

Malawi

## Restriction and Security Orders Act

Chapter 14:03

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1954/32/eng@2014-12-31

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PDF created on 21 September 2023 at 14:57.

*Collection last checked for updates: 31 December 2014.*

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Restriction and Security Orders Act  
Contents

1. Short title ..... 1

2. Interpretation ..... 1

3. Power to make restriction orders ..... 1

4. Power to make security orders ..... 2

5. Procedure for making orders ..... 2

6. Service of notice and arrest ..... 2

7. Powers of judges or magistrates ..... 3

8. Detention in custody pending decision ..... 3

9. Contents of orders ..... 3

10. Execution of orders ..... 4

11. Expenses ..... 4

12. Persons undergoing sentence ..... 4

13. Revocation and variation of orders ..... 4

14. Penalties for breach of order ..... 5

15. Penalty for harbouring ..... 5

16. Institution of proceedings ..... 5

17. Evidence ..... 5

18. Minister may make orders in relation to persons subject to restriction orders ..... 5

19. Arrest without warrant ..... 6

20. Rules ..... 6

21. Appointment of magistrates ..... 6

# Malawi

## Restriction and Security Orders Act

### Chapter 14:03

Commenced on 1 November 1954

*[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 Regulate the Making of Restriction and Security Orders in Respect of Undesirable and Convicted Persons

##### 1. Short title

This Act may be cited as the Restriction and Security Orders Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

“**convicted person**” means a person in respect of whom any court certifies to the Minister that he has been convicted, either by that court or by any inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment otherwise than only in default of payment of a fine;

“**judge**” means a Judge of the High Court;

“**magistrate**” means, subject to [section 6](#) (2) and (3), a person appointed to be a magistrate for the purpose of this Act under [section 21](#);

“**person charged**” means a person in respect of whom it is alleged that there are grounds for making a restriction order or security order under this Act and includes a person in respect of whom such an order has been made;

“**restriction order**” means an order prohibiting the person in respect of whom it is made from entering or from leaving an area within Malawi without the consent of the officer specified in the order;

“**security order**” means an order requiring the person in respect of whom it is made to give security in two or more sureties in such amount and for such time as may be therein specified to keep the peace and to be of good behaviour, or for indemnifying public funds for all costs, charges and expenses incurred in his regard, or for both such purposes, as may be appropriate in the case;

“**undesirable person**” means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government or public morals, or who is or has been attempting, or conducting himself in a manner calculated, to raise discontent or disaffection among the citizens or the inhabitants of Malawi, or to promote feelings of ill-will and hostility between different races or classes of the population of Malawi.

##### 3. Power to make restriction orders

Subject to this Act, the Minister may, if he thinks fit, make a restriction order in respect of any person who is—

- (a) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a restriction order should be made in his case, either in addition to or in lieu of sentence or

- (b) an undesirable person.

#### 4. Power to make security orders

- (1) Subject to this Act, the Minister may, if he thinks fit, either in addition to making a restriction order under [section 3](#) or separately, make a security order in respect of any person who is—
  - (a) a convicted person in respect of whom the court certifying to the Minister that he has been convicted recommends that a restriction order or a security order or both should be made in his case, either in addition to or in lieu of sentence or
  - (b) an undesirable person.
- (2) Where a security order is made as aforesaid, a restriction order shall be made in conjunction therewith to come into force upon default of compliance with the security order within a time therein fixed.
- (3) Where a security order has been complied with, the order shall, for the purposes of this Act, be deemed to remain in force so long as the security given thereunder subsists, and where a security order is revoked the said security shall cease to have effect.

#### 5. Procedure for making orders

Except where a court has, in accordance with this Act, given a certificate recommending that an order should be made, no restriction order or security order shall be made under this Act except where a judge or magistrate has, in accordance with [section 7](#), made a report on the case and the Minister is satisfied, having regard to the findings of fact and any conclusions of law as stated in the report, that such order may lawfully be made.

#### 6. Service of notice and arrest

- (1) A notice in the prescribed form shall be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is proposed that an order may be made against him under this Act, and requiring him to show cause, before a judge or magistrate at a place and time to be stated in the notice, why such order should not be made in respect of him.
- (2) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to a judge or to a Resident Magistrate or a magistrate of the first or second grade that that person is an undesirable person, such judge or magistrate may issue a warrant for his arrest, and if the notice mentioned in subsection (1) shall not already have been served upon him, it shall be so served not later than twenty-four hours after his apprehension.
- (3) In any case where it is intended to take proceedings against any person under this Act on the ground that he is an undesirable person, and it is represented on oath or affidavit to a judge or to a magistrate of the first or second grade that, in fact or according to a reasonable suspicion, anything which is necessary to the conduct of the proceedings or tending to throw light on the question of whether or not the person is an undesirable person, is in any building, ship, aircraft, vehicle, box, receptacle or place, such judge or magistrate may by warrant (called a search warrant) authorize a police officer, or other person therein named, to search the building, ship, aircraft, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing, and if any thing searched for be found, to seize it and carry it before the judge or magistrate who is to take or consider evidence in accordance with [section 7](#).
- (4) Sections 114 and 115 of the Criminal Procedure and Evidence Code shall apply to search warrants issued under subsection (3) and any magistrate issuing a search warrant under that subsection shall be deemed to have jurisdiction throughout Malawi. When any thing is seized and brought before a judge or magistrate, it may be detained until the conclusion of the investigation, reasonable care

being taken for its preservation and, after the order of the Minister is known, it shall be returned to the person in whose possession it was found, or otherwise dealt with as the Minister may direct or, in default of such direction, as the judge or magistrate shall direct.

[Cap 8:01]

- (5) Notwithstanding section 71 of the Criminal Procedure and Evidence Code, the Attorney General may request the judge or magistrate to direct that any proceedings under this Act in respect of a person charged with being an undesirable person, or any part of such proceedings shall be held *in camera*; and, if the Attorney General shall certify to the judge or magistrate that it is in his opinion desirable in the public interest that the proceedings, or such part thereof as the Attorney General may specify, shall be held *in camera*, the public generally or any particular person or class of persons specified by the Attorney General shall not have access to, or be or remain in, any room or building in which such proceedings are held during such proceedings or part thereof.

## 7. Powers of judges or magistrates

- (1) At the time appointed in the notice served under [section 6](#), or as soon as practicable thereafter, or at any adjournment of the hearing, the judge or magistrate shall take or consider such evidence upon oath or, subject to subsection (3), upon affidavit as is tendered in support of the allegations contained in the notice, and where the evidence is on affidavit, the person charged shall be informed of the general nature of such evidence, and where the evidence of witnesses is taken orally at the hearing, the witnesses may be cross-examined by the person charged or his legal practitioner, and the person charged may on his own behalf call such witnesses and tender such other evidence as may be relevant upon the question at issue.
- (2) The judge or magistrate, after considering the evidence adduced before him and making any further investigations which he may consider to be desirable, shall make a report to the Minister setting out his findings of fact and his conclusions on any questions of law involved, and, if he thinks fit, making a recommendation as to the issue in the case of any order or orders under this Act.
- (3) Notwithstanding subsection (1), a judge or magistrate may, before permitting evidence to be given on affidavit, require production, by the party tendering such evidence, of a certificate signed by the Director of Public Prosecutions that it is, in his opinion, necessary that the evidence be given on affidavit, and upon production of any such certificate the evidence on affidavit shall be received.
- (4) A judge or magistrate in taking or considering evidence under this section shall not be bound by any rules of evidence which may pertain to civil or criminal proceedings, but any witness who objects to answering any question on the ground that it will tend to incriminate him shall not be required to answer the question nor be liable to any penalty for refusing so to answer.

## 8. Detention in custody pending decision

Where a judge, magistrate or a court recommends the making of a restriction order or security order on the grounds that the person charged is an undesirable person or a convicted person, the person charged may, if the judge, magistrate or court, as the case may be, shall so order, be detained in such manner as the judge, magistrate or court may direct pending the decision of the Minister for a period not exceeding twenty-eight days, and shall be deemed to be in lawful custody while so detained.

## 9. Contents of orders

- (1) Every security order shall be in the prescribed form.
- (2) Every restriction order shall be in the prescribed form and shall state the area or areas which the person to whom it relates is prohibited from entering or leaving.
- (3) A restriction order may be expressed to be in force for a time limited therein or for an unlimited time, and, when the person charged is not taken into custody pending the execution thereof, shall prescribe a time within which the person charged may of his own volition comply therewith.

## 10. Execution of orders

- (1) As soon as practicable after a restriction order or security order is made, a copy thereof shall be served upon the person charged.
- (2) A person with respect to whom a security order has been made may be detained in such manner as may be directed by the Minister until such order shall have been complied with:  
  
Provided that, without prejudice to subsection (3), where the security order is not complied with, no person shall be detained under this subsection for a period exceeding twenty-eight days.
- (3) Subject to subsection (4), a person with respect to whom a restriction order is in force may be detained in such manner as may be directed by the Minister so far as necessary for the purpose of removing him from any place which he is prohibited from entering or to any place which he is prohibited from leaving and shall be deemed to be in lawful custody while so detained.
- (4) No person shall be detained under subsection (3) for a period exceeding ninety days and, if at the expiration of such period he has not been removed as aforesaid, the restriction order shall cease to have effect.

## 11. Expenses

- (1) Where a restriction order is made, the Minister may, if he thinks fit, apply any money of the person charged, and may sell any of his property and apply the proceeds of such sale, in payment of the whole or any part of the expenses of or incidental to the removal of that person to any place in pursuance of that order and, if necessary, the maintenance of that person while the order is in force.
- (2) Any sale or disposal of any property by a person in respect of whom a restriction order has been made shall be void and ineffectual to pass any title to such property, unless the expenses mentioned in subsection (1) have been paid or the Minister has consented in writing to such sale or disposal:  
  
Provided that a sale of any property by a person in respect of whom a restriction order has been made shall pass a good title in such property to the purchaser if he proves that he is a purchaser for value and that, at the time of such purchase, he had no knowledge that such a restriction order had been made.
- (3) Except so far as they are defrayed under subsection (1), any such expenses shall be payable out of public funds.

## 12. Persons undergoing sentence

If a person in respect of whom a security order or restriction order is made under this Act has been sentenced to any term of imprisonment, such sentence shall be served before the order is carried into effect unless the Minister otherwise directs.

## 13. Revocation and variation of orders

- (1) The Minister by order may at any time vary or revoke any restriction order or security order.
- (2) Without prejudice to the generality of subsection (1) the Minister may vary any restriction order so as to permit the person therein mentioned to enter or leave any area which he is prohibited from entering or leaving, or to permit him to leave Malawi and may attach to the permission a condition suspending the operation of the order during the absence of such person from any such area or from Malawi or conditions as to security for good behaviour or otherwise, and may also vary, cancel or add a condition requiring such person to report himself.
- (3) Any order made under subsection (2) may be expressed to have effect for the duration of the order thereby varied or for any lesser period.

- (4) As soon as practicable after an order has been made under this section a copy thereof shall be served upon or sent to the person in respect of whom it is made.

#### 14. Penalties for breach of order

- (1) If a person in respect of whom a restriction order is in force leaves or attempts to leave or enters or attempts to enter any area in contravention of the order, or having, in pursuance of permission given as hereinbefore provided, left or entered any place, willfully fails to observe any condition attached to such permission, he shall be liable to a fine of £250 and to imprisonment for twelve months, and to be again removed under the original order.
- (2) Nothing in this section shall prevent the making of a restriction order in accordance with this Act in consequence of a conviction for an offence against this Act.

#### 15. Penalty for harbouring

Any person who, without lawful excuse, knowingly harbours or conceals any person who—

- (a) is within any area of Malawi in contravention of the terms of a restriction order ; or
- (b) having entered any area of Malawi in pursuance of permission given as hereinbefore provided has willfully failed to observe any condition attached to such permission,

shall be liable to a fine of £250.

#### 16. Institution of proceedings

No proceedings shall be instituted under this Act except by the Director of Public Prosecutions or with his previous sanction in writing.

#### 17. Evidence

In any proceedings under this Act—

- (a) a document purporting to be an order made under this Act shall, until the contrary is proved, be presumed to be such an order;
- (b) any order made under this Act shall be presumed, until the contrary is proved, to have been validly made and to have been made on the date upon which it purports to have been made; and
- (c) any certificate made under [section 7 \(3\)](#) and purporting to be signed by the Director of Public Prosecutions shall, until the contrary is proved, be deemed to have been so signed.

#### 18. Minister may make orders in relation to persons subject to restriction orders

- (1) The Minister may by order impose, in relation to persons in respect of whom restriction orders are in force, and, either generally or in any specific case, such restrictions as to residence within the area specified in the order, reporting to the police, registration, occupation, employment, visitors, censorship and receipt or dispatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio or other apparatus, camera, arms and explosives, or other article, or such other like restrictions as he may deem necessary in the public interest, and any person in relation to whom any such order is made shall comply with the terms of the order.
- (2) If any person in respect of whom a restriction order is in force shall fail to comply with the terms of any order made under subsection (1), he shall be liable to a fine of £25 and to imprisonment for six months.

## 19. Arrest without warrant

Any police officer may arrest without a warrant any person reasonably suspected by him of having committed or of attempting to commit an offence under this Act.

## 20. Rules

- (1) The Minister may make Rules for the better carrying out of this Act.
- (2) In particular and without prejudice to the generality of the foregoing subsection, the Minister may make Rules—
  - (a) prescribing the form of certificate to be used by a court certifying a conviction and recommending the making of a restriction order or security order under [section 3](#) or [4](#);
  - (b) prescribing the form of notice to be served under [section 6](#);
  - (c) regulating the procedure at inquiries by a judge or magistrate under [section 7](#); and
  - (d) prescribing forms of restriction orders and security orders.

## 21. Appointment of magistrates

The Minister may, by notice published in the *Gazette* or by writing under his hand, appoint any Resident Magistrate to be a magistrate for the purposes of this Act.