (d);
  - (i) any two or more of the punishments set out in paragraphs (c) to (g) inclusive:  
Provided that, in the case of dismissal, the only further punishments which may be imposed shall be those set out in paragraphs (d) and (e).
- (2) Every punishment awarded or recommendation made by a senior officer under subsection (1) shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

#### 47. Power to try subordinate prison officers

- (1) The Commissioner, a senior officer or officer in charge may inquire into any alleged offence against discipline by a prison officer subordinate to him who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, the offender may be punished by—
  - (a) admonition;
  - (b) reprimand;
  - (c) severe reprimand;
  - (d) confinement to lines or extra duty for period not exceeding seven days, or both such confinement and such extra duty;
  - (e) fine not exceeding one-half of a month's pay;
  - (f) forfeiture of one or more efficiency badges;

- (g) stoppage of pay where there has been absence without leave, or loss by neglect of or injury to public property;
- (h) reduction in rank;
- (i) dismissal, subject to any regulation;
- (j) the punishment set out in paragraph (a) or (b) and the punishment set out in paragraph (g);
- (k) any two or more of the punishments set out in paragraphs (c) to (z) inclusive:

Provided that, in the case of dismissal, the only further punishments which may be imposed shall be those set out in paragraphs (e) to (g) inclusive.

- (2) Any sentence of a fine exceeding twenty shillings, reduction rank forfeiture of efficiency-badges, or dismissal awarded by a senior officer or officer in charge under subsection (1) shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

#### **48. Procedure after award of punishment**

- (1) The Commissioner may enhance vary, or remit, my punishment referred to him for confirmation under section [46](#) or [47](#) and may cancel any recommendation made thereunder.
- (2) An appeal against any decision of the Commissioner relating to any punishment awarded or recommendation made under section [46](#), [47](#) or section [51](#) (2) shall lie to the Minister, who may vary, or remit any such punishment and may act upon any such recommendation as he deems fit. No appeal shall lie under this subsection unless notice of intention to appeal has been given to the Commissioner within fourteen days of his decision being conveyed to the prison officer concerned.
- (3) No decision by the Minister or Commissioner in terms of this section shall be made to the prejudice of the prison officer concerned unless such, officer has had an opportunity of making representations in writing on his own behalf to the Minister or Commissioner, as the case may be.

#### **49. Stoppages of pay**

Any stoppage of pay exceeding one half of the offender's monthly pay imposed by an officer in charge shall be subject to confirmation by the Commissioner and all stop pages of pay shall be recovered from the offender's pay due or thereafter accruing, and so much only of his pay shall be stopped as shall leave him a residue of at least one-half of his monthly pay.

#### **50. Power to summons witnesses**

- (1) Any prison officer empowered make an inquiry under sections [46](#) and [47](#) may, subject to the general or special approval of the Commissioner, summon and examine witnesses on oath, may require the production of any document which in his opinion is relevant to such inquiry, may from time to time adjourn any such inquiry and, for the purposes of this section, may administer oaths.
- (2) Any person summoned as a witness under subsection (1) who fails to attend at the time and place mentioned in the summons or, when required so to do by the prison officer holding the inquiry, fails to attend any adjourned hearing, refuses to take the oath or to answer any question lawfully put to him shall on conviction in a magistrate's court be liable to a fine not exceeding five pounds, or to imprisonment for a period not exceeding one month:

Provided that no witness shall be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

- (3) Any person other than a prisoner summoned as a witness under subsection (1) shall be entitled to be paid such allowances and expenses as are normally allowed to such a witness when giving evidence before a magistrate's court.

### 51. Offence against discipline may be tried by a magistrate

- (1) In any case where, it appears to the Commissioner, the senior officer or the officer in charge who is inquiring into an alleged offence against [section 43](#) that the offence alleged to have been committed would not, by reason of its gravity or by reason of previous offences or for any other reason, be adequately punished by any of the punishments provided in [sections 46 and 47](#) the Commissioner or such officer, as the case may be, shall, without recording a finding, stay the proceedings and, if the case is being investigated by a senior officer or the officer in charge, such officer shall transmit the proceedings to the Commissioner. Where any proceedings have been stayed by the Commissioner or by a senior officer or the officer in charge the Commissioner may order the accused to be taken before a magistrate's court to be dealt with in accordance with subsection (3).
- (2) Where a case has been stayed and transmitted to the Commissioner, the Commissioner may, in lieu of ordering the accused to be dealt with by a magistrate's court, himself hear and determine the case, or direct the case to be dealt with by the senior officer or the officer in charge who transmitted it or by any other officer.
- (3) Where an accused person is taken before a magistrate's court under subsection (1), he shall be liable, for any of the offences mentioned in [section 43](#) to a fine not exceeding three months' pay, and to imprisonment for six months.

### 52. Interdiction

- (1) The Commissioner may, at anytime in the interests of discipline or public interest, interdict from duty any prison officer if disciplinary or criminal proceedings are being instituted against him.
- (2) Any prison officer interdicted in terms of subsection (1) shall receive such portion of his pay, being not less than one half, as the Commissioner shall determine.
- (3) If such prison officer is not dismissed from the service, he shall receive for the period of his interdiction—
  - (a) in the case of acquittal, his full pay;
  - (b) in any other case, such proportion of his pay as the Commissioner may decide.An appeal shall lie to the Minister from any decision of the Commissioner under paragraph (b) and such appeal shall be made and may be dealt with, *mutatis mutandis*, in accordance with [section 48](#) (2).
- (4) A prison officer shall not by reason of being interdicted from office cease to be a prison officer. During the term of such interdiction, the powers, functions, and privileges vested in him as a prison officer shall be in abeyance but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been interdicted.

### 53. Dismissal upon fine or imprisonment

The Minister may, on the recommendation of the Commissioner, dismiss from the service any junior or subordinate officer sentenced by a court to a fine or imprisonment in respect of any offence against any law.

**54. Pay not to accrue during absence without leave or imprisonment**

Unless the Commissioner otherwise orders, no pay shall accrue to any prison officer in respect of any day during which he is absent from duty without leave or is undergoing any sentence of imprisonment.

**Part VII – Desertion or inciting****55. Desertion**

Any prison officer who absents himself from duty without reasonable cause for a period exceeding twenty-one days shall be deemed to be a deserter and shall be liable to a fine of £100 and to imprisonment for two years.

**56. Deserter maybe apprehended by a person or police officer**

Any prison officer or police officer who has reason to believe that any prison officer has deserted from the service may apprehend him and—

- (a) take him forthwith to a police station and lay a charge against him; or
- (b) if there is no police station in the vicinity, take such person forthwith before a magistrate with a view to obtaining a warrant for his arrest.

**57. Penalty for inciting prison officer to desert**

Any person who by any means, directly or indirectly, procures or persuades, or attempts to procure or persuade, any officer of the service to desert, or who aids, abets or is accessory to the desertion of any officer of the service, or who, having reason to believe that any person is a deserter, harbours such deserter, or aids him in concealing himself or assists in his rescue, shall be liable to a fine of £50 and to imprisonment for six months.

**58. Penalty for mutiny or sedition**

Any prison officer who mutinies and any prison officer or other person who, directly or indirectly, instigates, commands, counsels, or solicits any mutiny or sedition amongst any prison officers or prisoners or disobedience to any lawful command given by any prison officer, or who attempts to seduce any prison officer from his allegiance or duty, shall be liable to a fine of £100 and to imprisonment for two years, and in addition to any such punishment shall be liable to a sentence of corporal punishment in accordance with [section 98](#).

**Part VIII – Admission and confinement of prisoners****59. Admission of prisoners**

- (1) No person shall be admitted into a prison unless accompanied by—
    - (a) a remand warrant, order of detention, warrant of conviction or of committal under the hand of any person authorized to sign or countersign such warrant or order under any law;
    - (b) an order of a court martial;
    - (c) a written requisition of an immigration officer issued in terms of the Immigration Act; or
- [Cap. 15:03]*

- (d) an order in writing signed by a member of a police force of or above such rank as may be prescribed.
- (2) An order issued under subsection (1) (d) shall be valid only for such period as is necessary to obtain a warrant or order referred to in subsection (1) (a) and for no longer.
- (3) The officer in charge shall satisfy himself before the admission of a prisoner that such prisoner is the person named in the requisition or in the warrant or order of detention accompanying him, and that such requisition, warrant, or order bears the signature of the proper authority lawfully authorized to issue it, and that it is in all other respects in order.
- (4) The officer in charge shall not refuse to accept any prisoner merely on the ground that there is an error on the face of any requisition, warrant or order of detention accompanying such prisoner, but shall take steps as soon as practicable to have such error corrected.

#### **60. Admission of infant child with female prisoner**

Subject to such conditions as may be specified by the Commissioner any unweaned infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessaries at the public expense:

Provided that, when such child has been weaned, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause such child to be handed over to such relatives or friends, or, if he is not so satisfied, shall hand such child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.

#### **61. Particulars of prisoner to be recorded**

Upon the admission to prison of any person, the officer in charge shall cause to be recorded such particulars regarding such person as may be prescribed.

#### **62. Search of prisoners**

Every prisoner, male or female, shall be searched on admission, and at such time subsequently as may be prescribed by a prison officer of his or her own sex, but not in the presence of a person of the opposite sex, and all prohibited articles taken from him.

#### **63. Money and other effects of prisoners to be kept in custody of the officer in charge**

- (1) All money, clothes, or other effects brought into prison by any prisoner, or sent to a prison for his use, which he is not permitted to retain shall be placed in the custody of the officer in charge who shall keep an inventory of the same, and all such money, clothes, or other effects shall be returned to such prisoner when he is released or discharged.
- (2) Where any clothes of such prisoner, are so old, worn-out, or dirty as to be unsuitable for further use, the officer in charge may order the same to be destroyed, and in such case, on the release or discharge of such prisoner, the officer in charge may, at the public expense, provide him with suitable clothing.
- (3) The officer in charge may refuse to take into prison any property of a prisoner which by reason of its bulk, nature, or excessive quantity cannot be conveniently stored in the prison.

## Part IX – Segregation and classification of prisoners

### 64. Separation of prisoners

- (1) Male and female prisoners shall be kept apart and confined in separate parts of the prison in such manner as to prevent their communicating the one sex with the other.
- (2) Subject to subsection (1), prisoners of each sex shall be divided into the following classes—
  - (a) unconvicted prisoners;
  - (b) convicted prisoners;
  - (c) young prisoners;
  - (d) adults;
  - (e) first offenders;
  - (f) prisoners with previous convictions;
  - (g) prisoners suspected or certified as being of unsound mind;
  - (h) such other classes as the Commissioner may determine; and, so far as the prison accommodation renders it practicable, each such class shall be kept apart from the other classes.

## Part X – Custody and removal of prisoners

### 65. Prisoners in lawful custody of officer in charge

Every person confined in a prison shall be in the lawful custody of the officer in charge thereof and, subject to this Act, shall remain in such lawful custody and be subject to prison discipline and to thin. Act daring the whole period of his imprisonment, whether he is or is not within the precincts of a prison.

### 66. Production of prisoners in court

- (1) Where it appears to the High Court or any magistrate's court that the attendance before such court of a person who is a prisoner is necessary for the purpose of obtaining evidence in any proceeding before such court the judge or magistrate, as the case may be, may issue an order directed to the officer in charge of the prison where the prisoner is serving a sentence, requiring him to produce the prisoner at the time and place specified in the order, and such officer in charge shall arrange for compliance with such order.
- (2) The court before which any person is produced in accordance with an order issued in terms of subsection (1) may give such directions as to the costs of compliance with the order as such court may deem fit.

### 67. Prisoners under police escort

- (1) Prisoners on remand or committed for trial, who are required to attend any court, may be taken for that purpose into police custody at the prison to which they have been committed, and shall remain under police supervision and guard until returned to the prison or discharged by the court.

- (2) Where on the removal of any prisoner from any prison the number of prison officers is insufficient to provide escort for such prisoner, the officer in charge of the prison from which the prisoner is to be removed may, with the general or special permission of the Commissioner of Police in Malawi, deliver the prisoner to any member of the police force who may be detained for such duty.
- (3) While a prisoner is in the custody of a member of a police force in accordance with this Act, he shall be deemed to be in lawful custody, and escape from the custody of such member of a police force shall be deemed to be escape from lawful custody.

#### **68. Statements to police officers**

- (1) Subject to subsection (2), a member of a police force, with the approval of the officer in charge of a prison and on production of an order in writing from a member of a police force of or above such rank as may be prescribed may, in the sight and hearing of a prison officer, interview within a prison any prisoner for purposes connected with the investigation of any offence whatsoever.
- (2) If the officer in charge is satisfied that a prisoner is willing to be interviewed by members of a police force out of the sight and hearing of a prison officer, then the officer in charge may permit that prisoner to be interviewed, by not less than two members of a police force within the prison and out of the sight and hearing of a prison officer.

#### **69. Prisoners and criminal investigations**

- (1) If a commissioned officer of a police force certifies verbally or in writing that a prisoner is required at a police station or any other place in the interests of justice or in connexion with the investigation of a crime, whether committed or alleged to have been committed by such prisoner or by some other person and whether or not such prisoner is detained in connexion with such crime, the officer in charge in whose custody such prisoner is may release, remove, or permit the removal of such prisoner from prison in accordance with this section.
- (2) An officer in charge, may release any unconvicted prisoner into police custody for such period as he considers necessary for the purposes mentioned in subsection (1).
- (3) An officer in charge may remove or permit the removal of a convicted prisoner from prison in the custody of a prison officer, and in any interview between the police and such prisoner such prison officer shall remain in sight of the prisoner.
- (4) Subject to the general or specific directions, of the Commissioner, an officer in charge may release any convicted prisoner into police custody for such period as he considers necessary for the purposes mentioned in subsection (1).

#### **70. Removal of prisoners from one prison to another**

The Commissioner may, by any general or special order, direct that any prisoner shall be removed to any prison other than that in which he is confined or to which he has been committed.

#### **71. Certain prisoners may be restrained**

Whenever the officer, in charge considers, it necessary for the safe custody of any prisoner that he should be confined by means of mechanical restraint, he may so confine him but in accordance with such regulations as may be prescribed.

## 72. Mentally disordered or defective prisoners

- (1) Any convicted prisoner adjudged according to any law to be a mentally disordered or defective person shall remain in the place named in the order providing for his detention as such until such prisoner has been discharged in accordance with such law, whereupon the Minister shall, if such prisoner has not completed the sentence in respect of which he was committed, order that he be delivered into the custody of the officer in charge of a prison for the completion of such sentence. In cases where the prisoner has completed the sentence in respect of which he was committed, he shall forthwith be released.
- (2) If any prisoner mentioned in subsection (1) was sentenced to death before being adjudged to be a mentally disordered or defective person and such sentence has not, at the time when he is certified to be of sound mind, been commuted to a term of imprisonment, then the Minister shall report the matter to the President.

## 73. Removal of sick prisoners to hospital

- (1) In the case of the serious illness of a prisoner, the officer in charge, on the advice of the medical officer, may make an order for the removal of such prisoner to a hospital. In cases of emergency, or in the absence of the medical officer, such removal may be ordered by the officer in charge.
- (2) So long as any prisoner who has been removed to any hospital under this section remains therein, he shall be deemed to be in lawful custody. The medical authority in charge of the hospital shall on admission of such prisoner, and at the end of every month while such prisoner remains in hospital, transmit to the officer in charge of the prison whence he came a certificate signed by him, stating his opinion as to the necessity for such prisoner to remain in the hospital and, when possible, stating the period for which such prisoner should so remain.
- (3) When, in the opinion of the medical authority in charge of any hospital, it is no longer necessary that any prisoner should remain therein, he shall transmit to the officer in charge of the prison whence such prisoner came a certificate stating that such necessity has ceased, and thereupon such officer in charge shall cause such prisoner to be brought to the prison, if he is still liable to be confined therein.
- (4) Every reasonable precaution shall be taken by the medical and other officers of any hospital to prevent the escape of any prisoner at any time under treatment therein, and it shall be lawful for such officers to take such measures for preventing the escape of any such prisoner as are reasonably necessary:  
  
Provided that the medical authority in charge of any such hospital may refuse to take or permit any action authorized under this section, if, in his opinion, such action would be prejudicial to the health of such prisoner or impracticable for any good and sufficient reason.
- (5) Where on account of the gravity of the offence for which any prisoner is in custody, or for any other reason, an officer in charge considers it to be desirable to take special measures for the security of such prisoner while he is undergoing treatment in hospital, it shall be lawful for him, by order in writing, to give such prisoner into the custody of fit and proper persons, being not less than two in number and willing to undertake such duty, one of whom at least shall always be with such prisoner by day and night, and such persons are hereby vested with authority to do all things reasonably necessary to prevent such prisoner from escaping, and shall be answerable for his safe custody until such time as he is handed over to an officer in charge on his discharge from hospital, or until such time as his sentence expires, whichever may first occur.

**74. Serving sentence while in hospital**

The period during which a prisoner has been detained in any hospital or institution in terms of section [72](#) or [73](#) shall be reckoned as part of his period of imprisonment.

**Part XI – Labour of prisoners****75. Employment of convicted prisoners**

- (1) Subject to subsection (2), every prisoner under sentence of imprisonment may be kept to labour within or without the precincts of any prison in any part of Malawi and in any employment that may be approved by the Minister.
- (2) Female prisoners shall not be employed outside a prison except on the recommendation of a medical officer, and then only on such labour as may be prescribed.

**76. Employment of unconvicted prisoners**

Unconvicted prisoners may elect to be given light employment, but shall be required to keep clean their cells, precincts of cells, clothing, furniture, and utensils.

**Part XII – Maintenance****77. Maintenance of unconvicted prisoners from private sources**

An unconvicted prisoner may be permitted to maintain himself and to arrange for the purchase of, or receive from private sources at proper hours, such food, clothing, bedding, or other necessaries as the Commissioner may from time to time determine.

**78. Food etc., not to be transferred to other prisoners**

No food, clothing, bedding or other necessaries permitted under [section 77](#) shall be given, hired, or sold to any other prisoner, and any prisoner who contravenes this section shall be liable to lose all privileges permitted under [section 77](#) for such time as the officer in charge may determine.

**79. Food, clothing and bedding for unconvicted prisoners**

If an unconvicted prisoner does not provide himself with food, clothing, and bedding, he shall receive the normal prison food, clothing, and bedding.

**Part XIII – Prohibited articles and areas****80. Power to search**

Any prison officer may examine anything being brought into or being taken out of a prison and may stop and search, or cause to be stopped and searched, any person or vehicle suspected by him of bringing any prohibited article into, or taking any such article out of, a prison, or of carrying out of a prison any property belonging to such prison, and the officer in charge shall immediately be informed of the finding of any such article or property and may seize and dispose of it in accordance with the instructions of the Commissioner.

### **81. Penalty for introduction or removal of prohibited articles into and from prison and for unauthorized communication with prisoners**

Any person who, save as is provided in this Act—

- (a) removes from or introduces into or throws from or into or attempts by any means whatsoever to remove from or introduce into a prison or takes from or gives to any prisoner any article whatsoever; or
  - (b) communicates with any prisoner,
- shall be liable to a fine of £25 and to imprisonment for six months.

### **82. Power of arrest**

Any prison officer may arrest without a warrant any person who—

- (a) commits or attempts to commit any offence against [section 81](#);
  - (b) when suspected by him of committing any offence against [section 81](#) refuses on demand of such prison officer to give his name and address; or
  - (c) on the demand of a prison officer, gives a name or an address which such prison officer knows or has reason to believe to be false or which subsequently proves to be false,
- and shall deliver such person into the custody of a member of a police force, and thereupon such member of a police force shall proceed as if the offence had been committed in his presence.

### **83. Unauthorized communications**

- (1) Every letter or document, except as may be prescribed, written in a prison by or on behalf of a prisoner shall be delivered to the officer in charge of that prison who shall, before the letter or document is removed from the prison, clearly endorse or cause to be endorsed thereon—
  - (a) the name of the prison;
  - (b) a statement to the effect that its removal from the prison is authorized; and
  - (c) the signature or initials of the prison officer making the endorsement.
- (2) Every person who comes into possession of a letter, or document which he has reasonable cause to believe was written in prison by or on behalf of a prisoner and which, is not endorsed in accordance with subsection (1) shall report that fact as soon as possible to the Commissioner or the officer in charge of the nearest prison and shall deliver the letter or document or cause it to be delivered to the Commissioner or such officer in charge.
- (3) No person shall, without the authority of the Minister, publish or cause to be published or transmit to any person for publication or otherwise the whole or any part of a letter or document which he has reasonable cause to believe was written in a prison by or on behalf of a prisoner and which is not endorsed in accordance with subsection (1).
- (4) Any person who contravenes or fails to comply with this section shall be liable to a fine of £25 and to imprisonment for six months.

### **84. Offences in respect of prisons and prisoners**

Any person who—

- (a) is found loitering within one hundred yards of any prison, or other place where prisoners may be for the purpose of imprisonment or labour, and who fails to depart therefrom upon being requested to do so by any prison officer or by a member of a police force; or
- (b) in any manner wilfully interferes with any prisoner or gang of prisoners, shall be liable to a fine of £25 and to imprisonment for six months.

#### **85. Removal of certain offenders**

Any person who is found committing an offence against [section 84](#) may be removed from the place where he is committing such offence by a prison officer or a member of a police force and, if the offence is repeated by any such person after he has once been removed in accordance with this section, he may be arrested without warrant by prison officer who, if he makes such an arrest, shall hand the offender over to a member of a police force.

#### **86. Unlawful possession of articles supplied to prison officers**

Any person, other than a prison officer, who is found in possession of any article which has been supplied to any prison officer, for the purposes of his duty, or of any other prison property, and who fails to account satisfactorily for his possession thereof, or who without lawful authority, purchases or receives any such article, or property from any prison officer, or who aids or abets any prison officer in selling or disposing of any such article or property, shall be liable to a fine of £25 and to imprisonment for six months.

#### **87. Offences in connexion with uniforms and decorations**

- (1) Any person who wears or uses without due authority any uniform or decoration supplied to or authorized for use by any member of the service, or any uniform or decoration so nearly resembling the same as to be calculated to deceive, shall be guilty of an offence.
- (2) Any person who falsely represents himself by act or words to be a person who is or has been entitled to use or wear any uniform or decoration referred to in subsection (1) shall be guilty of an offence.
- (3) Any person convicted of an offence under this section shall be liable to a fine of £25 and to imprisonment for six months.

#### **88. Notice to be displayed stating offences in respect of prisons and prisoners**

The officer in charge shall cause to be affixed in a conspicuous place outside the prison a notice setting forth the acts prohibited under sections [81](#), [84](#) and [86](#) and the penalties which may be incurred by their commission.

### **Part XIV – Discipline of prisoners**

#### **89. Prison offences**

The following acts and omissions shall be prison offences when committed by a prisoner—

- (1) mutiny;
- (2) incitement to mutiny;
- (3) quarrelling with any other prisoner;

- (4) making groundless complaints;
- (5) making false charges against prison officers in reply to any questions as to matters concerning the prison or prison discipline, or answering untruthfully any questions put by a prison officer while carrying out this Act;
- (6) holding any communication, in writing, by word of mouth or otherwise, with a prisoner or any other person in disobedience of the regulations of the prison;
- (7) doing any act calculated to create any unnecessary alarm among prisoners or prison officers;
- (8) omitting or refusing to march as ordered, when moving about the prison, or when proceeding to or returning from work;
- (9) refusing, without satisfactory reason, to eat the food prescribed;
- (10) eating or appropriating any food not assigned to him or taking from or adding to the portions of food assigned to other prisoners;
- (11) without permission of a prison officer, removing food from a cookhouse or from a place where meals are served, or disobeying any order as to the issue and distribution of food and drink;
- (12) wilfully destroying food, or throwing it away without orders;
- (13) introducing into food or drink anything likely to render it unpalatable or unwholesome;
- (14) omitting or refusing to wear the clothing issued to him, or exchanging any portion of it for the clothing of other prisoners, or losing, discarding, damaging, or altering any part of it;
- (15) removing, defacing, or altering any distinctive number, mark, or badge attached to or worn on such clothing;
- (16) omitting or refusing to keep his person clean, or disobeying any order as to the cutting or shaving of hair;
- (17) omitting or refusing to keep clothing, blankets, bedding, or equipment clean, or disobeying any order as to the arrangement or disposition of any such articles;
- (18) interfering in any way with prison locks, lamps, or lights, or other public property without authority;
- (19) stealing the prison clothing or any part of the prison equipment of any other prisoner;
- (20) committing a nuisance in any part of the prison;
- (21) defacing or injuring the walls, furniture, or other property of the prison;
- (22) spitting on or otherwise soiling any floor, door, wall, or other part of the prison building, or any article in the prison;
- (23) wilfully fouling latrines, washing or bathing places;
- (24) failing or refusing to take due care of, or injuring, destroying, or misappropriating any tools or any clothing or other articles, being public property;
- (25) wilfully causing to himself, or failing to report, any illness, injury, or disability;
- (26) any act of insubordination;
- (27) failing to assist in the suppression of violence;
- (28) taking part in any attack upon any prison officer or upon another prisoner;

- (29) escaping, conspiring with a person to procure the escape of a prisoner or assisting or inciting another prisoner to escape from the prison in which he is detained or from a conveyance, hospital or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody;
- (30) possessing any instrument or other thing with intent to procure his own escape or that of another prisoner;
- (31) omitting or refusing to help any prison officer to prevent an escape, an attempted escape, or an attack upon such officer or upon another prisoner;
- (32) contravening or failing or neglecting to comply with any regulation or lawful order, including a standing order, made under this Act or under any regulation with which it is his duty to comply;
- (33) treating with disrespect any prison officer, or any visitor or any person employed in connexion with the prison;
- (34) being idle, careless, or negligent at work, or refusing to work;
- (35) leaving his cell or other appointed location, or his place of work, without permission;
- (36) receiving or having in his possession any prohibited article which he is not entitled to have;
- (37) any assault or act of violence;
- (38) making unnecessary noise;
- (39) disorderly or indecent behaviour;
- (40) insulting, threatening, or indecent language;
- (41) malingering, or refusing to undergo medical treatment;
- (42) wilfully bringing a false accusation against any prison officer or prisoner;
- (43) abetting the commission of any prison offence; or
- (44) any other act, conduct, disorder, or neglect to the prejudice of good order or discipline.

## 90. Trial of prison offences

- (1) A charge against a prisoner in respect of a prison offence may, subject to this section, be heard and determined—
  - (a) before a magistrate's court, by a magistrate; or
  - (b) within a prison, by the Commissioner or, at the request of the Commissioner or the officer in charge, by a visiting justice.
- (2) A prisoner charged with a prison offence under subsection (1) (b) shall be informed of the nature of the charge and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.
- (3) The Commissioner may confer the power of hearing and determining a charge under subsection (1) (b) upon an officer in charge and, in so doing, may limit the officer's power to award punishments conferred by [section 92](#) to punishments less stringent than those specified in that section.
- (4) Nothing in this section contained shall be construed as precluding the prosecution of a prisoner for an offence in terms of any other law, so, however, that no prisoner shall be punished twice for the same act or omission.

## 91. Punishments for prison offences heard and determined before a magistrates court

- (1) A prisoner found guilty of a prison offence under [section 90](#) (1) (a) may be awarded—
  - (a) any one or more or all of the following punishments—
    - (i) imprisonment for a period not exceeding six months;
    - (ii) loss, for a period not exceeding sixty days, of a remission of sentence earned in terms of [section 107](#);
    - (iii) corporal punishment in accordance with [sections 96, 97](#) and [98](#);
    - (iv) deprivation of privileges;
    - (v) extra work for a period not exceeding ten days; and, additionally or alternatively,
  - (b) if he is of or over the age of sixteen years, one, but not more than one, of the following punishments—
    - (i) solitary confinement for a period not exceeding twenty-five days;
    - (ii) solitary confinement with penal diet in accordance with [section 93](#) (1);
    - (iii) reduced diet with or without solitary confinement in accordance with [section 93](#) (2).
- (2) If a prisoner is found guilty of a prison offence specified in [section 89](#) (1), (2), (28), (29), (30) or (31), subsection (1) (a) (i) shall have effect as if the reference in that subsection to the words “six months” were a reference to the words “two years”.
- (3) A sentence of imprisonment awarded for a prison offence in terms of this section to a prisoner who—
  - (a) is a convicted prisoner shall commence on the date of expiry of the sentence of imprisonment being served by the convicted prisoner at the time of the offence;
  - (b) is not a convicted prisoner shall commence on the date the sentence of imprisonment is awarded.

## 92. Punishments for prison offences heard and determined within a prison

- (1) A prisoner found guilty of a prison offence under [section 90](#) (1) (b) may, subject to subsection (2), be awarded—
  - (a) any one or more or all of the punishments specified in [section 91](#) (1) (a) (ii) to (v) inclusive; and, additionally or alternatively,
  - (b) if he is of or over the age of sixteen years, one, but not more than one, of the punishments specified in [section 91](#) (1) (b).
- (2) The following provisions shall apply in connexion with the award, in terms of subsection (1), of a sentence of corporal punishment to a prisoner found guilty of a prison offence under [section 90](#) (1) (b)—
  - (a) in a case tried by the Commissioner or by a visiting justice the sentence shall not be subject to confirmation;
  - (b) in a case tried by a senior officer or officer in charge, the sentence shall be subject to confirmation by the Commissioner;

- (c) if a sentence of corporal punishment is not carried out, for medical reasons, the Commissioner, visiting justice, senior officer or officer in charge, as the case may be, may substitute for the sentence any punishment, other than corporal punishment, which he is authorized to award in accordance with subsection (1)

**93. Special provisions relating to the punishments of solitary confinement with penal diet and of reduced diet**

- (1) Punishment of solitary confinement with penal diet awarded to a prisoner found guilty of a prison offence shall not be awarded for a period exceeding fifteen days and, when awarded for a period exceeding three days, the punishment of penal diet shall be imposed, at three-day intervals, for periods of not more than three consecutive days at a time. No prisoner sentenced to solitary confinement with penal diet shall be put to any form of manual labour until the sentence is completed and no period of solitary confinement served in terms of this subsection shall exceed fifteen days.
- (2) Punishment of reduced diet with or without solitary confinement shall not be awarded to a prisoner found guilty of a prison offence for a period exceeding twenty-five days and, when awarded for a period exceeding eight days, the punishment of reduced diet shall be imposed, at three-day intervals, for periods of not more than eight consecutive days at a time.

## **Part XV – Escapes**

**94. Assisting prisoner to escape, etc.**

- (1) A person, other than a prisoner, who—
  - (a) aids a prisoner in escaping or attempting to escape, conspires with a person to procure the escape of a prisoner or incites a prisoner to escape from the prison in which he is detained or from a conveyance, hospital or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody; or
  - (b) with intent to facilitate the escape of a prisoner—
    - (i) conveys anything—
      - (A) to a prisoner; or
      - (B) into a conveyance, prison, hospital or other place whatsoever where or in which a prisoner may be;or
    - (ii) places anything outside a conveyance, prison, hospital or other place whatsoever where or in which a prisoner may be so that it may come into the possession or use of a prisoner,shall be liable to imprisonment for seven years.

**95. Harboring prisoners**

A person harbouring or employing a prisoner whom he knows to be unlawfully at large shall be liable to a fine of £50 and to imprisonment for six months.

## Part XVI – Corporal punishment

### 96. Prison offences for which corporal punishment may be awarded

No sentence of corporal punishment for a prison offence shall be awarded under section 91 or 92 unless the prison offence is one specified in section 89 (1), (2), (28), (29), (30), (31) or (37) or is a third or subsequent offence against any provision of that section.

### 97. Certain prisoners not liable to corporal punishment

No sentence of corporal punishment for a prison offence shall be awarded in terms of section 91 or 92 to a prisoner who is—

- (a) a woman; or
- (b) under sentence of death.

### 98. Number of strokes to be specified

Whenever a sentence of corporal punishment for a prison offence is awarded under section 91 or 92 the number of strokes, which shall not exceed twelve, shall be specified.

### 99. Corporal punishment; confirmation

Where any law provides for confirmation of any sentence of corporal punishment awarded by a court, no such sentence shall be carried out until it has been confirmed in accordance with such law.

### 100. Type of cane and method of infliction

Corporal punishment shall be inflicted with a cane of a type and in a manner approved by the Minister.

### 101. Medical officer and officer in charge to be present while corporal punishment is being inflicted

A sentence of corporal punishment shall not be carried out unless—

- (a) a medical officer has, after examination, certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him; and
- (b) the medical officer who made the examination referred to in paragraph (a) and the officer in charge are present while the corporal punishment is being inflicted on the prisoner.

### 102. Sentence of corporal punishment may be stayed

The medical or prison officer mentioned in section 101 may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out if in his opinion the punishment is likely to cause more serious injury than is contemplated in the sentence.

### 103. Corporal punishment not to be inflicted by instalments

No sentence of corporal punishment shall be carried out by instalments.

## Part XVII – Prisoners under sentence of death

### 104. Confinement of condemned prisoner

Every prisoner sentenced to death shall be confined in some safe place within a prison and, if possible, shall be kept apart from other prisoners and shall be placed under constant observation both by day and by night.

### 105. Persons who may have access to condemned prisoner

No person other than a prison officer, a medical officer, a visiting justice, a minister of religion, or person authorized by the Commissioner shall have access to a prisoner under sentence of death:

Provided that such prisoner may, with the consent of and subject to any reasonable conditions which may be imposed by the Commissioner or the officer in charge, be visited by his legal advisers and such of his relatives and friends as he may express a wish to see.

### 106. Attendance at execution by officials

- (1) Executions shall be carried out at such prisons as the Commissioners may specify and shall be attended by the officer in charge and such other prison officers as the Commissioner or officer in charge may direct, and may be attended by the sheriff, or deputy sheriff, by a minister of religion and such other persons as the Minister may authorize.
- (2) As soon as may be after sentence of death has been executed on the prisoner, the medical officer shall examine the body and shall ascertain the fact of death and shall sign a certificate thereof and deliver such certificate to the officer in charge, who shall also sign such certificate and transmit it to the registrar of the court which imposed the sentence.

## Part XVIII – Remission of sentence

### 107. Remission

- (1) A convicted prisoner under sentence of imprisonment for a period of more than one month, other than a prisoner sentenced to imprisonment for life, may earn by satisfactory industry and good conduct remission of one-third of his sentence:

Provided that in no case shall a sentence be reduced by reason of remission to less than one month.

- (2) Any convicted prisoner who, immediately before the date of commencement of the Prisons Amendment Act, 1962 (that is to say, the 1st October, 1962), was serving a sentence of imprisonment of less than three years, may earn by satisfactory industry and good conduct remission of his sentence equal to—

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- (a) one-quarter of the period of imprisonment which he had served at the said date; and
- (b) one-third of the sentence which was imposed on him and which is unexpired at the said date;

and accordingly, any remission credited to such prisoner on the said date shall be disregarded:

Provided that in no case shall a sentence be reduced by reason of remission to less than one month.

- (3) Any convicted prisoner other than a prisoner—
  - (a) sentenced to imprisonment for life; or
  - (b) referred to in subsection (4) or in [section 109](#), who, immediately before the date of commencement of the Prisons Amendment Act, 1962, was serving a sentence of imprisonment of three years or more, may earn by satisfactory industry and good conduct remission of one-third of his sentence.
- (4) Any convicted prisoner who, immediately before the date of commencement of the Prisons Amendment Act, 1962, was being detained in prison in consequence of the cancellation of a licence granted to him under the provisions then comprising Part XIX of this Act to be at large in Malawi or in any other territory, may earn by satisfactory industry and good conduct remission of one-third of the sentence of imprisonment which was imposed on him and which was unexpired at the date his detention commenced in consequence of the cancellation of his licence.
- (5) For the purpose of giving effect to subsections (1), (2), (3) and (4) every prisoner referred to in those subsections shall—
  - (a) in the case of a prisoner referred to in subsection (1), on his admission to prison; and
  - (b) in the case of a prisoner referred to in subsections (2), (3) and (4), on the date of commencement of the Prisons Amendment Act, 1962, be credited with the full amount of remission he can earn from which shall be deducted any loss of remission awarded to him for a prison offence in terms of [section 91](#) or [92](#).
- (6) The Commissioner may restore in whole or in part any remission forfeited or lost under this Act including any remission forfeited or lost before the date of commencement of the Prisons Amendment Act, 1962.

#### 108. Remission on special grounds

The Commissioner may recommend to the Minister, who, if he thinks fit, may recommend to the President that remission should be granted to a prisoner by reason of the meritorious conduct or the mental or physical condition of such prisoner.

### **Part XIX – Transitional provisions relating to a prisoner in relation to whom a licence to be at large was in force at the date of commencement of the Prisons Amendment Act, 1962**

#### 109. Transitional provisions

- (1) Notwithstanding the repeal of the former Part XIX of this Act by section 11 of the Prisons Amendment Act, 1962, the provisions of that Part, other than [section 113](#) (2) and (3), as in force before such repeal shall, subject to subsection (2), continue to apply in relation to a licence to be at large which was in force immediately before the date of commencement of the Prisons Amendment Act, 1962 (that is to say, the 1st October, 1962), and in relation to the person to whom that licence refers.

*[24 of 1962(F)]*

- (2) Any person referred to in subsection (1) who, after the date of commencement of the Prisons Amendment Act, 1962, is detained in prison by virtue of Part XIX of this Act as in force immediately before such date, may earn by satisfactory industry and good conduct remission of one-third of the sentence of imprisonment which was imposed on him and which was unexpired at the date such detention commenced.

- (3) For the purpose of giving effect to subsection (2) any prisoner referred to in that subsection shall, on the date on which his detention commences, be credited with the full amount of remission he can earn from which shall be deducted any loss of remission awarded to him for a prison offence under section 91 or 92.

## **Part XX – Release on licence of prisoners undergoing imprisonment for life**

### **110. Release on license of prisoners undergoing imprisonment for life**

- (1) The Minister may at any time if he thinks fit release on licence a prisoner undergoing imprisonment for life for any offence for which he was convicted, subject to such conditions as may be specified in the licence; and the Minister may at any time vary, modify or cancel any such condition.
- (2) The Minister who released a prisoner in terms of subsection (1) may at any time by order recall to prison that prisoner but without prejudice to the power of the Minister to release him on licence again: and where any prisoner is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.
- (3) An order made in terms of subsection (2) shall be sufficient authority for the arrest of the prisoner to whom it relates as if it were a warrant of arrest issued by a magistrate.

## **Part XXI – Report on long-term prisoners**

### **111. Report on long-term prisoners**

- (1) At the end of every four years' imprisonment of each prisoner undergoing imprisonment for life, or for a period exceeding seven years, the Commissioner shall forward, in accordance with this section, a report upon such prisoner.
- (2) If the prisoner was sentenced for an offence against any law, the report shall be submitted to the Minister.
- (3) Where the Minister asks for a report on any prisoner to be supplied at any time or at intervals more frequent than those provided in subsection (1), the Commissioner shall supply such report as requested, and shall arrange for compliance with any instructions as to pardon, respite, reprieve, commutation or remission of sentence given by the President.

## **Part XXII – Discharge of prisoners**

### **112. Officer in charge to be responsible for discharge of prisoners**

- (1) Every officer in charge shall be responsible for the due discharge from prison of all prisoners under his control immediately upon their becoming entitled thereto.
- (2) Where, by or under any enactment in force in Malawi, a prisoner becomes entitled to discharge from a prison otherwise than by the expiration of his sentence, the officer in charge shall not discharge him otherwise than in accordance with the terms of an order, warrant or instruction issued in writing under the hand of a person authorized to do so under such enactment or in due course of law.

**113. Day of discharge of prisoners**

All prisoners who are not persons committed to a prison under the provisions of a law relating to imprisonment for non-payment of debts shall be discharged by noon on the day on which they are entitled to be discharged, but should that day fall on a Sunday or public holiday, they shall be discharged by noon on the next preceding day not being a Sunday or public holiday.

**114. Travelling expenses of prisoner on discharge**

The travelling expenses to such place as the Commissioner may determine of a prisoner on his discharge from prison shall, if the Commissioner by standing orders or otherwise so directs, be paid out of moneys provided by Parliament.

**Part XXIII – Miscellaneous****115. List of prisoners detained to be delivered to High Court**

Every officer in charge within the area for which any session of a High Court is held for the trial of criminal cases shall deliver to that Court at the commencement of each such session a list of the unconvicted prisoners then within his prison, and that list shall specify in the case of each such prisoner the date of admission and the authority for detention, and shall deliver also a list of detained witnesses.

**116. Rewards for apprehension of escaped prisoners**

- (1) The Commissioner may offer rewards to persons who give information leading to the apprehension of prisoners who have escaped from custody, and any person giving any such information, whether or not any such offer has previously been made, and any person who apprehends, secures, and hands over or causes to be handed over to any officer in charge any prisoner who has escaped may be paid his just and reasonable expenses and, in addition, such sum by way of reward as the Commissioner may determine.
- (2) No payment of any sum as a reward shall be made under the authority of this section to any prison officer or member of a police force unless, in the opinion of the Commissioner, such exceptional circumstances exist as to justify such a payment being made.

**117. Commutation of death sentence to sentence of imprisonment**

Where the President pardons any person who has been sentenced to death on condition that he serves a period of imprisonment, that person shall be deemed to have been sentenced to such period by the court before which he was convicted.

**118. Detention of prisoners from other countries**

- (1) Every person who has been sentenced by a competent court within any country to which the Minister may declare this section to apply may be sent into, imprisoned, and detained in Malawi until the expiration of such sentence, or during such portion thereof as may be deemed necessary, and shall be treated and be subject to this Act as if he were undergoing the sentence of a competent court of Malawi.
- (2) A certificate under the hand of the Minister, setting forth that from documents laid before him it appears that the person named in the certificate has been sentenced as described in subsection (1) to a period of imprisonment as specified in the certificate, shall be accepted at all times during the

continuance of such period as conclusive evidence that such person is lawfully under detention in accordance with this section.

### **119. Removal of prisoners outside Malawi**

- (1) Every person who has been or may hereafter be sentenced to imprisonment by any competent court within Malawi may, by warrant signed by the Minister, be removed to any country in which he was born or where he normally resided before his entry into Malawi, in order that such person may be detained in any prison in such country until the expiration of his sentence or release according to law.
- (2) Every person detained in custody by reason of his having been charged with an offence and either found to have been insane at the time of such offence, or found or certified or otherwise lawfully proved to be unfit on the grounds of his insanity to be tried for such offence, and every person convicted of an offence, and afterwards certified or otherwise lawfully proved to be insane may, by warrant signed by the Minister, be removed to any such territory as is provided in subsection (1), in order that such person may be confined in such place as may be stated in such warrant until the Minister may otherwise determine.
- (3) Any person in course of removal under a warrant signed in accordance with this section shall be deemed to be in lawful custody whilst in any part of Malawi.
- (4) Nothing in this Act contained shall prevent the conviction, judgment, finding, order, or sentence recorded or made in respect of any person removed in terms of this section from being questioned within Malawi in the same manner as if he had not been removed, and the sentence of such person may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed.

### **120. Minister may grant permission to be absent from prison**

The Minister may, subject to such conditions as he may specify, grant a prisoner permission in writing to be absent from prison for a specified period for personal, family or other reasons if, in the opinion of the Minister, the circumstances of the case warrant the granting of such permission.

## **Part XXIV – Regulations and transitional**

### **121. Power to make regulations**

- (1) The Minister may make regulations with respect to any of the following matters—
  - (a) the powers and duties and terms and conditions of engagement and service of prison officers and other persons employed in prisons;
  - (b) the powers and duties of medical officers and the medical inspection of prisoners;
  - (c) measures for the prevention of contagious and infectious diseases in prisons;
  - (d) the powers and duties of visiting justices, official visitors, ministers of religion, and prisoners' aid societies;
  - (e) the type and description of cells for separate confinement;
  - (f) the safe custody, classification, hours of labour, mode of employment, segregation, diet, clothing, maintenance, instruction, discipline, discharge, treatment, correction, and training of prisoners;
  - (g) visits to and communications with prisoners;

- (h) the introduction of a progressive stage system;
  - (i) the introduction of a payment system for prisoners;
  - (j) for the responsibility and safe keeping of all stores, equipment, and accoutrements issued to prisons;
  - (k) for accounts and accounting procedure;
  - (l) for preventing prison officers or visitors or other persons who have access to prisons from divulging to any unauthorized person any information concerning the administration of prisons or the condition, treatment, and affairs of prisoners;
  - (m) the establishment, constitution, functions, and procedure of a prison officers' association and for matters incidental thereto;
  - (n) the custody and maintenance, including charges to be paid by a judgment creditor, of persons who may be committed to a prison under any law relating to imprisonment for non-payment of debts;
  - (o) the treatment of persons declared to be habitual criminals under any law;
  - (p) the carrying out of any sentence of solitary confinement, or spare or reduced diet, awarded under any law;
  - (q) the establishment of such boards as the Minister deems necessary or expedient for any purpose arising under this Act and the powers, rights, privileges and duties of and the procedure to be followed by such boards;
  - (r) prescribing anything to be prescribed under this Act; and
  - (s) generally, for the effective administration of this Act, for the good management and government of prisons, and the discipline and safe custody of prisoners.
- (2) Regulations made under subsection (1) may prescribe penalties for a contravention thereof, or failure to comply therewith, not exceeding a fine of £100 and imprisonment for twelve months.
- (3) In exercising the powers conferred upon him by subsection (1), the Minister may restrict the application of any regulation to one or more prisons and may apply differing regulations in respect of different prisons or classes of prisoners determined by him.
- (4) Different regulations may be made in terms of subsection (1) (a) for different classes of prison officers and other persons employed in prisons.

## 122. Transitional

- (1) Unless a contrary intention appears therein, references in any written law to a prison shall be construed as including a reference to a prison established under this Act.
- (2) Any person sentenced to any period of imprisonment under any law having force and effect in Malawi, who at the date of commencement of this section was due to serve some further part of such sentence, shall be deemed to be a prisoner for the purposes of this Act.

## Schedule (Section 8)

### Ranks of the service

#### *Senior officers*

Commissioner for Prisons

Senior Superintendent

Superintendent

***Junior officers***

Assistant Superintendent

Technical officer Gaoler

Gaoler

***Subordinate officers***

Warder 1st Class

Warder 2nd Class

Warder 3rd Class

Warder 4th Class

Instructor