

Malawi

General Interpretation Act Chapter 1:01

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1966/36/eng@2014-12-31

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PDF created on 21 February 2024 at 13:16.

Collection last checked for updates: 31 December 2014.

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Malawi

General Interpretation Act

Chapter 1:01

Assented to on 26 August 1966

Commenced on 29 August 1966

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

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

[36 of 1966; 11 of 1967; 37 of 1967; 3 of 1968; 9 of 1968; 25 of 1968; 26 of 1968; 1 of 1969; 30 of 1969; 23 of 1971; 51 of 1971; 20 of 1975; 5 of 1981; 30 of 1991; 19 of 1992; 21 of 1996]

An Act to make provision with regard to the construction, application and interpretation of written law, to make certain general provisions with regard to such law and other like purposes

1. Short title

This Act may be cited as the General Interpretation Act.

2. Interpretation of words and expressions

- (1) In this Act and, subject to [section 57](#), in every other written law enacted, made or issued before or after the coming into operation of this Act, the following words and expressions shall have the meanings respectively assigned to them, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise provided—

"**act**" used with reference to an offence or civil wrong includes an omission and extends to a series of acts and omissions;

"**Act**" used with reference to legislation means an Act of Parliament, an Ordinance, and any applied Act;

"**administrative officer**" means a District Commissioner or an Assistant District Commissioner;

"**amendment**" includes repeal, addition, variation and substitution;

"**applied Act**" means any legislation not enacted by the legislature of Malawi which by virtue of the Republic of Malawi (Constitution) Act has the force of an Act of Parliament in Malawi;

"**Cabinet**" means the Cabinet constituted by or under the Constitution;

"**calendar year**" means the period from the 1st January to the 31st December in the same year including both those days;

"**Chief**" has the meaning ascribed thereto by section 2 of the Chiefs Act;

[23 of 1971]

[Cap. 22:03]

"**Chief Justice**" means the Chief Justice of the High Court;

"**cognizable to the police**" and "cognizable" used with reference to an offence means that a police officer may arrest without warrant a person whom he suspects upon reasonable grounds of having committed that offence;

"**commencement**" used with reference to a written law means the date on which that written law comes into operation;

"**Commonwealth**" or "Commonwealth of Nations" means the Commonwealth of Nations comprised of all the Commonwealth countries;

"**Commonwealth citizen**" has the same meaning as in the Malawi Citizenship Act;

[Cap. 15:01]

"**Commonwealth country**" or "member of the Commonwealth" or "country of the Commonwealth" means any country which is a member of the Commonwealth of Nations, and includes any colony, protectorate, trust territory or other dependency of such country;

[20 of 1975]

"**Consolidated Fund**" means the Consolidated Fund established under the Constitution;

"**Constitution**" or "Constitution of Malawi" means the Constitution of the Republic of Malawi established by section 4 of the Republic of Malawi (Constitution) Act and set forth in the Second Schedule thereto;

"**consular officer**" means consul-general, consul, vice-consul, consular agent, and any person for the time being authorized to discharge the duties of consul-general, consul, vice-consul or consular-agent;

"**contrayene**" in relation to any requirement or conditions specified in any written law, or in any permit, licence or other authority granted under any written law, includes a failure to comply with that requirement or condition;

"**court**" means any court of the Republic of competent jurisdiction;

"**Crown Agents**" and "Crown Agents for Oversea Governments and Administrations" both mean the persons for the time being acting as Crown Agents in England for Overseas Governments and Administrations;

"**customary land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**customary law**" means the customary law applicable in the area concerned;

"**District**" means one of the districts into which Malawi is divided for purposes of administration in accordance with the Regional and District Boundaries and Place Names Act;

[Cap. 18:04]

"**District Commissioner**" means the administrative officer in charge of a District, and "Assistant District Commissioner" shall be construed accordingly;

"**District Council**" means a District Council established under the Local Government (District Councils) Act, or a District Commissioner or a Commission when performing the functions of a District Council in accordance with the Local Government (District Councils) Act;

[Cap. 22:02]

"**document**" includes any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;

"**export**" means to take or cause to be taken out of Malawi by any means whatsoever;

"*Gazette*" means the Malawi Government *Gazette* and includes any supplement thereto and any *Gazette Extraordinary*;

"**General Notice**" (or its abbreviated form "Gen.N.") means any notice published as such in the *Gazette*;

"**Government**" means the Government of the Republic established under the Constitution;

"**government analyst**" includes any assistant or other analyst employed by the Government;

"**Government land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**Government Notice**" (or its abbreviated form "G.N.") means any notice published as such in the *Gazette*;

"**Government Printer**" means the Government Printer of Malawi and any other printer authorized by or on behalf of the Government to print any written law or other document of the Government;

"**High Court**" means the High Court of Malawi established under the Constitution;

"**immoveable property**" means land whether covered by water or not, any estate or interest in or over land or arising out of or relating to land and anything permanently attached to the earth or permanently fastened to anything so attached;

"**import**" means to bring or cause to be brought into Malawi by any means whatsoever;

"**judge**" means a judge of the High Court and includes the Chief Justice;

"**judgment**" in relation to a court includes decree, order, sentence or decision;

"**land surveyor**" means a person lawfully entitled to carry out surveys of land under any written law;

"**law officer**" means a person for the time being holding the office of Attorney-General or Solicitor-General;

"**legal practitioner**" means a person entitled to practise as such under any Act for the time being applicable to legal practitioners;

"**local authority**" means a City Council, a District Council, a Municipal Council or a Town Council;

[5 of 1981]

"**magistrate**" has the meaning assigned thereto in the Courts Act;

[Cap. 3:02]

"**Malawi**" means the Republic of Malawi and in relation to any period prior to the 6th July, 1964, means the territories comprising the former Nyasaland Protectorate and in relation to any period after that date means the territories comprising the Republic;

"**master**" used with reference to a ship means the person (except a pilot or harbour-master) having for the time being control, charge or command of such ship, and with reference to an aircraft means the person having for the time being control, charge or command of such aircraft;

"**medical practitioner**" means a medical practitioner duly registered or licensed as such under any Act for the time being applicable to the registration or licensing of medical practitioners;

"**Minister**" means a person appointed as a Minister of the Government under the Constitution;

"**the Minister**" means the Minister for the time being charged with responsibility for the matter in question, and includes the President when he has assigned to himself or is exercising such responsibility;

"**month**" means a calendar month;

"**moveable property**" means property other than immoveable property;

"**Municipal Council**" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

[Cap. 22:01]

"**Municipality**" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

[Cap. 22:01]

"**oath**" and "affidavit", in the case of a person allowed by law to affirm or declare instead of swear, include affirmation or declaration;

"**Ordinance**" means an Ordinance enacted in the former Nyasaland Protectorate;

"**Paramount Chief**" means a person holding or acting in the office of Paramount Chief under the Chiefs Act;

[23 of 1971]

[Cap. 22:03]

"**Parliament**" means the Parliament of the Republic established by the Constitution;

"**Principal Secretary**" or "Secretary" in relation to a Ministry means the public officer appointed as the Civil Service head of that Ministry;

"**the Principal Secretary**" or "the Secretary" in relation to any matter means the Principal Secretary of the Ministry for the time being charged with responsibility for the matter in question;

"**person**" includes any company or association or body of persons, corporate or unincorporate;

"**police officer**" means any member of the Malawi Police Service constituted under the Police Act;

[Cap. 13:01]

"**power**" includes any privilege, authority or discretion;

"**prescribed**" means prescribed by or under the written law in which the word occurs;

"**President**" means the President of the Republic;

"**private land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**property**" includes money, and every description of property, whether movable or immovable, animate or inanimate, obligations and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property;

"**public holiday**" means a day which is specified as, or deemed to be or interpreted as, a public holiday in accordance with the Public Holidays Act, or which is declared by the Minister to be a public holiday under the Public Holidays Act;

[Cap. 18:05]

"**public land**" has the meaning assigned thereto in the Land Act;

[Cap. 57:01]

"**public office**" means any office the holder of which is invested with or performing duties of a public nature;

"**public officer**" means a person holding or acting in any public office;

"**public place**" means every public highway, street, road, square, court, alley, lane, bridleway, footway, parade, wharf, jetty, quay, bridge, public garden, open space, theatre, place of public entertainment of any kind and other place to which the public are entitled or permitted to have access whether on payment or otherwise;

"**Public Seal**" means the Public Seal of Malawi;

"**Region**" means one of the Regions into which Malawi is divided for the purposes of administration in accordance with the Regional and District Boundaries and Place Names Act;

[Cap. 18:04]

"**registered**" used with reference to a document means registered under the law for the time being applicable to the registration of such document;

"**Registrar General**" includes the Assistant Registrar General;

"**repeal**" includes rescind, revoke, cancel or delete;

"**Republic**" means the Republic of Malawi;

"**Resident Magistrate**" has the meaning assigned thereto in the Courts Act;

[Cap. 3:02]

"**road**" has the meaning assigned to the word street;

"**rule**" includes rule of court, by-law and regulation;

"**rule of court**", when used in relation to any court, means a rule or order made by the authority empowered to make rules or orders regulating the practice and procedure of such court;

"**sell**" includes barter, exchange, and offer to sell or expose for sale;

"**signature**" with reference to a person who is unable to write his name, includes mark or thumbprint;

"**statutory declaration**" if made—

- (a) in the Republic, means a declaration made under the Oaths, Affirmations and Declarations Act;

[Cap. 4:07]

- (b) in any other place, means a declaration made before a Malawi diplomatic or consular officer, a Notary Public or any other person having authority under the law of that place to take or receive a declaration;

"**street**" means any highway, street, road, bridge, square, court, alley, lane, bridleway, footway, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access whether on payment or otherwise;

"**Sub-Chief**" has the meaning ascribed thereto by section 2 of the Chiefs Act;

[23 of 1971]

[Cap. 22:03]

"**subordinate court**" has the meaning assigned thereto in the Courts Act;

[Cap. 3:02]

"**subsidiary legislation**" means a proclamation, regulation, rule, order, notice, by-law or other instrument made under any written law and having legislative effect;

"**Supreme Court of Appeal**" means the Supreme Court of Appeal established under the Constitution;

"**swear**" in the case of a person allowed by law to affirm includes affirm;

"**Town Council**" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

[Cap. 22:01]

"**Township**" has the meaning assigned thereto in the Local Government (Urban Areas) Act;

"**Traditional Authority**" means, in relation to any part of Malawi, a Paramount Chief, Chief, Sub-Chief or any two or more of the persons holding or acting in such offices designated for the time being as the Traditional Authority of and for such part of Malawi by the President by notice published in the *Gazette*;

[23 of 1971]

"**treaty**" means a treaty, convention or agreement made with a foreign state, together with any protocol, annex or declaration attached thereto, or independent thereof but referring thereto;

"**United Kingdom**" means Great Britain and Northern Ireland;

"**veterinary surgeon**" has the meaning assigned to that expression in the Veterinary Surgeons Act;

[Cap. 53:04]

"**will**" includes codicil;

"**word**" includes figures, punctuation marks, parentheses and typographical, monetary and mathematical symbols;

"**writing**" and expressions referring to writing include printing, photography, lithography, type-writing and any other modes of representing or reproducing words in visible form;

"**written law**" includes the Constitution, Acts and subsidiary legislation;

"**year**" means a year reckoned according to the Gregorian Calendar.

- (2) In every written law, unless a contrary intention appears, words and expressions importing the masculine gender include females, and words and expressions importing the feminine gender include males.
- (3) In every written law, unless a contrary intention appears, words and expressions in the singular include the plural and words and expressions in the plural include the singular.
- (4) Where the interpretation of any word or expression is defined in this or any other written law, such definition shall extend, with the necessary modifications, to the interpretation of the grammatical variations and cognate expressions of such word or expression.
- (5) In every Act, unless a contrary intention appears, the words "chapter", "part", "section" and "schedule" denote respectively a chapter, part or section of or schedule to the Act in which the word occurs; and "subsection", "paragraph" and "subparagraph" denote respectively a subsection of the section or a paragraph or subparagraph of the section, subsection, paragraph or Schedule in which the word occurs. Corresponding expressions in subsidiary legislation shall be similarly construed and interpreted.

[20 of 1975]

3. Acts shall be judicially noticed

Every Act enacted by Parliament shall be a public Act and shall be judicially noticed as such.

4. Notification of approval of appointment, etc.

Where, by or under any written law, it is provided that subsidiary legislation may be made or that any appointment may be made, function performed or power exercised with the approval or consent of, or after consultation with, the President or Minister or any other authority, a notification published in the

Gazette stating that such approval or consent has been given or that such consultation has taken place shall be *prima facie* evidence in all courts and for all purposes whatsoever of such approval, consent or consultation.

5. Forms

Where a form is prescribed or specified by any written law, deviations therefrom neither materially affecting the substance nor calculated to mislead shall not invalidate the form used.

6. Acts to be divided into sections

All Acts shall be divided into sections, if there be more enactments than one, which sections shall be deemed to be substantive enactments without any introductory words.

7. Mode of citing written laws

- (1) Where any written law is referred to, it shall be sufficient for all purposes to cite such written law either by the short title or citation, if any, by which it is made citable, or, in the case of an Act, by the year in which it was made and its number among the Acts of that year, or, in the case of any revised edition of the written laws issued under any Act providing for the issue of a revised edition, by its short title or its chapter number, or in the case of subsidiary legislation, by the year in which it was made and the number of the Government Notice or General Notice in which it was published in the *Gazette*, and the reference may in all cases be made according to the copies of the written law printed by the Government Printer.
- (2) Any such citation of a written law shall, unless a contrary intention appears, be construed as a reference to such written law as amended from time to time by any other written law.

8. Schedules and tables to be part of written law

Every Schedule to or table in any written law shall, together with the notes thereto, be construed and have effect as part of such written law.

9. Time when written law comes into operation

- (1) Subject to subsections (2) and (3), an Act assented to by the President shall come into operation immediately on the expiration of the day next preceding the day on which it is published in the *Gazette*.
- (2) Where it is enacted in the Act, or in any other written law, that such Act or any provision thereof shall come or be deemed to have come into operation on some specified day, the Act or, as the case may be, such provision shall come or be deemed to have come into operation immediately on the expiration of the day next preceding such day.
- (3) Where it is enacted in an Act, that such Act shall come into operation on such date as may be appointed by any person, such person may, by notice or order, bring the Act into operation on a day specified in the notice or order, or may by the same or by different notices or orders bring different provisions of the Act into operation on different dates.

[51 of 1971]

10. Repealed written law not revived

Where any written law repealing in whole or in part any former written law is itself repealed, such last repeal shall not revive the written law or provisions before repealed unless words be added reviving such written law or provisions.

11. Repeal of amended written law to include amendment

Where any written law which has been amended by any other written law is itself repealed, such repeal shall, unless a contrary intention appears, include the repeal of all those provisions of other written laws by which such first-mentioned written law has been amended.

12. Reference to written law to include amendments

Where in any written law a reference is made to another written law, such reference shall, unless a contrary intention appears, be deemed to include a reference to such last-mentioned written law as the same may be, from time to time, amended.

13. Continuation of certain repealed laws

Where a written law repeals wholly or partially any former written law and substitutes provisions for the written law repealed, the repealed written law shall remain in force until the substituted provisions come into operation.

14. Provisions respecting effect of repealing written law

- (1) Where a written law repeals and re-enacts with or without modification, any provisions of any other written law, then unless a contrary intention appears—
 - (a) all proceedings commenced under any provision so repealed shall be continued under and in conformity with the provision so repealed;
 - (b) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights existing under any provision so repealed or in any other proceedings in relation to matters which have happened before the repeal, the provision so repealed shall continue to apply;
 - (c) any reference in any unrepealed written law to any provision so repealed or to any person, authority or matter mentioned in any provision so repealed shall be read and construed as a reference to the provision, person, authority or matter respectively substituted therefor;
 - (d) any officer or person whose appointment under any provision so repealed was subsisting immediately before such repeal shall continue to hold office under the provision so substituted until another officer or person is appointed in his stead;
 - (e) any subsidiary legislation made under such repealed provisions shall remain in force, so far as it is capable of being made under the repealing written law, and is not inconsistent therewith, until it has been revoked or repealed by any other written law, and shall be deemed for all purposes to be subsidiary legislation made under such repealing written law.
- (2) Where a written law repeals in whole or in part any other written law, then, unless a contrary intention appears, the repeal shall not—
 - (a) revive anything not in force or existing at the time at which the repeal takes effect;
 - (b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed;
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any written law so repealed; or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such

investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.

15. Construction of amending written law with amended written law

Where one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof, and unless a contrary intention appears, be construed as one with the amended written law.

16. Effect of expiry of written law

Upon expiry of any written law [section 14](#) (2) shall apply as if such written law had been repealed.

17. Publication and commencement of subsidiary legislation

- (1) No subsidiary legislation shall come into operation unless it has been published in the *Gazette*, but the date of commencement shall be in accordance with subsection (2).
- (2) Where no date of commencement is expressly provided therein or in any other written law, subsidiary legislation shall come into operation on the expiry of the day immediately preceding the day of its publication in the *Gazette* or, where it is enacted either therein or in some other written law that subsidiary legislation shall come into operation on some specified day, subject to [section 18](#), it shall come into operation on the expiry of the day immediately preceding that day.

[25 of 1968]

18. Retrospective operation of subsidiary legislation

Any subsidiary legislation, except where a contrary intention appears, may be made to operate retrospectively to any date, not being a date earlier than the commencement of the written law under which such subsidiary legislation is made, but so, however, that no person shall be made or become liable to any penalty whatsoever in respect of any act committed or failure to do anything before the day on which such subsidiary legislation is published in the *Gazette*

[1 of 1969]

19. Construction of subsidiary legislation

In all subsidiary legislation, except where a contrary intention appears—

- (a) expressions used shall have the same respective meanings as in the written law under the authority of which the subsidiary legislation was made;
- (b) any reference to "the Act" or to "the Ordinance" shall mean the Act or Ordinance under the authority of which the subsidiary legislation was made.

20. Exercise of powers between assent to and commencement of Act

Where an Act which confers power to make any appointment, to make subsidiary legislation, to prescribe forms or to do any other thing for the purposes of the Act, has been assented to by the President in accordance with the Constitution, such power may, unless a contrary intention appears, be exercised at any time after such assent, so however that any subsidiary legislation or appointment made or other thing done in exercise of such power shall not take effect until the Act comes into operation except to the extent necessary for bringing the Act into operation.

21. General provisions with respect to the power to make subsidiary legislation

Where any written law confers power on any person to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of subsidiary legislation—

- (a) where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all powers thereunto enabling;
- (b) no subsidiary legislation shall be inconsistent with the provisions of any Act and any such legislation shall be of no effect to the extent of such inconsistency;
- (c) subsidiary legislation may at any time be amended by the same person by whom and in the same manner in which it was made:

Provided that, where such person has been replaced wholly or in part by another person, the power conferred thereby upon the original person may be exercised by the replacing person concerning all matters or things within his jurisdiction as if he were the original person;

- (d) where any written law confers power on any person to make subsidiary legislation for any general purpose, and also for any special purpose incidental thereto, the enumeration of the special purpose shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;
- (e) there may be annexed to the breach of any subsidiary legislation such penalty not exceeding K1,000 or such term of imprisonment not exceeding three months, or both such fine and imprisonment, as the authority making the subsidiary legislation may think fit.

[5 of 1981]

[19 of 1992]

22. References to written laws to include subsidiary legislation thereunder

Any reference to a written law shall, except where a contrary intention appears, include a reference to any subsidiary legislation made under the written law to which reference is made.

23. Act done under subsidiary legislation deemed done under written law which authorizes it

An act shall be deemed to be done under any written law or by virtue of the powers conferred by any written law or in pursuance or execution of the powers of or under the authority of any written law, if it is done under or by virtue of or in pursuance of subsidiary legislation made under any power contained in that written law.

24. Fees

- (1) Where any written law confers power on any person to make subsidiary legislation, and provision may be made by such subsidiary legislation in respect of fees or other charges, such subsidiary legislation may, unless a contrary intention appears, provide for all or any of the following matters—
 - (a) specific fees or charges;
 - (b) maximum fees or charges;
 - (c) minimum fees or charges;
 - (d) the payment of fees or charges either generally or under specific conditions or in specific circumstances; and

- (e) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.
- (2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions;
 - (b) in respect of certain documents or classes of documents;
 - (c) when any event happens or ceases to happen;
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of such matters, transactions, documents, events and persons,
- and may be expressed to apply or be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified therein.

25. Signification of orders by President or a Minister

Where, under any written law, the President or a Minister has exercised any power to make any subsidiary legislation or appointment, give any direction, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or has exercised any other power, it shall be sufficient if the exercise of such power be signified—

- (a) in the case of the President, under the hand of the Minister for the time being responsible for the matter in question or of the Permanent Secretary nominated by such Minister in that behalf;
- (b) in the case of a Minister, by the Permanent Secretary or other public officer nominated by such Minister in that behalf.

26. Appointments of officers by name or office

Where, by or under any written law, the President or any Minister or any other person is empowered to appoint or name a person to exercise any powers or perform any duties, the President or such Minister or other person may appoint a person by name or the person for the time being holding the office designated by the President, such Minister or other person to exercise such powers and perform such duties; and thereupon or from the date specified in the appointment, the person appointed by name or the person holding the office so designated may exercise such powers and perform such duties accordingly.

27. Powers and duties to be exercised and performed from time to time

Where any written law confers any power or imposes any duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as the occasion arises.

28. Powers and duties of office holder

Where any written law confers any power or imposes any duty on the holder of any office as such, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office.

29. Reference to holder of office includes person discharging

In any written law, instrument, appointment, warrant or process of any kind, any reference to a person holding an office shall include a reference to any person for the time being lawfully discharging the functions of that office.

30. Power to appoint substantively pending retirement etc., of existing holder

- (1) Where the substantive holder of any public office constituted by or under any Act is on leave pending relinquishment by him of such office, it shall be lawful for another person to be appointed substantively to the same public office.
- (2) Where two or more persons are holding the same public office by reason of an appointment made in accordance with subsection (1), then for the purposes of every written law and in respect of every power conferred or duty imposed upon the holder of such office, the person last appointed to the office shall be deemed to be the holder thereof.

31. Effect of appointment to act in a public office

Where, by or under any written law, any powers are conferred or any duties are imposed upon the holder of a public office and a public officer has, under the Constitution, been appointed to act in such public office during any period owing to absence or inability to act of the holder due to illness or any other cause, such powers may be exercised and such duties shall be performed during such period by the public officer appointed to act in such public office, subject to such conditions, exceptions and qualifications as may be specified by the authority by whom the acting appointment is made.

32. Power to appoint to include power to dismiss, etc., and to re-appoint

Where, by or under any written law, a power is conferred upon any person to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person having such power shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in the exercise of the power, or to revoke the appointment, constitution or establishment of, or dissolve any board, commission, committee or similar body appointed, constituted or established in exercise of such power, and to re-appoint, re-constitute, or re-establish the same:

Provided that where the power of such person so to act is exercisable only upon the recommendation, or is subject to the approval or consent of some other person, then such power shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

33. Change in title of public office

Whenever the title of any public office is changed, the President may, by order, direct that, for the purposes of all written laws, the title of the office shall be replaced by the new title from a date specified in the order, and with effect from such date any reference in any written law to the former title of such office shall be read and construed as a reference to that office by such new title.

34. Construction of enabling words

Where any written law confers power upon any person to do or to enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are necessary to enable the person to do or to enforce the doing of the act or thing.

35. Power of President to delegate authority

- (1) Where by any written law the President is empowered to exercise any powers or perform any duties, he may, unless by any written law expressly prohibited from doing so, depute any person by name, or the person for the time being holding the office designated by him, to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions and qualifications, as the President may prescribe, and thereupon or from the date specified by the President the person so deputed may exercise such powers and shall perform such duties as aforesaid.

- (2) Nothing in subsection (1) shall be deemed to relate to the appointment or functions of a Presidential Commission under the Constitution.

36. Power of Ministers and others to delegate

Where, by or under any written law, a Minister, the Attorney General, a Permanent Secretary, the Director of Public Prosecutions, or the Commissioner of Police is empowered to exercise any power or to perform any duty, such Minister, the Attorney General, such Permanent Secretary, the Director of Public Prosecutions or the Commissioner of Police, as the case may be, may, unless by any written law expressly prohibited from doing so, depute any person or the person for the time being holding any office designated by him to exercise such power or perform such duty on his behalf, subject to such conditions, exceptions and qualifications as the Minister, Attorney General, Permanent Secretary, Director of Public Prosecutions or Commissioner of Police, as the case may be, may specify, and thereupon from the date specified by the Minister, Attorney General, Permanent Secretary, Director of Public Prosecutions or Commissioner of Police, as the case may be, the person deputed may exercise such power and shall perform such duty, subject to any conditions, exceptions and qualifications as aforesaid:

Provided that nothing in this section shall extend to the delegation of any power to make subsidiary legislation.

37. Saving in respect of delegations

Notwithstanding the delegation under section [35](#) or [36](#) of any power or duty, the person by whom such delegation was made may—

- (a) exercise such power or perform such duty; and
- (b) vary or cancel such delegation.

38. Power of majority of more than two persons

Save as is otherwise expressly provided by any written law, whenever any act or thing is required to be done by more than two persons, a majority of them may do it.

39. Method of appeal to the President or a Minister and appearance thereon

Where, by or under any written law, a right of appeal to the President or a Minister against the decision of any person, statutory body or public officer is given to any person, such person may, in the absence of any express provision to the contrary—

- (a) within thirty days of notification of the decision submit for the consideration of the President or Minister a written memorandum setting out the grounds of appeal on which he relies; and
- (b) if he so desires, with the consent of the President or Minister, appear in person or by legal practitioner on such date and at such time as the President or Minister may decide.

40. Power to appoint chairman etc., of board, etc.

Where, by or under any written law, power is given to any person to appoint any board, council, commission, committee or similar body, it shall be lawful for such person, unless a contrary intention appears, to appoint a chairman, deputy chairman, vice-chairman and secretary of such board, council, commission, committee or similar body.

41. Power to appoint members of board, etc., includes power to appoint public officers and alternates

- (1) Where, by or under any written law, any authority to appoint a person as member of any board, council, commission, committee or similar body is conferred, then, unless a contrary intention appears, the authority shall include a power—
 - (a) to appoint, by his official designation, any public officer; and
 - (b) to appoint a person as alternate member.
- (2) On an appointment by his official designation of a public officer as a member or alternate member being made under subsection (1), then, until such appointment shall be revoked or otherwise determined, the person for the time being holding the office in question shall be a member or alternate member, as the case may be, of such board, council, commission, committee or similar body.
- (3) Where any person has, under the powers conferred by subsection (1), been appointed an alternate member of any such board, council, commission, committee or similar body, such person shall—
 - (a) act as a member only when the member to whom he is alternate is by reason of illness, absence from the Republic or other like cause, unable to perform his duties as a member;
 - (b) when acting as a member, have all the powers of the member to whom he is alternate.

42. Powers of board, etc., not affected by vacancy or certain defects

Where, by or under any written law, any board, council, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless a contrary intention appears, the powers of such board, commission, council, committee or similar body shall not be affected by—

- (a) any vacancy in the membership thereof; or
- (b) any defect afterwards discovered in the appointment or qualification of a person purporting to be a member thereof.

42A. ***

[repealed by 21 of 1996]

43. Authentication of decisions, etc., and affixing of common seal

- (1) In the absence of express provision to the contrary, a document, other than a document required to be under seal, and a decision of any board, council, commission, committee or similar body which requires authentication may be authenticated by the signature of the chairman of or other person authorized by the board, council, commission, committee or similar body.
- (2) Where, by or under any written law, any board, council, commission, committee or similar body is constituted to be a corporate body having perpetual succession and a common seal, and any document requires to be sealed with such common seal, then, in the absence of express provision to the contrary, such common seal shall be affixed by the chairman of such board, council, commission, committee or similar body or other person authorized by the board, council, commission, committee or similar body and shall be authenticated by his signature.

44. Time

- (1) The standard time of Malawi shall be two hours in advance of Greenwich mean time:
Provided that the President may, by order, prescribe any other period by which the standard time of Malawi shall be in advance of Greenwich mean time.

- (2) Where any expression of time occurs in any written law or in any deed, instrument, warrant or process of any kind, the time referred to shall, unless it is otherwise expressly provided, be deemed to be the standard time of Malawi.

45. Computation of time and meaning of clear days

- (1) In computing time for the purpose of any written law, unless a contrary intention appears—
 - (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
 - (b) if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day which is not an excluded day;
 - (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day;
 - (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days excluded days shall not be reckoned in the computation of time.
- (2) Where, in any written law, an act or proceeding is directed or allowed to be done or taken within a number of clear days, excluded days shall not be reckoned in the computation of such number.

46. Provision where no time prescribed

Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without undue delay, and as often as due occasion arises.

47. Construction of power to extend time

Where, in any written law, a time is prescribed for doing any act or taking any proceeding, and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

48. Measurement of distances

In the measurement of any distance for the purposes of any written law, that distance shall, unless a contrary intention appears, be measured in a straight line on a horizontal plane.

49. Evidence of signature of President, Minister or law officer, etc.

Where the fiat, consent or authority of the President, a Minister, the Attorney General, the Solicitor General or the Director of Public Prosecutions is necessary before any prosecution, action or other proceeding is commenced, any document purporting to bear the fiat, consent or authority of the President, Minister, Attorney General, Solicitor General or Director of Public Prosecutions shall be received as *prima facie* evidence in any proceeding without proof being given that the signature to such fiat, consent or authority is that of the President, Minister, Attorney General, Solicitor General or Director of Public Prosecutions.

49A. Evidence of execution of instrument under seal by public officer

- (1) Whenever the Government is, or has at any time been, a party to any transaction which, in order to meet some requirement of the law or for some other sufficient reason, is constituted or evidenced by, or recorded in, an instrument under seal such instrument shall, subject to subsection (2), for

all purposes be presumed to have been signed, sealed and delivered by the Government if executed by a public officer for, on behalf of and in the name of the Government by such officer signing and delivering the instrument after having affixed his personal seal thereto.

- (2) The presumption referred to in subsection (1) may be rebutted only by evidence which establishes to the satisfaction of any court that the public officer who executed the instrument concerned did not have the authority, express or implied, to enter on behalf of the Government into the transaction constituted or evidenced by, or recorded in, such instrument.

[51 of 1971]

50. Law officers

Any power conferred or duty imposed by any written law on the Attorney General may, unless a contrary intention appears, be exercised or performed by the Solicitor General if—

- (a) the Attorney General is unable to act owing to illness or absence; or
- (b) the Attorney General authorizes the Solicitor General to act in any particular matter or class of matters.

51. Ex-officio proceeding not to abate on death, etc.

Any civil or criminal proceeding taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding that office.

52. Imposition of penalty no bar to civil action

The imposition of a penalty or fine under the authority of any written law shall not, in the absence of express provision to the contrary, relieve any person from liability to answer for damages to any person injured.

53. Provision as to offences under two or more laws

Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless a contrary intention appears, be liable to be prosecuted and punished under any of such laws, but shall not be liable to be punished twice for the same offence.

54. Penalties prescribed may be maximum penalties, but may be cumulative

- (1) Where any written law contains a provision prescribing a penalty for an offence, such provision shall, unless a contrary intention appears, mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.
- (2) Where in any written law more than one penalty is prescribed for an offence, the use of the word "and" shall, unless a contrary intention appears, mean that the penalties may be inflicted alternatively or cumulatively.

55. Disposal of forfeits

- (1) Where any animal or other thing is by any written law declared, or is under any written law adjudged by any court or other authority, to be forfeited, it shall, in the absence of express provision to the contrary—
 - (a) be forfeited to the Government; and
 - (b) the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into the Consolidated Fund.

- (2) Nothing in this section shall affect any provision in any written law whereby any portion of any fine or forfeit or the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any authority to any person.

56. Disposal of fines and penalties

Any fine or penalty imposed by or under the authority of a written law shall, in the absence of express provision to the contrary, be paid into the Consolidated Fund.

57. Interpretation of applied laws

- (1) Every applied law shall be read with such formal alterations as to names, localities, courts, offices, persons, moneys, penalties and otherwise as may be necessary to make the same applicable to the circumstances.
- (2) Every applied law shall be construed in accordance with the law relating to the interpretation of such applied law which was in operation in the place where and at the time when the law was made.

58. Saving of rights of Government in written laws

No written law shall, in any manner whatsoever, affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication that the Government is bound thereby.

59. Service, etc. of documents

- (1) Where in any written law, whether the word "serve", "send" or some other word is used, a document is required or permitted to be served on, sent or given to, any person under or for the purposes of the written law and there is no express provision in the written law directing it to be served, sent or given in a particular manner, the document may be served, sent or given—
 - (a) in the case of an individual (except where paragraph (b) or (c) applies), by serving it upon the individual personally or by sending it by post in an envelope addressed to him at his usual or last known postal address;
 - (b) in the case of a public officer as such, by serving it upon him personally or by leaving it, in an envelope addressed to him, at the principal office where he exercises or performs his functions or by sending it by post in an envelope addressed to him at the postal address of such principal office;
 - (c) in the case of a partnership—
 - (i) by serving it upon a partner, or the person having the control or management of the partnership, personally; or
 - (ii) by leaving it at the principal office of the partnership, or by sending it by post, in an envelope addressed to such partner or person at the postal address of the principal office of the partnership,but without prejudice to section 18 of the Partnership Act;
[Cap. 46:04]
 - (d) in the case of a body corporate, by leaving it at the registered or principal office of the body corporate, or by sending it by post, in an envelope addressed to the body corporate at the postal address of such registered or principal office; or
 - (e) in the case of a body, whether corporate or unincorporate, constituted or established by an Act, by leaving it at the principal office of the body or any other office specified by the body as one at which it will accept service of documents, or by sending it by post, in an envelope addressed to the body at the postal address of such principal or other office.

- (2) For the purposes of paragraphs (c) and (d) of subsection (1), the principal office of a company registered outside Malawi or a partnership carrying on business outside Malawi is its principal office or registered principal place of business, as the case may be, within Malawi.
- (3) Where in any written law, whether the word "serve", "send" or "give" or some other word is used, a document is required or permitted to be served on, sent or given to, any person because he is or was the occupier, lessee or owner of any building or other premises and it is not practicable after reasonable enquiry to ascertain that person's name, it is sufficient if he is described in the document as the occupier, lessee or owner, as the case may be.
- (4) Where in any written law, whether the word "serve" or "give" or some other word is used, a document is required or permitted to be served on, or given to, any person as being the person having an estate or interest in land and it is not practicable after reasonable enquiry to ascertain that person's name or address, the document may be served or given—
 - (a) by addressing it to the person by the description of the person having that estate or interest in the land (naming it); and
 - (b) by delivering the document to some responsible person over the apparent age of eighteen years on the land or by affixing it, or a copy of it, in a conspicuous position on the land.
- (5) Where a document is sent by post pursuant to subsection (1), it shall be deemed to have been received, unless the contrary is proved, at the time at which it would be delivered in the ordinary course of post.

[5 of 1981]

60. ***

[repealed by 30 of 1969]

61. Production of Gazette and official copies to be *prima facie* evidence of contents

The production of a copy of the *Gazette* containing any written law or any notice of any kind whatsoever, or of a copy of any such written law or notice purporting to be printed by the Government Printer, shall be *prima facie* evidence in all courts and for all purposes whatsoever of the due tenor and making of such written law or notice.

62. Power to cancel licences, etc.

- (1) Notwithstanding any other law, where any written law confers the power to issue any licence, permit or authorization, such licence, permit or authorization may at any time be cancelled upon the directions of the responsible Minister, without the assignment of any reason, if the Minister is satisfied that the holder of the licence has acted in a manner harmful to the interests of the national economy or the security of the State.
- (2) Where under subsection (1) any licence, permit or authorization is cancelled, the Government and any Minister or officer of the Government shall not be liable for the payment of any compensation.
- (3) Where any written law confers a power to issue any licence, permit or authorization, then, unless a contrary intention appears, such licence, permit or authorization may be issued subject to such conditions, not inconsistent with that law, as the authority issuing it deems expedient.
- (4) The Forfeiture Act may be applied in any case where a licence, permit or authorization has been cancelled under subsection (1).

[Cap. 14:06]

[3 of 1968]

63. Act for which payment required need not be performed until payment made

- (1) Where any person is required to do anything for which a fee is to be paid or a charge made under any written law, such person may decline to do that thing until the fee is paid or until payment of the charge is made, or, where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by the person required to do the thing.
- (2) Where a thing has been done for which an estimated amount has been paid, such amount shall be adjusted to the correct amount either by means of a further payment or by refund of the amount overpaid.