

Malawi

## Malawi National Examinations Board Act

### Chapter 30:04

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# Malawi National Examinations Board Act

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# Malawi

## Malawi National Examinations Board Act

### Chapter 30:04

Commenced on 1 August 1969

*[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.]*

**An Act to make provision for the establishment, constitution, control and administration of the Malawi National Examinations Board and for matters incidental thereto and connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Malawi National Examinations Board Act.

*[9 of 1987]*

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the Malawi National Examinations Board established under [section 3](#) (1);

“**Centre**” means the Regional Testing Resource and Training Centre, an international organization established by agreement dated the 26th day of June, 1969, made between the respective Governments of Malawi, Swaziland, Lesotho, Botswana and the United States Agency for International Development, having its principal office in Malawi and now in the course of dissolution;

“**Chairman**” means the Chairman of the Board as provided under [section 5](#);

“**committee**” means a committee of the Board appointed under [section 8](#);

“**financial year**” means such year or other period as the Minister may, from time to time, by notice published in the *Gazette*, determine to be the financial year of the Board.

*[9 of 1987]*

### Part II – Establishment of Malawi National Examinations Board

#### 3. Establishment of Board

- (1) There is hereby established a Board, to be known as the Malawi National Examinations Board which shall be governed and administered in accordance with the provisions of this Act.
- (2) The Board shall be a body corporate with perpetual succession and a common seal, with power to acquire, hold, charge and dispose of property, movable and immovable, to borrow money and to do or perform all such things and acts for the purpose of carrying out its functions as a body corporate may lawfully do.

- (3) The Board may sue and be sued in its corporate name and may for all purposes be described by such name.

*[12 of 1976]*

*[9 of 1987]*

#### **4. Execution of documents, etc.**

All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairman or any member or officer of the Board authorized in that behalf by the Chairman.

### **Part III – Constitution of Board and procedure**

#### **5. Constitution of Board**

- (1) The Board shall consist of—
- (a) The Vice-Chancellor of the University of Malawi, who shall be Chairman;
  - (b) four members nominated by the Senate of the University of Malawi, appointed by the Minister;
  - (c) four members appointed by the Minister in his discretion;
  - (d) four members, representing post primary institutions, other than those institutions mentioned in this section, providing full time recognized courses, to be recommended at a meeting of all members appointed under paragraphs (a), (b) and (c), appointed by the Minister;
  - (e) the Secretary for Education and Culture or his representative;
  - (f) one member representing the Malawi Institute of Education, appointed by the Minister;
  - (g) four members representing primary schools, appointed by the Minister from amongst headmasters of primary schools;
  - (h) four members representing secondary schools, appointed by the Minister from amongst headmasters of secondary schools;
  - (i) two members representing primary school teacher training colleges, appointed by the Minister from amongst principals of those colleges;
  - (j) one member representing the Christian Council, appointed by the Minister;
  - (k) one member representing the Special Education, appointed by the Minister;
  - (l) one member representing the Catholic Secretariat, appointed by the Minister;
  - (m) one or more members representing and recommended by external examining bodies, appointed by the Minister; and
  - (n) two members actively engaged in commercial pursuits in Malawi, appointed by the Minister from amongst persons so engaged.
- (2) The members of the Board shall elect one of their number to be Vice-Chairman who shall, in the absence or temporary incapacity of the Chairman, act as Chairman.
- (3) The members of the Board, other than the Chairman, shall hold office for two years.
- (4) Any member of the Board shall be eligible for re-appointment for any number of terms of office.

- (5) Any person who is absent for more than three successive meetings of the Board without permission from the Chairman, or who, in the opinion of the Chairman is for any cause incapacitated so as to be unable to take a proper part in the affairs of the Board, may have his membership of the Board terminated by the President.
- (6) Any appointed member may, by notice under his hand addressed to the Chairman, resign from his membership of the Board.
- (7) Where any member of the Board ceases to be a member before the normal expiration of his term of office, the authority which appointed him may appoint another person in his stead to hold office until such first-named person's term of office would have expired had he not ceased to be a member as aforesaid.
- (8) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman, speak but shall have no power to vote at that meeting.

*[12 of 1976]*

*[8 of 1980]*

*[9 of 1987]*

## **6. Executive Secretary**

There shall be an Executive Secretary of the Board who shall be appointed by the Board on such terms and conditions as it thinks fit.

*[12 of 1976]*

*[9 of 1986]*

## **7. Procedure of Board**

- (1) The Board shall meet not less than once in every year.
- (2) Ten members of the Board shall be a quorum.
- (3)
  - (a) All questions at a meeting of the Board shall be determined by a majority of the votes of the members present.
  - (b) The Chairman shall have, in the case of equality of votes, a casting vote in addition to a deliberative vote.
- (4) The Chairman may, and upon application in writing with reasons specified by three members shall, convene a special meeting of the Board at any time.
- (5)
  - (a) The Board shall cause minutes of all proceedings of meetings of the Board, and of all meetings of committees appointed under [section 8](#) (1), to be entered in books kept for that purpose.
  - (b) Any such minutes, if purporting to be approved by and signed by the Chairman of the next succeeding meeting of the Board or committee, as the case may be, shall be evidence of such proceedings and until the contrary is proved the meeting to which the minutes relate shall be deemed to have been duly held and convened and all proceedings thereat to have been duly transacted and all appointments of members and members of committees shall be deemed to be valid.
- (6) Subject to the foregoing the Board may regulate its own procedure and may make administrative rules generally for the government, control, administration and management of the Board and

committees and for the conduct of its business, including, without limiting the generality of the foregoing, rules prescribing—

- (a) the terms and conditions of service, pension and retirement benefits and the like, of staff, other than temporary staff;
- (b) measures for the discipline of staff; and
- (c) the financial procedure of the Board.

*[9 of 1987]*

## **8. Committees**

- (1) The Board may by resolution appoint such committees as it may think fit.
- (2) The Board shall determine the powers, duties and procedure of all committees appointed by it under the Act and the terms of office of persons appointed to such committees and may delegate to them any of the functions of the Board other than those required by this Act to be exercised by resolution of the Board.
- (3) The Board may, in appointing any committee under this section, appoint any person thereto notwithstanding that he is not a member of the Board.

## **Part IV – Functions and powers of the Board**

## **9. Functions and powers of the Board**

- (1) The functions and powers of the Board shall be—
  - (a) to conduct such academic, technical and other examinations at the conclusion of any approved course in Malawi as it may consider desirable in the public interest;
  - (b) to award certificates or diplomas to successful candidates in such examinations;
  - (c) to invite any body or bodies outside Malawi to conduct examinations jointly with the Board and to award certificates or diplomas to successful candidates in such examinations;
  - (d) to advise any body or bodies so invited under paragraph (c) upon the adaptation of examinations necessary for the requirements of Malawi and to assist any such body or bodies to conduct such examinations;
  - (e) to recommend to the Minister syllabuses for use in secondary schools;
  - (f) to process and analyse examination results statistically;

*[12 of 1976]*

  - (g) to provide computer or statistical services when required;
  - (h) to engage in test development, related research and validity studies;
  - (i) to devise, develop and implement systems of test enabling or facilitating the proper selection of pupils for secondary education and students for any university, school or other educational institution approved by the Minister, at any such university, school or institution or to devise, develop, implement or facilitate any course of instruction or training approved by the Minister;
  - (j) to advise the Government, the Minister and any university, school or other educational institution approved by the Minister on the development and use of such systems of test as are referred to in paragraph (i); and

- (k) to advise the Public Service Commission and, at the discretion of the Board, any employer, on tests designed to demonstrate the suitability of any employee, or prospective employee, for employment, either generally or in any particular position, capacity or class of employment.
- (2) For the furtherance of its functions and powers the Board may with the approval of the Minister make regulations—
  - (a) regulating the conduct of examinations and tests for all purposes incidental thereto; and
  - (b) prescribing examination and test fees and other charges payable to the Board.
- (3) For the furtherance of its functions and powers the Board may, with the approval of the Minister, organize training courses for, or arrange for the training of, examiners, markers, supervisors, invigilators, testing, research and computer personnel to ensure the proper management of examinations and tests conducted by the Board.
- (4) The Board shall have the further powers set out in the Schedule.
- (5) The Minister may, at any time, by notice published in the *Gazette*, alter or amend the Schedule.

[12 of 1976]

[9 of 1987]

## Part V – Financial provisions

### 10. Finance

- (1) The funds of the Board shall comprise—
  - (a) such moneys as may be granted from time to time by the Government;
  - (b) such donations, grants, bequests and loans as may from time to time be accepted by the Board;
  - (c) such fees or other charges as may be paid to the Board by candidates for examinations and test users; and
  - (d) such other moneys as the Board may from time to time lawfully obtain or receive.
- (2) The funds of the Board shall be applied to the purposes for which the Board is established under this Act.
- (3) The funds of the Board shall be paid into a bank and the banking account or accounts shall be operated in such manner as the Board may determine.

### 11. Investment

- (1) The Board may, with the approval of the Minister, and subject to such conditions as he may impose, invest such part of its funds as are not for the time being required for the purposes of its business.
- (2) The powers of the Minister under this section shall be exercised with the concurrence of the Minister for the time being responsible for finance and shall extend to the amount which may be invested, the nature of the investment and the terms and conditions thereof, and the Minister's approval may be either general or limited to a particular investment.

## 12. Borrowings

Subject to section 31 of the Finance and Audit Act, the Board may borrow moneys by way of bank overdraft, the issue of securities, or in any other manner whatsoever.

*[12 of 1976]*

## 13. Accounts and audit

The Board shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year of the Board a statement of accounts in a form approved by the Minister.

- (2) Subject to any direction made by the Minister for the time being responsible for finance under section 45 of the Finance and Audit Act, the accounts of the Board shall be audited by auditors approved annually by the Minister.

*[Cap. 37:01]*

- (3) As soon as the accounts of the Board for any financial year have been audited, the Board shall cause to be sent to the Minister a copy of the statement of accounts prepared in respect of that year together with a copy of any report made by the auditors on the statement or on the accounts.
- (4) The Minister shall, within a period of six months after the end of the financial year to which the accounts relate, lay a copy of every such statement and report before the National Assembly.

*[12 of 1976]*

*[Please note: numbering as in original.]*

## Part VI – Offences and penalties

## 14. Offences and penalties

- (1) For purposes of this section—

“candidate” means candidate for National Examinations;

“National Examinations” has the meaning ascribed thereto in the Education Act.

*[Cap. 30:01]*

- (2) A person who—

- (a) gains access to National Examinations materials without authority;
- (b) reveals, orally or in writing, the contents of National Examinations material; or
- (c) willfully or maliciously damages National Examinations materials,

shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.

- (3) Any person who, being charged with the responsibility for the safekeeping, delivery, distribution, printing or otherwise processing of National Examinations materials—

- (a) fails to exercise due care and attention in relation to the security of National Examinations materials; or
- (b) fails to take reasonable steps for the security of National Examinations materials,

shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.



- (4) Any candidate who—
- (a) enters, or attempts to enter an examination room where National Examinations are being conducted with any reference materials, or any other unauthorized equipment or instrument; or
  - (b) possesses or uses, in an examination room where National Examinations are being conducted, any reference material, or any other unauthorized equipment or instrument,
- shall be guilty of an offence and liable to a fine of K50,000 and imprisonment for two years.
- (5) Any candidate who, during National Examinations—
- (a) copies from, or discusses with, another candidate or any other person, any answer to any question in the examination;
  - (b) having been permitted to go outside the examination room to relieve himself or herself, consults with any person, or refers to any reference material, in relation to the examination,
- shall be guilty of an offence and liable to a fine of K50,000 and imprisonment for two years.
- (6) Any person who intimidates, harasses, assaults or otherwise obstructs a supervisor, an invigilator, a security officer or any other person authorized to conduct or administer National Examinations or lawfully involved in conducting or administering National Examinations, shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.
- (7) Any person who—
- (a) being involved in the enrolment and registration process of candidates for National Examinations; or
  - (b) being authorized to conduct or administer National Examinations,
- fails to comply with, or contravenes, any regulations in relation to the conduct of National Examinations, shall be guilty of an offence and liable to a fine of K300,000 and imprisonment for ten years.
- (8) Any person who contravenes any regulation made under this Act shall be guilty of an offence, and where no specific penalty is provided for, shall be liable to a fine of K50,000 and imprisonment for two years.

*[30 of 1994]*

*[10 of 2004]*

## **Schedule (Section 9)**

### **Powers of the Board**

1. To appoint and employ, with the approval of the Minister, such professional, technical and administrative officers, clerks and other servants as it may deem requisite.
2. To pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit.
3. To provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.
4. To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for persons in its employ.
5. To purchase land and construct thereon dwelling-houses for persons in its employ.
6. To sell or lease dwelling-houses and land for residential purposes to persons in its employ.

7. Wherever it considers it necessary or expedient, for the performance of any of its powers or functions, to purchase, take on lease or in exchange, hire, or otherwise acquire any real or personal property, or any right of possession, occupancy or user in or over any such property.
8. To construct, maintain, alter and improve any buildings, works machinery and plant wherever it deems it necessary or expedient to do so for the performance of any of its powers or functions.
9. To work or otherwise beneficially use, to exchange, let, sell or mortgage any property, acquired or constructed under paragraphs 4, 5, 6, 7 or 8.
10. To enter into agreements to facilitate the voluntary transfer of professional, technical or other staff between itself and any other employer.
11. To dispose of by way of sale, gift or such other means as the Board may deem fit any used or perishable stores not required for the purposes of the Board.
12. For the better performance of its functions, to cooperate with Government departments, local authorities, universities, technical colleges, schools, Chambers of Commerce and such other associations, organizations or persons as to it may appear necessary or desirable.
13. To make rules prescribing measures for the discipline of staff.
14. To do all things incidental or conducive to the performance of its powers or functions under this Act.

*[12 of 1976]*