

Malawi

Oaths, Affirmations and Declarations Act

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Malawi

Oaths, Affirmations and Declarations Act**Chapter 4:07****Assented to on 21 December 1967****Commenced on 1 February 1968***[Up to date as at 31 December 2014]*

[Note: This version of the Act was revised and consolidated in the Fourth 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 relating to Oaths, Affirmations and Declarations and 45 of 1967 Matters Incidental thereto**Part I – Preliminary****1. Short title**

This Act may be cited as the Oaths, Affirmations and Declarations Act.

Part II – Oaths and affirmations**2. Persons by whom oaths and affirmations must be made**

- (1) Oaths and affirmations shall be made for the purposes of judicial proceedings by—
 - (a) all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or receive evidence;
 - (b) interpreters of questions put to and evidence given by such persons;
 - (c) assessors.
- (2) Oaths and affirmations by interpreters and assessors shall be made in the same manner as that prescribed by [section 6](#) in the case of witnesses.

3. Authority to administer oaths and affirmations

- (1) Courts and persons having by law or consent of parties authority to examine witnesses or receive evidence are authorized to administer by themselves or by an officer empowered by them in that behalf, oaths and affirmations in discharge of their duties, or in exercise of the powers imposed or conferred upon them respectively by law.
- (2) A commissioner for oaths may either in Malawi or beyond it administer any oath or affirmation or take any affidavit for the purpose of any judicial or other proceeding in Malawi.

4. Commissioners for oaths, etc.

- (1) The following persons shall be commissioners for oaths—
 - (a) legal practitioners for the time being holding a licence to practice as such under the Legal Education and Legal Practitioners Act:

[Cap. 3:04]

- (b) magistrates;
 - (c) other public officers for the time being holding or acting in a public office of one of the following grades, that is to say, Professional Officer or Administrative Officer;
 - (d) persons appointed commissioners for oaths under any other written law; and
 - (e) such other persons as the Minister may by notice appoint to be commissioners for oaths.
- (2) No commissioner for oaths shall exercise any of his powers as such in any proceeding in which he or any partner or employee of his is acting for any party or in which he has a personal interest.
- (3) Commissioners for oaths shall be entitled to charge the fees set out in the First Schedule in respect of the several matters to which they are applicable:
- Provided that all such fees taken by a commissioner for oaths who is a public officer shall be forthwith paid by him into the Consolidated Fund.
- (4) The Chief Justice may by notice from time to time amend the First Schedule.

5. Penalty for holding self out as commissioner for oaths without entitlement and suspension from practising

- (1) Any person who shall hold himself out to be a commissioner for oaths or who shall receive any fee or reward as a commissioner for oaths, without being entitled to practise as such or perform duties as such, shall be liable to a fine of £100 and for a second or subsequent offence to a fine of £250 and to imprisonment for six months.
- (2) Any commissioner for oaths may be suspended from practising as such for such period as the Chief Justice may in his discretion think fit for any failure to perform his functions in the prescribed manner or for making any charge or demanding any payment for any act performed in his capacity as a commissioner for oaths in excess of that prescribed in the First Schedule.

6. How oaths and affirmations may be administered

- (1) Before giving evidence in a judicial proceeding, a witness shall make the oath or affirmation set out in the Second Schedule. The court, or a person authorized by law or by the court in that behalf, shall ask such witness if he believes in Almighty God and, if so, whether he agrees to make the oath. If he answers both questions affirmatively, he shall be required by such court or person authorized, as the case may be, to make the oath holding his right hand uplifted. In all other cases he shall be required by the court or person authorized to make the affirmation:

Provided however that where, in any proceedings against a person for any offence, any person of immature age, before the court as a witness, does not in the opinion of the court understand the nature of either an oath or an affirmation the court may receive his evidence, though not given on oath or affirmation, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence.

- (2) Where evidence is received by a court in accordance with the proviso to subsection (1), the accused shall not be liable to be convicted on such evidence unless it is corroborated by some other material evidence implicating him.

7. Effect of irregularities

No omission to make any oath or affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

8. Rules relating to duties of commissioners for oaths

The Chief Justice may make rules prescribing the manner in which a commissioner for oaths is to perform his duties.

Part III – Statutory declarations

9. Statutory declarations

- (1) Wherever by law a solemn declaration is directed, permitted or authorized, or wherever a person voluntarily desires to make a solemn declaration, it shall be sufficient if such declaration is made and subscribed (as nearly as material) in the form set forth in the Third Schedule.
- (2) Any commissioner for oaths and such other persons as the Minister may by notice authorize may take and receive the solemn declaration of any person.
- (3) Whenever any declaration is made and subscribed under this section, such fee as would have been payable on the making of any oath, affirmation or affidavit may be charged in like manner.
- (4) A declaration made under this section may be referred to in any other law or legal document as a statutory declaration.
- (5) When a declarant is unacquainted with the English language the declaration shall be in the form in the Fourth Schedule, the interpreter having first declared as in the form in the Fifth Schedule. The declaration of the interpreter shall be deemed a statutory declaration.
- (6) Whenever in any written law any person is required for any purpose whatsoever other than the purpose of a judicial proceeding to make or take an oath, affirmation or affidavit he may in lieu thereof make and subscribe a declaration under this section:

Provided however that this subsection shall not apply to any requirement that any person make or take a promissory oath or affirmation under the Constitution, the Promissory Oaths Act or any other written law.

[Cap. 17:01]

Part IV – Miscellaneous

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

Any commissioner for oaths before whom any oath, affirmation or affidavit is made or taken and every person before whom a statutory declaration is made shall state truly in the jurat or attestation at what place and on what date the oath, affirmation affidavit, or declaration is made or taken.

11. Savings

- (1) Nothing contained in this Act shall apply to proceedings before Courts-Martial.
- (2) Nothing in this Act contained shall affect any provision in any law under which any certificate or other document is made admissible in evidence, and this Act shall be deemed to be additional to, and not in derogation of, any such provision.

First Schedule (Section 4 and 5)

| | K | t |
|---|---|----|
| 1. For taking any affidavit, acknowledgement or declaration <i>[G.N. 142/1976]</i> | 1 | 00 |
| 2. For every exhibit to any affidavit, acknowledgement or declaration | 0 | 40 |

| | | |
|---|---|----|
| 3. For attending to administer an oath or to take a declaration or acknowledgement elsewhere than at the office or place of business of the person taking an affidavit, acknowledgement or declaration, in addition to expenses incurred and the ordinary fee thereon | 1 | 00 |
| 4. For explaining fully the purpose and, effect of a bill of sale and attesting the same | 2 | 00 |

Second Schedule (Section 6(1))

Form of oath

I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Form of affirmation

I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

Third Schedule (Section 9(1))

Form of declaration

I, A.B. of _____ do solemnly and sincerely declare as follows—

(Here insert matter declared)

AND I MAKE this solemn declaration, conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act.

Declared at _____ this ___ day of _____ 19 _____

Before me:

Fourth Schedule (Section 9(5))

Declaration by a person who does not understand the English language

I, A.B., do solemnly and sincerely declare as follows—

_____ and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act.

(Signed) A.B.

Declared at _____ this ___ day of _____ 19_, through the interpretation of _____ of _____ who has first declared that he had truly, distinctly, and audibly interpreted the contents of this document to the declarant, and that he would truly and faithfully interpret the declaration about to be administered to him.

Before me:

Fifth Schedule (Section 9(5))

Declaration by interpreter

I, C.D., do solemnly and sincerely declare that I well understand the English and the ___ languages and that I have truly, distinctly and audibly interpreted the contents of this document to the declarant A.B. in the _____ language and that I will truly and faithfully interpret the declaration about to be administered to him.

(Signed) C.D.

Interpreter

Declared at _____ this ___ day of ___ 19____

Before me: