

Malawi

## Mutual Assistance in Criminal Matters Act Chapter 8:04

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1991/24/eng@2014-12-31

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PDF created on 22 September 2023 at 14:58.

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

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# Malawi

## Mutual Assistance in Criminal Matters Act

### Chapter 8:04

Commenced on 1 April 1994

*[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 with respect to the scheme relating to mutual assistance in criminal matters within the commonwealth to facilitate the operation of that scheme in Malawi and to make provision concerning mutual assistance in criminal matters between Malawi and countries other than Commonwealth countries, and to provide for matters connected therewith or incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Mutual Assistance in Criminal Matters Act.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**appropriate authority**”—

- (a) in relation to Malawi, means the person or authority designated pursuant to [section \(4\)](#);
- (b) in relation to any Commonwealth country, means the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;

“**judicial records**” means judgments, orders and decisions of courts, and other records held by judicial authorities;

“**official records**” means documents held by government departments or agencies or prosecution authorities;

“**relevant proceedings**” means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act by a Commonwealth country;

“**Scheme**” means the scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth;

“**serious offence**” means an offence the maximum penalty for which is death or imprisonment for not less than twelve months;

“**transmitted**”, in relation to a request, means—

- (a) in Part II, transmitted by the appropriate authority in Malawi to the appropriate authority in the commonwealth country from which assistance is requested; and
  - (b) in Part III, transmitted by the appropriate authority in the Commonwealth country making a request for assistance, to the appropriate authority in Malawi.
- (2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of or the law in force in a part of, that country.

- (3) For the purposes of this Act, a ship or aircraft of, or registered in, Malawi or a Commonwealth country shall be deemed to be part of Malawi or, as the case may be, the Commonwealth country.
- (4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in Malawi or in a Commonwealth country if any information or indictment has been laid or filed against the person for the offence, whether or not—
  - (a) a summons to require the attendance of the person to answer to the information or indictment; or
  - (b) a warrant for the apprehension of the person, has been issued.
- (5) Where, in Malawi or a Commonwealth country—
  - (a) a person has been convicted by a court of a serious offence; and
  - (b) with his consent, another serious offence, of which he has not been found guilty, is taken into account by the court in passing sentence for the offence referred to in paragraph (a), the person shall, for the purposes of this Act, be deemed to have been convicted by the court of the offence so taken into account on the date on which the sentence was passed.
- (6) A reference in this Act to property derived or obtained from the commission of an offence shall be deemed to include reference to property used in, or in connexion with, the Commission of the offence.

### **3. Application of this Act**

- (1) Subject to subsection (2), this Act shall apply in relation to all Commonwealth countries.
- (2) The Minister may, by order published in the *Gazette*, direct that the application of this Act in relation to a particular Commonwealth country be subject to such conditions, exceptions or qualifications as are specified in the order and in that event this Act shall apply accordingly.

### **4. Appropriate authority for Malawi**

The Minister may, by order published in the *Gazette*, designate any person or authority as the appropriate authority in Malawi for the purpose of this Act.

### **5. Restriction with respect to operation of this Act**

- (1) Nothing in this Act shall derogate from existing forms or prevent the development of other forms of co-operation (whether formal or informal) in respect of criminal matters between Malawi and any Commonwealth country, or between Malawi, or any enforcement agencies or prosecuting authorities in Malawi, and the International Criminal Police Organization or any such agencies or authorities outside Malawi.
- (2) Nothing in this Act shall authorize the extradition, or the arrest or detention with a view to extradition of any person.

## **Part II – Requests by Malawi to Commonwealth Countries for Assistance**

### **Division 1 - General assistance**

#### **6. Assistance in obtaining evidence, etc**

Where the appropriate authority in Malawi has reasonable grounds to believe that evidence or information relevant to any criminal matter may be obtained if in a Commonwealth country—

- (a) evidence is taken from any person;

- (b) information is provided;
- (c) any—
  - (i) person;
  - (ii) sample, specimen or other item from or provided by a person; or
  - (iii) remains which are or may be human, is or are subjected to any examination or test;
- (d) judicial records or official records are produced, copied or examined;
- (e) any record or article is produced, copied or examined;
- (f) samples of any matter or thing are taken, examined or tested; or
- (g) any building, place or thing is viewed or photographed, a request may be transmitted by such authority requesting that assistance be given by the Commonwealth country concerned in obtaining the evidence or information.

#### **7. Assistance in locating or identifying person**

Where the appropriate authority in Malawi has reasonable grounds to believe that a person who—

- (a) is or might be concerned in or affected by;
- (b) could give or provide evidence or assistance relevant to,

any criminal matter is in a Commonwealth country, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

#### **8. Assistance in obtaining article or thing by search and seizure if necessary**

Where the appropriate authority in Malawi has reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in obtaining, by search and seizure if necessary, the article or thing.

#### **9. Assistance in arranging attendance of persons**

Where the appropriate authority in Malawi has reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in arranging the attendance of the person in Malawi to give or provide that evidence or, as the case may be, assistance

#### **10. Assistance in transferring prisoners**

- (1) Where the appropriate authority in Malawi has reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted by such authority to the appropriate authority in the Commonwealth country requesting the Commonwealth country to transfer the prisoner to Malawi to give or provide that evidence or, as the case may be, assistance.
- (2) Where, pursuant to a request made under subsection (1), a prisoner is transferred to Malawi from a Commonwealth country subject to conditions with respect to his custody, release or return or with respect to any other matter, the appropriate authority in Malawi shall, unless and to the extent that the Commonwealth country waives their observance, take the necessary steps to ensure that the conditions are observed.

- (3) Where any condition referred to in subsection (2) requires that a prisoner be kept in custody while in Malawi, the prisoner shall, while in Malawi or travelling to or from Malawi pursuant to the request, be kept in such custody as the Minister may direct in writing.
- (4) In this section, “prisoner”, in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his personal liberty pursuant to such law.

## 11. Assistance in serving documents

Where, for the purpose of, or in connexion with, any criminal matter, it is necessary or desirable to serve a document on any person or any authority in a Commonwealth country, a request may be transmitted by the appropriate authority in Malawi to the appropriate authority of the Commonwealth country requesting that assistance be given by the Commonwealth country in effecting the service.

## 12. Restriction on use of evidence, etc.

Any—

- (a) evidence or information obtained or, as the case may be, given or provided by any person pursuant to a request referred to in section [6](#), [9](#) or [10](#);
- (b) article, record or thing obtained pursuant to a request referred to in section [6](#), [8](#) or [9](#),

shall be used in Malawi only for the purposes of the criminal proceedings to which the request related or, as the case may be, any criminal proceedings consequent on the investigation to which the request related, unless the Commonwealth country to which the request was made consents to the evidence or information being in Malawi used for the purposes of any other criminal proceedings.

## 13. Immunities and privileges

- (1) Subject to subsection (2), a person in Malawi pursuant to a request made under section [9](#) or [10](#)—
  - (a) shall not be liable to be detained, prosecuted or punished in Malawi for any offence that is alleged to have been committed, or that was committed, before the person’s departure, pursuant to the request, from the Commonwealth country to which the request was made;
  - (b) may refuse to answer any question or to produce any article, record or thing if the refusal is based on the law of Malawi; and
  - (c) shall not be compelled to give or provide evidence, information or assistance for the purposes of, or in connexion with, any criminal matter other than that to which the request related.
- (2) Subsection (1) (a) shall not apply to a person—
  - (a) if he leaves Malawi and then returns otherwise than pursuant to the same or another request; or
  - (b) who has been notified by the appropriate authority in Malawi that his presence is no longer required for the purposes of the request and who then remains in Malawi for more than 14 days after the first date on which he had a reasonable opportunity to leave Malawi.
- (3) For the purposes of subsection (1) (a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.



## Division 2 - Assistance in connexion with serious offences

### 14. Assistance in property, etc.

Where—

- (a) a person has been charged with, or convicted of, a serious offence; or is suspected, on reasonable grounds, of having committed such an offence; and
- (b) property derived or obtained, directly or indirectly, from the commission of that offence is suspected, on reasonable grounds, to be in a Commonwealth, country,

a request may be transmitted by the appropriate authority in Malawi to the appropriate authority in the Commonwealth country requesting that assistance be given by the Commonwealth country in accordance with the laws of that country in identifying, locating or assessing the value or amount of any such property.

### 15. Assistance in relation to certain orders

(1) Where—

- (a) an order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly, from the commission of a serious offence or an order has been made confiscating property derived or obtained, directly or indirectly, from the commission of a serious offence; and
- (b) property to which the restraining order applies or, as the case may be, which is available for the satisfaction of the confiscation order is suspected, on reasonable grounds, to be in a Commonwealth country,

then, subject to subsection (3), a request may be transmitted by the appropriate authority in Malawi to the appropriate authority in the Commonwealth requesting that the order concerned be enforced in accordance with the laws of the Commonwealth country and that, to that end, the country give appropriate assistance.

- (2) In any case where a request to a Commonwealth country under this section is accepted, the appropriate authority in Malawi shall inform the appropriate authority in that country if the confiscation order or restraining order concerned is thereafter varied or has thereafter ceased to have effect.
- (3) A request shall not be made under this section for the enforcement of a confiscation order if the amount specified in the order or the total value of property required to satisfy the order or the pecuniary penalty under the order would be less than K25,000 or such other amount as may be prescribed.

### 16. Assistance in obtaining orders in nature of restraining orders

Where—

- (a) a person has been, or is likely to be, charged with, or has been convicted of, a serious offence and a confiscation order has been, or is likely to be made confiscating property derived or obtained, directly or indirectly, from the commission of the serious offence; and
- (b) the property so derived or obtained is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted by the appropriate authority in Malawi to the appropriate authority in the Commonwealth country requesting that an order be made, in accordance with the laws of the

Commonwealth country, restraining dealings with the identified property and that, to that end, the country give appropriate assistance.

### **Part III – Requests by Commonwealth countries to Malawi for assistance**

#### **Division 1 - Form and acceptance or refusal of requests**

##### **17. Form of requests**

- (1) Subject to subsection (2), the Schedule shall apply to the request for assistance under this Act made by a Commonwealth country.
- (2) Subsection (1) shall not apply to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted—
  - (a) it shall be required to be implemented only to the extent that the appropriate authority in Malawi considers reasonable; and
  - (b) such request shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as the appropriate authority in Malawi considers reasonable.
- (3) Where a Commonwealth country making a request for assistance under this Act wishes the request or any part of it to be kept confidential, it shall so state, giving reasons, in the request or in a document accompanying, but not forming part of, the request.

##### **18. Acceptance or refusal of requests, etc.**

- (1) Subject to subsections (2) and (3) a request for assistance under this Act duly made by a Commonwealth country shall be accepted.
- (2) A request for assistance under this Act made by a Commonwealth country to Malawi shall be refused if, in the opinion of the appropriate authority in Malawi—
  - (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or in which it was committed, an offence of a political character;
  - (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
  - (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;
  - (d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in Malawi, would not have constituted an offence under the criminal law of Malawi;
  - (e) the granting of the request would be contrary to the Constitution of Malawi, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of Malawi;
  - (f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in Malawi;
  - (g) the prisoner is not willing to give his consent to the transfer in the case of a request referred to in [section 23](#) (1);

- (h) the request is for assistance of a kind which cannot be given under this Act or requires steps to be taken for its implementation that could not be lawfully taken; or
  - (i) the implementation of the request would require an individual to act, or refrain from acting and the individual is not willing to do so and cannot be lawfully compelled to do so.
- (3) A request for assistance under this Act made by a Commonwealth country to Malawi may be refused if, in the opinion of the appropriate authority in Malawi—
- (a) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside Malawi in similar circumstances would not have constituted an offence against the laws of Malawi;
  - (b) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in Malawi at the same time and had constituted an offence against the law of Malawi, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;
  - (c) the provision of the assistance would impose an excessive burden on the resources of Malawi;
  - (d) the conditions, exceptions or qualifications imposed pursuant to [section 3](#) (2) in relation to the country prevent the request being accepted;
  - (e) the request, not being one referred to in [section 17](#) (2), does not meet the requirements of the Schedule;
  - (f) there are reasonable grounds for doing so in the case of a request referred to in [section 23](#) (1); or
  - (g) the request cannot be accommodated within relevant legal practices and procedures in Malawi.
- (4) If, in the opinion of the appropriate authority in Malawi the expense involved in complying with a request for assistance under this Act made by a Commonwealth country and accepted would be of an extraordinary nature, the appropriate authority in Malawi shall consult with the appropriate authority in the Commonwealth country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the appropriate authority in Malawi may refuse to continue further with the request.
- (5) Where any of the grounds referred to in subsection (2) or (3) apply in relation to some, but not all, of the matters in respect of which a request for assistance under this Act is made, nothing in this section shall operate to prevent the request being accepted to the extent that no such ground applies.
- (6) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to [section 17](#) (2), is refused, the fact of and, subject to subsection (7), the grounds for, the refusal shall be given by the appropriate authority in Malawi to the appropriate authority in the Commonwealth country.
- (7) In the case of a refusal of a request such as is referred to in [section 23](#) (1), the appropriate authority in Malawi is not required to give grounds for the refusal.
- (8) After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the appropriate authority in Malawi may require the appropriate authority in the Commonwealth country to furnish information relative to the request, and if that information is not furnished within such period as the appropriate authority in Malawi considers reasonable the request shall be deemed to have been withdrawn.
- (9) For the purposes of this section, an offence is not an offence within the scope of any international convention to which both Malawi and the Commonwealth country making the request are parties

and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

## Division 2 - General assistance

### 19. Assistance to a country in obtaining evidence, etc.

- (1) This section shall apply where a request is transmitted requesting assistance by Malawi in obtaining, evidence or information relevant to any criminal matter in relation to the Commonwealth country making the request and the request is accepted.
- (2) Subject to this section, regulations made under this Act may prescribe practices and procedures for obtaining evidence or information pursuant to a request for assistance under this section by a Commonwealth country.
- (3) A person from whom evidence is taken in Malawi pursuant to a request for assistance under this section by a Commonwealth country—
  - (a) may refuse to answer any question if—
    - (i) the refusal is based on the laws of Malawi;
    - (ii) to require the person to answer the question would constitute a breach of a privilege recognized by the laws of the Commonwealth country;
    - (iii) to answer the question would constitute the commission by the person of an offence against the laws of the Commonwealth country;
  - (b) shall not be compelled to give or provide evidence or information for the purposes of, or in connexion with, any criminal matter other than to which the request relates.
- (4) Where the request for assistance under this section is to the effect that evidence or information be obtained, copies of records not publicly available may be produced, copied or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in Malawi.

### 20. Assistance to a country in locating or identifying a person

- (1) This section shall apply where a request is transmitted requesting assistance by Malawi in locating, or in identifying and locating, a person believed to be in Malawi who—
  - (a) is or might be concerned in or affected by; or
  - (b) could give or provide evidence or assistance relevant to,any criminal matter in relation to the Commonwealth country making the request and the request is accepted.
- (2) Where this section applies, the appropriate authority in Malawi shall ensure that the person is located, or identified and located, and shall inform the appropriate authority in the Commonwealth country making the request accordingly.

### 21. Assistance to a country in obtaining article or thing by, search and seizure if necessary

- (1) This section shall apply where a request is transmitted requesting assistance by Malawi in obtaining, by search and seizure if necessary, an article or thing in Malawi for the purposes of, or in connexion with, any criminal matter in relation to the Commonwealth country making the request and the request is accepted.

- (2) Where this section applies, the appropriate authority in Malawi shall, unless the article or thing concerned is otherwise lawfully obtained, authorize in writing a police officer to apply to a magistrate for a search warrant in respect of the article or thing.
- (3) A police officer authorized under subsection (2) may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.
- (4) The laws of Malawi with respect to the procedure for—
  - (a) the making and disposal of an application for a search warrant;
  - (b) the execution of a search warrant,shall apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.
- (5) The appropriate authority in Malawi shall provide such certification as may be required by the appropriate authority in the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure and the subsequent custody of any property seized.
- (6) Where this section applies, the appropriate authority in Malawi may give authority in writing to enable any article or thing obtained pursuant to a request to be removed to the Commonwealth country that made the request.

## **22. Assistance to country in arranging attendance of persons to give evidence**

- (1) This section shall apply where a request is transmitted to the appropriate authority in Malawi by the appropriate authority in a Commonwealth country requesting that assistance be given by Malawi in arranging the attendance, in the Commonwealth country making the request, of a person in Malawi to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country and the request is accepted.
- (2) Where this section applies, the appropriate authority in Malawi shall—
  - (a) inquire whether or not the person concerned is willing to attend as requested;
  - (b) inform the appropriate authority in the Commonwealth country making the request as to the outcome of the inquiry;
  - (c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

## **23. Assistance to a country by transferring a prisoner**

- (1) This section shall apply where a request is transmitted by a Commonwealth country in Malawi to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal matter and the request is accepted.
- (2) Where this section applies, the Minister shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.
- (3) The appropriate authority in Malawi may state, and inform the appropriate authority in the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.
- (4) Any period during which a prisoner is in custody in a Commonwealth country pursuant to a request, shall be deemed, for all purposes, to be time served in custody in Malawi.
- (5) In this section, “prisoner” means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, an offence, or is subject to any limitation on his personal liberty pursuant to any law.

## 24. Assistance to a country in serving documents

- (1) This section shall apply where a request is transmitted requesting Malawi to transfer a prisoner in Malawi to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal matter in relation to that Commonwealth country and the request is accepted.
- (2) Where this section applies, the appropriate authority in Malawi shall—
  - (a) ensure that the document is served—
    - (i) in accordance with procedures proposed in the request; or
    - (ii) if those procedures would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the laws of Malawi;
  - (b) if the document—
    - (i) is served, transmit to the appropriate authority in the Commonwealth country making the request a certificate as to service;
    - (ii) is not served, transmit to the appropriate authority in the Commonwealth country a statement of the reasons which prevented the service.
- (3) In this section, “document” does not include—
  - (a) a subpoena;
  - (b) any process—
    - (i) requiring the attendance of a person before court or tribunal in the Commonwealth country making the request;
    - (ii) which attracts a criminal penalty or sanction for non-compliance with its requirements.

### **Division 3 - Assistance in connexion with serious offences in Commonwealth countries**

## 25. Assistance to a country in tracing property, etc.

- (1) This section shall apply where—
  - (a) the appropriate authority in a Commonwealth country transmits to the appropriate authority for Malawi a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in a Commonwealth country, to the effect that in that country a named person—
    - (i) has been charged with, or convicted of, a specified serious offence; or
    - (ii) is suspected, on reasonable grounds, of having committed such a specified serious offence;
  - (b) the property derived or obtained, directly or indirectly, from the commission of a specified serious offence is suspected, on reasonable grounds, to be in Malawi;
  - (c) a request is transmitted requesting assistance by Malawi in identifying, locating or assessing the value or amount of that property; and
  - (d) the request is accepted.

- (2) Where this section applies, the appropriate authority in Malawi—
  - (a) shall give the assistance requested and, in doing so, shall invoke such powers and procedures as are available for that purpose; and
  - (b) shall inform the appropriate authority in the Commonwealth country making the request accordingly.

## 26. Assistance to a country in relation to certain orders

- (1) This section shall apply where—
  - (a) an order is made in a Commonwealth country—
    - (i) confiscating property derived or obtained, directly or indirectly, from the commission of a specified serious offence;
    - (ii) imposing on the person against whom the order is made a pecuniary penalty calculated by reference to the value of property so derived or obtained; or
    - (iii) restraining dealings with property which is, or is suspected, on reasonable grounds, of being, property so derived or obtained;
  - (b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in Malawi.
  - (c) a request is transmitted requesting that the order concerned be enforced in accordance with the laws of Malawi and that, to that end, Malawi is requested to give appropriate assistance; and
  - (d) the request is accepted.
- (2) Where this section applies, the appropriate authority in Malawi shall cause an application to be made to the High Court in accordance with the Rules of the Supreme Court for the registration of the order concerned.
- (3) On application made pursuant to subsection (2), the High Court shall register the order if it is satisfied—
  - (a) that at the time of registration the order is in force; and
  - (b) in the case of an order such as is referred to in subsection (1) (a) (ii)—
    - (i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend himself, or that he had died or absconded before such notice could be given to him; and
    - (ii) that the order is not subject to appeal.
- (4) Where an order is registered in accordance with this section, a copy of any amendment made to the order (whether before or after registration) may be registered in the same way as the order and the amendment shall not, for the purposes of this Act, have effect until it is so registered.
- (5) An order or an amendment of an order shall be registered by the registration, in accordance with the Rules of the Supreme Court, of—
  - (a) a copy of the order or amendment; or
  - (b) a copy of the order or amendment duly authenticated in accordance with [section 31](#) (2) (a).
- (6) The High Court shall, after appropriate notice has been given to the appropriate authority in Malawi, cancel the registration of an order in accordance with this section if it appears to the

High Court to have ceased to have effect in the Commonwealth country that made the request for assistance.

- (7) In this section, “appeal” includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or stay of execution.

## **27. Assistance to a country in obtaining orders in nature of restraining orders**

- (1) This section shall apply where—
- (a) the appropriate authority in the Commonwealth country transmits to the appropriate authority in Malawi a certificate given, for the purposes of a request for assistance under this section, by a person legally qualified in the Commonwealth country, to the effect that in that country—
    - (i) a named person has been, or is likely to be, charged with, or has been convicted of, a specified serious offence; and
    - (ii) an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of that country of confiscating property derived or obtained, directly or indirectly, from the commission of the specified serious offence or of imposing on that named person a pecuniary penalty calculated by reference to the value of the property so derived or obtained;
  - (b) property so derived or obtained, or which would be available to satisfy a pecuniary penalty under the confiscation order or, as the case may be, under such an order if made, is suspected, on reasonable grounds, to be in Malawi;
  - (c) a request is transmitted requesting that an order be made, in accordance with the laws of Malawi, restraining dealings with property and that, to that end, Malawi is requested to give appropriate assistance; and
  - (d) the request is accepted.
- (2) Where this section applies, the appropriate authority in Malawi shall cause such application to be made as he deems necessary to secure the making of an order of the kind requested.

## **Part V – Miscellaneous**

### **28. Certificates given by the appropriate authority**

- (1) The appropriate authority may give a certificate in such form as he determines, certifying all or any of the following facts, namely, that—
- (a) a request for assistance under this Act has been made by a Commonwealth country;
  - (b) the request meets the requirements of this Act;
  - (c) the acceptance of the request was duly made under and in accordance with this Act.
- (2) In any relevant proceedings a certificate purporting to have been given under subsection (1) shall be received as conclusive proof of the matters certified by the certificate.

### **29. Proof of documents**

- (1) In any relevant proceedings a document that is duly authenticated is admissible in evidence.
- (2) A document is duly authenticated for the purposes of subsection (1) if it purports to be—
- (a) signed or certified by a Judge or magistrate of the Commonwealth country making a request;



- (b) authenticated by the oath of a witness, or of a public officer, of the Commonwealth country making request; or
  - (c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of the Commonwealth country making the request.
- (3) In any relevant proceedings, a certificate purporting to have been given—
- (a) by the appropriate authority in a Commonwealth country certifying the matters referred in the definition of “serious offence”; or
  - (b) by a legally qualified person for the purposes of a request for assistance under [section 26](#) or [28](#),
- shall be received as evidence of the matters duly certified by the certificate.
- (4) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with this Act or any other law.

### 30. Transit

- (1) Where a person is to be transported in custody from a Commonwealth country through Malawi to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the scheme, by that other Commonwealth country, the person—
- (a) may be transported through Malawi in the custody of another person; and
  - (b) if an aircraft or ship which the person is being transported lands or calls at a place in Malawi, shall be kept in such custody as the Minister may direct in writing until the person’s transportation is continued.
- (2) Where a person is being held in custody pursuant to a direction under subsection (1) (b) and the person’s transportation is not, in the opinion of the Minister, continued within a reasonable time, the Minister may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

### 31. Escaping

Any person who escapes from lawful custody while in Malawi pursuant to a request under [section 10](#), or while being kept in custody pursuant to a direction under [section 30](#) (1) (b), shall be guilty of an offence and be liable to imprisonment for two years.

### 32. Arrest of person who has escaped from custody

- (1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person—
- (a) has been brought to Malawi pursuant to a request under [section 10](#), or was being kept in custody pursuant to a direction under [section 30](#) (1) (b); and
  - (b) has escaped from lawful custody while in Malawi pursuant to the request, or while being so kept in custody.
- (2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Act.

### 33. Regulations

- (1) The Minister may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—
  - (a) making provisions as to evidence or proof of any matter for the purposes of this Act;
  - (b) prescribing expenses and allowances payable to any person in Malawi pursuant to a request;
  - (c) prescribing conditions to be imposed for the protection of any interest in any property to be sent to a requesting country pursuant to a request; or
  - (d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in Malawi pursuant to a request.
- (2) Regulations made for the purposes of [section 19](#) (2) may include procedures for, and powers in relation to, the taking of evidence in Malawi by commissions from, or nominated by, the Commonwealth country concerned.

### Schedule (Section 17(1))

#### Form of request for assistance made by Commonwealth countries

1. A request for assistance under this Act made by a Commonwealth country shall-
  - (a) specify the assistance requested;
  - (b) identify the person, agency or authority that initiated the request;
  - (c) state any period within which the country wishes the request to be complied with;
  - (d) if the request would involve travel by any person from Malawi to the Commonwealth country, give details of allowances and accommodation to which the person would be entitled; and
  - (e) contain such information as is available to the appropriate authority in the Commonwealth country as will facilitate compliance with the request.
2. (1) Where the assistance requested by a Commonwealth country is for the purposes of an investigation, the request—
  - (a) shall be accompanied by the certificate, in relation to the investigation;
  - (b) shall state when the investigation commenced and the nature of the investigation.
- (2) Where the assistance requested by a Commonwealth country is for the purposes of proceedings, the request—
  - (a) shall be accompanied by the certificates, in relation to the proceedings;
  - (b) shall—
    - (i) give details of the proceedings and the offence concerned, including a summary of the known facts;
    - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate;
    - (iii) state when the proceedings were instated the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.

3. Where a request referred to in [section 19](#) is made by a Commonwealth country the request shall—
  - (a) give details of the proceedings that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied, to that country;
  - (b) where relevant, indicate whether any person from whom evidence is to be taken is to be examined—
    - (i) orally or in writing;
    - (ii) under oath;
    - (iii) in the presence of his legal representative;
    - (iv) in the presence of the person to whom any relevant proceedings in the Commonwealth country relate;
  - (c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;
  - (d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country;
  - (e) give details of any privileges<sup>^</sup> exceptions under the laws of the Commonwealth country in relation to obtaining evidence or information by the means proposed in the request.
4. Where a request referred to in [section 21](#) is made by a Commonwealth country the request shall identify the article or thing which is to be obtained, and, so far as is reasonably practicable shall contain all information available to the appropriate authority in the country which may be required to be adduced in an application under the laws of Malawi for any necessary warrant or authorization to effect a seizure of that article or thing.
5. Where a request referred to in [section 23](#) is made by a Commonwealth country the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.
6. Where a request referred to in [section 24](#) is made by a Commonwealth country, the request shall—
  - (a) be accompanied by the document to be served; and
  - (b) where that document relates to the attendance of any person in the country, give such notice as the Commonwealth country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.
7. Where a request referred to in [section 25](#) is made by a Commonwealth country, the request shall—
  - (a) give details of the specified serious offence; and
  - (b) state the grounds for suspecting that the relevant property is in Malawi and give any information in the possession of the Commonwealth country which will assist in identifying or locating the property.
8. Where a request referred to in [section 26](#) is made by a Commonwealth country, the request shall—
  - (a) be accompanied by a copy of the relevant order made in the Commonwealth country sealed by the court that made the order and duly authenticated, and shall identify the law under which the order was made;
  - (b) give details of the specified serious offence;
  - (c) state the grounds for suspecting that the relevant property is in Malawi and give any information in the possession of the Commonwealth country which will assist in identifying or locating the property; and
  - (d) give particulars of any amount paid or recovered under the relevant order.

9. Where a request referred to in [section 27](#) is made by a Commonwealth country, the request shall—
- (a) if relevant, be accompanied by a copy of the order made in the country, sealed by the court that made the order and duly authenticated, and shall identify the law under which the order was made;
  - (b) if relevant, state the grounds for believing that an order is likely to be made;
  - (c) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be made;
  - (d) state the grounds for suspecting that the relevant property is in Malawi and give any information in the possession of the Commonwealth country which will assist in identifying the property.