

Malawi

Nurses and Midwives Act

Chapter 36:02

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Malawi

Nurses and Midwives Act

Chapter 36:02

Commenced on 1 April 1996

[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 provide for the establishment of the Nurses and Midwives Council of Malawi, the registration and disciplining of nurses and nursing technicians, the licensing of private practice, the regulation of education and training of nurses and nursing technicians and generally for the control and regulation of the nursing profession and practice in Malawi and for matters incidental thereto or connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Nurses and Midwives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**certificate**” means a certificate of registration issued by the Council to a person entitled to be registered in accordance with this Act;

“**Council**” means the Nurses and Midwives Council of Malawi established by [section 3](#);

“**Executive Committee**” means the committee established by [section 13](#);

“**medical practitioner**” means a person registered as such under section 17 of the Medical Practitioners and Dentists Act;

[Cap. 36: 01]

“**nurse**” means a person registered as such under [section 26](#) and includes a midwife;

“**nursing agency**” means practice registered as such under [section 42](#);

“**nursing technician**” means a person registered as such under [section 26](#) and includes a midwife;

“**pharmacist**” means a person registered as such under section 4 of the Pharmacy, Medicines and Poisons Act;

[Cap. 35: 01]

“**register**” means any of the registers required to be kept under sections [18](#) and [19](#);

“**Registrar**” means the Registrar of the Council appointed under [section 15](#).

Part II – The Nurses and Midwives Council of Malawi

3. Establishment of the Council

There is hereby established a Council to be known as the Nurses and Midwives Council of Malawi, which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

4. Composition of the Council

- (1) The Council shall consist of the following members all of whom shall, save in the case of an *ex officio* member, be citizens of Malawi—
 - (a) the Secretary for Health and Population who shall be a member *ex officio*;
 - (b) the Controller of Nursing Services in the Ministry of Health and Population who shall be a member *ex officio*;
 - (c) the Principal of Kamuzu College of Nursing who shall be a member *ex officio*;
 - (d) the Chairperson of the National Association of Nurses of Malawi who shall be a member *ex officio*;
 - (e) one medical practitioner nominated by the Medical Council of Malawi and appointed by the Minister;
 - (f) one member appointed by the Minister from the general public who shall be a person—
 - (i) of good character and good standing in the community;
 - (ii) knowledgeable in consumer health concerns; and
 - (iii) with no direct or indirect financial interest in health care services;
 - (g) five nurses and one nurse technician elected by the National Association of Nurses of Malawi;
 - (h) the Registrar of the Pharmacy, Medicines and Poisons Board or his duly designated alternate who shall be a member *ex officio*;
 - (i) the Executive Secretary of the Christian Hospitals Association of Malawi or his duly designated alternate who shall be a member *ex officio*;
 - (j) the Solicitor General or his duly designated alternate who shall be a member *ex officio*.
- (2) Subject to [section 5](#), a member, of the Council, not being a member *ex officio*, shall hold office for three years but shall be eligible for re-nomination, re-appointment or re-election, as the case may be, for only one term of office;
- (3) At least three months prior to the date of expiry of the term of office of the members of the Council, the Medical Council of Malawi in subsection (1) (d), and the National Association of Nurses of Malawi in subsection (1) (f) shall inform the Registrar in writing of the names of persons nominated or elected by them in terms of the provisions referred to.
- (4) Where the Medical Council of Malawi or the National Association of Nurses of Malawi, as the case may be, is for any reason whatsoever unable to nominate or elect any number of members of the Council it is required to nominate or elect under subsection (1), the Minister may appoint to the Council an equal number of members from amongst persons eligible for nomination or election, as the case may be, under that subsection, and the members so appointed shall hold office until

substituted by nominated or elected members or for such period, not exceeding three years, as the Minister may, either at the time of making the appointment or at any time thereafter, direct in writing.

- (5) Before appointing a person to be a member of the Council the Minister shall satisfy himself that that person shall have no such financial or other interest as is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council, and the Minister shall also satisfy himself from time to time with respect to every member of the Council that he has no such interest; and a person who is, or whom the Minister proposes to appoint to be a member of the Council shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this subsection.
- (6) If the Minister is not satisfied as to the suitability of a person nominated for appointment he may inform the appointing body, by notice in writing, that he rejects the nomination and may include in that notice a further request for a nomination.
- (7) After consultation with the Council, the Minister may vary its composition by order published in the *Gazette*.
- (8) Upon the appointment or election to the Council of any member, the Minister shall cause notice of such appointment or election to be published in the *Gazette* and shall in such notice specify the current membership of the Council resultant upon such appointment or election.

5. Vacation, etc., of members from office

- (1) The Minister may require a member of the Council to vacate his office if the Minister is satisfied that the member—
 - (a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with, his creditors;
 - (b) has been absent from three consecutive meetings of the Council, of which he has had notice, without the leave of the Council;
 - (c) has been disqualified under this Act from carrying on his profession or calling;
 - (d) has been convicted under this Act or the repealed Act or any law relating to poisons or drugs;
 - (e) has been convicted—
 - (i) within Malawi of a criminal offence; or
 - (ii) outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon;
 - (f) is mentally or physically incapable of efficiently performing his duties as a member of the Council;
 - (g) has had a penalty imposed upon him under this Act by the Council; or
 - (h) has financial or other interest that is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Council.
- (2) The Minister may suspend from office a member of the Council against whom—
 - (a) criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed; or

- (b) disciplinary proceedings under this Act are instituted by the Disciplinary Committee, and while that member is so suspended he shall not carry out any duties as a member.
- (3) A member of the Council may resign his office by notice in writing—
 - (a) in the case of an elected member, to the Chairperson of the Council;
 - (b) in the case of an appointed member, to the Minister.

6. Filling of vacancies on the Council

- (1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed or elected in accordance with the relevant provisions of [section 4](#) (1) under which the former member was appointed or elected:

Provided that if the remaining period is less than six months, then—

- (a) in the case of an appointed member, the Minister may decide not to have the vacancy filled until the expiry of the period; and
 - (b) in the case of an elected member, it shall not be necessary to hold an election and the Council may, if it sees fit, either decide not to have the vacancy filled or to co-opt a person to fill the vacancy until the expiry of the remaining period.
- (2) If any member of the Council is granted leave of absence by the Council, the Council may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of that member.

7. Co-opted persons

The Council may in its discretion at any time and for any length of period invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at that meeting.

8. Chairperson and Vice-Chairperson

- (1) The Minister shall, by writing and under his hand, designate one member of the Council to be the Chairperson thereof.
- (2) The Council shall elect a Vice-Chairperson from amongst its members. The Vice-Chairperson shall, subject to subsection (3), hold office for the duration of his membership on the Council.
- (3) The office of the Vice-Chairperson shall become vacant—
 - (a) if the holder resigns his office by notice in writing to the Council;
 - (b) if the holder of the office ceases to be a member of the Council; or
 - (c) if the Council so directs.
- (4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairperson shall discharge the functions of the Chairperson.
- (5) If the office of Chairperson or Vice-Chairperson becomes vacant, the members of the Council shall at the first meeting after such vacancy has occurred, elect from among themselves a new Chairperson or Vice-Chairperson, as the case may be, and the member so elected shall, subject to [section 5](#), hold office for the unexpired portion of the period for which his predecessor was elected.
- (6) A Chairperson or Vice-Chairperson may vacate office as such without such vacation by itself terminating his membership of the Council.

Part III – Meetings of the Council

9. Meetings of the Council

- (1) Subject to the provisions of this Act, the Council shall hold ordinary meetings for the dispatch of business at least three times in each year.
- (2) An extraordinary meeting of the Council—
 - (a) may be convened by the Chairperson at any time; and
 - (b) shall be convened by the Chairperson within twenty-one days of the receipt by him of a request in writing signed by not less than five members of the Council and specifying the purpose for which the meeting is to be convened.
- (3) At any meeting of the Council—
 - (a) the Chairperson or, in his absence the Vice-Chairperson, shall preside;
 - (b) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and
 - (c) the quorum shall be formed by seven members.
- (4) At any meeting the decision of the Council on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.
- (5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.
- (6) The record of any meeting of the Council shall be made available to any person registered under this Act at all reasonable times at the offices of the Council:

Provided that the provision of this subsection shall not be construed as entitling a registered person to peruse the records of—

 - (a) a meeting of the Disciplinary Committee or any other committee of the Council; or
 - (b) the Council where the Council has resolved that it shall sit as a committee.
- (7) Subject to subsection (8) all proceedings before the Council shall be held in public.
- (8) If the Council is satisfied, either by reason of the confidential nature of the matter or otherwise, that it is appropriate to do so, the Council may direct that a matter, or part of a matter, shall be held in private.

10. Disclosure of interest of member

- (1) A member of the Council who is in any way directly or indirectly interested in any matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.
- (2) The disclosure shall be recorded in the minutes of the meeting.
- (3) A member shall not take part in the deliberations on or decision about the matter if the Council decides that the member's interest might prejudicially affect—
 - (a) his consideration of the matter; or
 - (b) the Council's consideration of the matter.

- (4) For the purpose of the making of a determination by the Council under subsection (3) in relation to a member who has made a disclosure under subsection (1), the member shall not—
- (a) be present during any deliberation of the Council for the purpose of making the determination; or
 - (b) take part in the making by the Council of the determination:
- Provided that the absence of the member in accordance with this subsection shall not invalidate a meeting otherwise validly convened.

Part IV – Functions and powers of the Council

11. Functions of the Council

The Council shall be the sole registering authority of all persons required to be registered or licensed under this Act and shall have the following further functions—

- (a) to assist in the promotion and improvement of the health of the population in Malawi;
- (b) to control and to exercise authority affecting the education, training and practice of persons in, and the performance of, the practices pursued by nurses and nurse technicians.
- (c) to exercise disciplinary control over the professional conduct of all persons registered under this Act and practising in Malawi;
- (d) to promote liaison of the education and training, and the manner of the exercise of the practices, referred to in paragraph (b) both in Malawi and elsewhere, and to promote the standards of such education and training and the manner of the exercise of such practices in Malawi;
- (e) to advise the Minister on any matter falling within the scope of this Act; and
- (f) to communicate to the Minister any information acquired by the Council relating to matters of public health.

12. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power to—

- (a) where authorized by this Act, remove from or restore to a register any name;
- (b) appoint examiners and moderators, set and conduct examinations and grant certificates;
- (c) approve nursing schools in accordance with the prescribed conditions, inspect such schools, or withdraw or suspend approval of any such school if the education or training thereat is not, in the opinion of the Council, satisfactorily carried out, or if any condition imposed has not been complied with:

Provided that the Council shall not refuse to approve, or shall not withdraw or suspend the approval of, any such school without the consent of the Minister;
- (d) carry out any inspection it may deem necessary to enable it to consider an application for the approval of a nursing school or any variation of a condition imposed in respect of an approved nursing school;
- (e) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept any donation or accept and administer any trust;
- (f) subject to the prescribed conditions, issue or renew a licence to carry on the business of a nursing agency, inspect the records and accounts, and investigate the activities, of a nursing agency, require any person licensed to carry on the business of a nursing agency to submit to the Council such

- information as it may deem necessary, and, in the prescribed circumstances, suspend or cancel a licence to carry on the business of a nursing agency;
- (g) consider any matter affecting the nursing or midwifery profession, and make representations or take such action in connexion therewith as the Council may deem advisable;
 - (h) upon application of any person, recognize a qualification held by him (whether such qualification has been obtained in Malawi or elsewhere), as being equal, either wholly or in part, to any prescribed qualification, whereupon such person shall, to the extent to which the qualification has so been recognized, be deemed to hold such prescribed qualification;
 - (i) require approved nursing schools to submit annual returns of students registered under [section 33](#) and pupils registered under [section 34](#) and such other information as may become necessary at any time;
 - (j) cause copies of the registers and supplementary lists, and copies thereof, showing all alterations to the registers, to be printed and published;
 - (k) make extracts from the registers;
 - (l) perform such other functions as may be prescribed or assigned to the Council by the Minister; and
 - (m) generally, do all such things as it may deem necessary or expedient to achieve the objects of this Act.

13. Executive Committee

- (1) There shall be an Executive Committee of the Council consisting of the Chairperson and the Vice-Chairperson of the Council, the Chairperson of Committees established under this Act, and such other members of the Council as the Council may designate.
- (2) The Executive Committee may, subject to the directions of the Council, exercise all the powers, other than the powers referred to in [section 61](#) (2) and perform all the functions of the Council, but shall not have the power, save in so far as the Council otherwise directs, to set aside or amend any decision of the Council, and any act performed or decision taken by the Executive Committee shall be of force and effect unless it is set aside or amended by the Council at its next ensuing meeting.
- (3) At any meeting of the Executive Committee—
 - (a) the Chairperson or, in his absence the Vice-Chairperson, shall preside;
 - (b) in the absence of both the Chairperson and Vice-Chairperson the members present and forming the quorum shall elect one of their number to preside; and
 - (c) the quorum shall be formed by any four members.
- (4) At any meeting the decision of the Executive Committee on any matter shall be that of the majority of the members present and voting at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.
- (5) Subject to the provisions of this Act, the Council may make standing orders for the regulation of the proceedings and business of the Executive Committee and may vary, suspend or revoke any such standing orders.

14. Committees of the Council

- (1) In addition to the Executive Committee, the Education and Examination Committee, the Investigating Committee, the Disciplinary Committee, the Appointment and Finance Committee, the Professional Practice Committee and save as otherwise provided in relation to those six committees, the Council may establish any number of other committees to carry out any special or general functions determined by the Council and may delegate to any such committee such of the functions of the Council as the Council may consider expedient.

- (2) The Chairperson of the Council shall by reason of his office be a member of every committee established under subsection (1).
- (3) The Chairperson of each committee shall be appointed by the Council from amongst the members of the Council.
- (4) Each committee may co-opt as members of such committee persons who are not members of the Council and any of such members so co-opted may or may not be officers in the public service.
- (5) The Chairperson of a committee may, at any time and place, convene a meeting of the committee of which he is Chairperson.
- (6) The Council may, at any time, direct the Chairperson of any committee to convene a meeting of such committee and such Chairperson shall, as soon as is practicable, comply with such direction.
- (7) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.
- (8) Any member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowance as the Council may determine.

Part V – Management

15. Appointment of Registrar and other staff

- (1) Subject to the provisions of this section, the Council—
 - (a) shall appoint a Registrar upon terms and conditions approved by the Minister; and
 - (b) may appoint assistant registrars and such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.
- (2) Before appointing a person to be a Registrar, the Council shall satisfy itself that the person has at least a degree in nursing and five years experience in nursing practice, education or administration.
- (3) The Registrar, after consultation with the Chairperson of the Council, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Council at its next meeting.
- (4) The Registrar shall be the Secretary to the Council and to every committee thereof and shall, on the instructions of the Chairperson of the Council or the Chairperson of any committee, convene a meeting of the Council or the committee, as the case may be.
- (5) If the Registrar is absent or unable to carry out any of his functions under this Act or any other enactment, an assistant registrar or any other officer of the Council shall exercise, during the period that the Registrar is so absent or unable to act, such of the functions of the Registrar as the Chairperson of the Council may designate.

Part VI – Financial provisions

16. Funds, accounts, audit

- (1) The funds of the Council shall consist of—
 - (a) such sums as may be appropriated by Parliament for the purposes of the Council;
 - (b) all fees payable under this Act;

- (c) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise, including any penalty or costs payable to the Council under this Act; and
- (2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act.

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- (3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

17. Remuneration and expenses of members of the Council

Members of the Council shall be paid from the funds of the Council such allowance as the Minister may determine and in determining the allowance the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee of the Council in connexion with the business of the Council or the committee.

Part VII – Registers

18. Registers

- (1) Subject to the provisions of this Act, the Council shall continue to keep and maintain the registers which were established before the commencement of this Act and may establish or continue to keep and maintain—
 - (a) a register of nurse midwives;
 - (b) a register of nursing midwife technicians;
 - (c) a register of persons temporarily employed in Malawi, being persons referred to in [section 36](#).
- (2) The Council may establish a register of students who are undergoing training in Malawi or a qualification required for admission as a nurse or nurse technician.
- (3) There shall be entered in a register under this section in relation to a registered person, address, qualification and date of first registration, date of first licence, date of renewal of licence and such other particulars as the Council may from time to time determine.
- (4) The Council may alter the title of any register and every person registered in a register bearing the former title shall for all purposes be considered as registered in the register bearing the new title.
- (5) Where the Council intends to establish a register or to alter the name of a register, the Council shall cause to be published in the *Gazette* and in one issue of a newspaper in general circulation in Malawi notice of such intention and the date with effect from which it is intended that the register shall be established or the name of the register shall be altered.

19. Specialist Register

- (1) The Council may establish and keep a register of nurses or nursing technicians who have acquired special knowledge and experience in a particular branch of nursing.
- (2) If the Council establishes a register under subsection (1), it may, by rule or otherwise, determine—
 - (a) the requirements to be satisfied, including the experience to be acquired, the nature and duration of the training to be undertaken and the degree, diploma or certificate to be held by a nurse or nursing technician before he can be registered on that register;

- (b) the conditions which shall exempt any person from the requirement, experience or training referred to in paragraph (a);
 - (c) the conditions governing the practice of nurses or nursing technicians who have been registered on a register kept under subsection (1), including conditions restricting the practice of any such nurse or nursing technician to a particular branch of nursing;
 - (d) the circumstances in which the Council may remove the name of a person from a register kept in terms of subsection (1).
- (3) There shall be entered in a register kept under subsection (1) in relation to a registered person such particulars as the Council may from time to time determine.

20. Duties of Registrar

- (1) All registers shall be kept under the custody of the Registrar at the offices of the Council.
- (2) It shall be the duty of the Registrar, under the direction of the Council, to—
 - (a) enter in any register the particulars required under this Act of every person whom he registers in that register;
 - (b) make in a register any necessary alterations in the name, address, qualifications and other particulars of a registered person;
 - (c) erase from a register the name of a registered person who dies; and
 - (d) when required to do so by or under this Act or in pursuance of an order of a court—
 - (i) to mark in a register the registration of an applicant or, as the case may be, the suspension from practice of a registered person; and
 - (ii) to erase from a register the name of a registered person;
 - (e) generally to comply with the requirements imposed on him by this Act.
- (3) Where the Registrar erases from a register the name of a registered person he shall enter in that register a record of the reasons therefor.

21. Certificate and licence

- (1) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—
 - (a) registers or licenses any person, he shall issue to him a certificate of registration or a licence, as the case may be;
 - (b) erases from a register the name of a registered person or a licensee; or marks in a register the suspension from practice of a registered person he shall, wherever possible, notify him in writing accordingly.
- (2) On application by a registered person the Registrar may issue to that person a duplicate certificate of registration or licence—
 - (a) if he is satisfied as to the identity of the applicant; and
 - (b) on production by the applicant of an affidavit certifying that the certificate of registration or licence has been lost or destroyed; and
 - (c) on payment by the applicant of the appropriate prescribed fee, if any.

22. Publication of registers

- (1) The Registrar shall, from time to time, under the authority of the Council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and erasures made since the last publication of the complete registers to be published in the *Gazette*.
- (2) Copies of the registers shall be published in such form as the Council may direct and may contain, in lists separate from the main registers, such particulars as the Council may require to be published.

23. Registers to be evidence

- (1) Subject to the provisions of subsection (2), the last published copy of a register, as read with any supplementary list, purporting to be published under the authority of the Council under [section 22](#), shall be *prima facie* evidence in any legal proceedings of the facts therein recorded and the omission of the name of any person from such copy shall be *prima facie* evidence, that such person is not registered.
- (2) In the case of a person—
 - (a) whose name does not appear in a published copy of a register and whose name has been added to a register after the date of the last published copy thereof, a certificate under the hand of the Registrar of the entry of the name of that person in that register shall be *prima facie* evidence that that person is so registered on that register; or
 - (b) whose name has been erased from a register since the date of the last published copy thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of that person has been erased from the register shall be *prima facie* evidence that that person is not registered on that register; or
 - (c) who has been suspended from practice in accordance with this Act, a certificate under the hand of the Registrar that that person has been so suspended from practice for a period specified in that certificate shall be *prima facie* evidence that that person has been suspended from practice for that period.

Part VIII – Registration

24. Persons registered under the repealed Act

Every person who, immediately before the commencement of this Act, was registered in any register under the repealed Act and is resident in Malawi, shall be deemed to have been registered under this Act in the appropriate register.

25. Residence of registered persons

- (1) Subject to subsection (2), an applicant for registration shall not be registered unless at the time of his application—
 - (a) he resides in Malawi; or
 - (b) he intends, if he is registered, to take up residence in Malawi within six months of the date of his registration.
- (2) Any person who resides in and is lawfully practising his profession or calling in such country as the Council may from time to time specify for the purposes of this subsection by notice in the *Gazette* may be registered if, but for residing outside Malawi, he is otherwise qualified for registration.

26. Registration and licensing prerequisites for practising

No person shall be entitled to practise within Malawi the profession of a nurse or nursing technician, or to practise within Malawi as a student nurse or as a pupil nursing technician, unless he is in terms of this Act registered and licensed as a nurse, a nursing technician, a student nurse or a pupil nursing technician, as the case may be.

27. Persons entitled to be registered

Except as otherwise provided by or under this Act, every person shall be entitled to be registered in the appropriate register if he—

- (a) has undergone the prescribed courses of instruction, education and training in Malawi and has passed the prescribed final examination conducted by the Council in respect of that register; or
- (b) has undergone a course of instruction, education and training and passed examination elsewhere than in Malawi which the Council recognizes as equivalent to the instruction, education and training and examination required under paragraph (a).

28. Use of titles

Any person registered under this Act may take and use the title appropriate to the register on which his name appears.

29. Registered persons entitled to practice

Every person registered under this Act shall be entitled to practice nursing of the category in respect of which he is registered.

30. Licensing of registered persons

- (1) Except as otherwise provided by this Act, every person registered under this Act shall, immediately at the expiration of the year in which he is registered, apply for a licence to practise.
- (2) An applicant for a licence to practise shall—
 - (a) complete the prescribed application form for licence to practise;
 - (b) pay the prescribed fee; and
 - (c) submit evidence that he has complied with [section 31](#), where it is applicable.

31. Refresher courses and in service education

Except as otherwise provided by this Act, every person registered under this Act shall—

- (a) within two years of his being registered, attend an in service education, in any field of nursing, lasting not less than one day; and
- (b) within five years of his being registered, attend a refresher course in any field of nursing.

32. Registration of additional qualification

- (1) Every person registered under this Act who has obtained any post basic qualification that is higher than the qualification that constituted the basic qualification in respect of which he has been registered shall be entitled subject to subsection (2), to register such a qualification.
- (2) Only such qualifications as may be prescribed may be registered under this section.

33. Registration of student nurses

- (1) The Council shall register as a student nurse a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.
- (2) Every person shall on commencing or resuming education and training as a student nurse at an approved nursing school apply for registration with the Council.
- (3) The person in charge of an approved nursing school shall forthwith notify the Council of the termination of the education and training of a student nurse, whether by reason of abandonment or completion of education and training or a transfer or for any other reason.
- (4) A person registered under subsection (1) shall be deemed to be registered on the register of nurse midwives in so far as is necessary—
 - (a) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a student nurse shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a nurse;
 - (b) for the purpose of any other enactment or such other purposes as the Council may specify.

34. Registration of pupil nursing technicians

- (1) The Council shall register as a pupil nursing technician a person undergoing education and training at an approved nursing school who has complied with the prescribed conditions and has furnished the prescribed particulars.
- (2) Every person shall, on commencing or resuming education and training as a pupil nursing technician at an approved nursing school, apply for registration with the Council.
- (3) The person in charge of an approved nursing school shall notify the Council of the termination of the education and training of a student nursing technician, whether by reason of abandonment or completion of education and training or a transfer or for any other reason.
- (4) A person registered under subsection (1) shall be deemed to be registered on the register of nursing midwife technicians in so far as is necessary—
 - (a) to enable him to be employed in nursing practice at a hospital or institution approved by the Council:

Provided that a pupil nursing technician shall not be employed in nursing practice unless he is at all material times during such employment under the supervision of a qualified nurse;
 - (b) for the purpose of any other enactment or such other purposes as the Council may specify.

35. Limited registration

- (1) The Council may accept any qualification which has not been recognized under [section 27](#) as entitling the holder to be registered if, in all other respects, he satisfies the conditions and requirements of this part for registration on a register kept under this Act:

Provided that the acceptance of a particular qualification for limited registration of one person shall not confer any right to any form of registration on any other person holding the same qualification.
- (2) The Council may require an applicant for limited registration as a condition of such registration—
 - (a) to undertake a specified period of practice on the staff of a hospital or other institution specified by the Council or with an employer approved by the Council; and

- (b) to pass, during the period of his limited registration, such examination as the Council may specify.
- (3) An application for limited registration under subsection (1) shall be made in writing to the Registrar and shall be accompanied with the prescribed fee.

36. Registration of persons temporarily employed

Any person qualified to practise the profession or calling of a nurse or nurse technician, who intends to practice that profession or calling in Malawi but does not intend to reside for a period exceeding twelve months in Malawi may, if he satisfies the Registrar that he is so qualified, be registered on a register of persons temporarily employed:

Provided that in circumstances considered by the Registrar to be exceptional, the Registrar may extend the period of registration for twelve months.

37. Procedure for registration

- (1) Every person who wishes to be registered or licensed in terms of this Act, shall apply to the Council and shall submit the qualifications which, in his submission, entitle him to registration or licensing, together with such proof of identity and of the authenticity and validity of the qualification submitted as may be required by the Council.
- (2) If the Council is satisfied that the qualifications and the other documents submitted in support of the applications under this Act, it shall upon payment of the prescribed fee, register or license the applicant in the appropriate register, and issue a registration certificate or licence, authorizing the applicant, subject to the provisions of this Act and to any other legal provisions, to practise within Malawi the profession in respect of which he has applied for registration or licence.
- (3) The Council may refuse to register or license an applicant if in its opinion the applicant, notwithstanding that he is otherwise qualified, is not a fit and proper person to be registered or licensed by reasons of—
 - (a) his physical or mental health;
 - (b) the fact that he is not of good character and reputation;
 - (c) the fact that he does not have adequate knowledge of the English language; and
 - (d) any conduct of his which, if he had been registered, would have constituted improper or disgraceful conduct or conduct which, when regard is had to the profession for which that person has applied to be registered, is improper or disgraceful:

Provided that, before refusing registration or licensing under paragraph (d), the Council shall refer the matter to the Disciplinary Committee and the provisions of Part XII shall, *mutatis mutandis*, apply as if the applicant were registered or licensed on the register on which he had applied to be registered.

38. Erasures from register

- (1) The Council may direct the Registrar to erase from a register of nurse midwives or register of nursing midwife technicians—
 - (a) the name and all particulars of a person whose registration or licence has been cancelled in accordance with this Act, or who—
 - (i) has requested that his name be removed from the register, in which case such person may be required by the Registrar to lodge with the Registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him;

- (ii) not being a citizen of Malawi; has been absent from Malawi for a continuous period of three years preceding such erasure;
 - (iii) fails to pay the prescribed fee payable under this Act within three months after the date on which that fee became payable;
 - (iv) has failed within a period of three months after the date of an inquiry sent by the Registrar by registered letter to the address as shown in the register to notify the Registrar of his present address:

Provided that if such registered letter is returned to the Registrar by reason of it being unclaimed or for any other reason the Council may forthwith direct that the name of the person be erased from the register; or
 - (v) is resident or practising in Malawi and whose name has been removed from the roll, register or record of any university, hospital, college, training school or institution, society or other body from which that person received the qualification on the basis of which he was registered; or
- (b) any entry which is proved to the satisfaction of the Council to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.
- (2) The name and all particulars of a person shall be erased—
- (a) from the register of nurse student, register of pupil nursing technician, limited register or temporary register—
 - (i) when the person is registered on the register of nurse midwives or nursing midwife technicians; or
 - (ii) on the expiration of the period of registration on such register;
 - (b) in case of limited register, on the cancellation of the registration of that person.
- (3) If a person referred to in [section 25](#) (1) fails to take up residence in Malawi within the period referred to in that paragraph, his name and particulars shall be erased from the register on the expiration of that period.
- (4) The Registrar shall erase from the register of nurse student or register of pupil nursing technician, as the case may be, the name of a person who is registered on that register—
- (a) who advises the Registrar that he is leaving Malawi after completion of his training as nurse student or pupil nursing technician or otherwise; or
 - (b) on the expiration of thirty-six months from the date of his registration unless he satisfies the Registrar that due to illness or other cause the period of his training has been extended; or
 - (c) on the termination of the period of training which has been extended in the circumstances referred to in paragraph (b); or
 - (d) if the Council instructs the Registrar to erase the name of that person from the register.
- (5) Before the Council directs an erasure to be made under subsection (1) (a) (v) or subsection (4) (d) the Council shall afford the person concerned an opportunity of showing cause before the Council as to why the erasure should not be made.

39. Method of erasure

In order to effect the erasure of the name and particulars of a person from a register, a line of red ink shall be drawn through such name and particulars but so as to leave them remain legible.

40. Consequence of erasure

Any certificate of registration or licence issued to a person whose name has been erased shall be deemed to have been cancelled on the date of erasure and the person concerned shall be deemed not to be registered or licensed with effect from that date.

41. Appeals against refusal to register or erasure from register

- (1) A person aggrieved by—
 - (a) the refusal of the Council to register him or any qualification or particular which he wishes to be registered under this Act; or
 - (b) the erasure from a register of his name or of any qualification or particular which he considers he is entitled under this Act to have entered against his name in a register, may after notice to the Council and within three months after the date of erasure, appeal to the High Court in such manner as may be prescribed or as may be considered appropriate by the High Court against such erasure.
- (2) On an appeal under subsection (1) the High Court may—
 - (a) dismiss the appeal; or
 - (b) if it is of the opinion that the Council has not acted in accordance with the provisions of this Act, make an order that the name of the appellant or the qualification or particular, as the case may be, be entered in the appropriate register; or
 - (c) refer the matter back to the Council for further consideration, and may, make such other order as to costs or otherwise as it may deem just.

Part IX – Private practice

42. Licence for private practice

- (1) The Council may authorize the Registrar to issue to a person registered under this Act, who has applied in the prescribed manner and whom the Council considers has had suitable experience in nursing or midwifery, as the case may be, a licence to engage in carrying out the practice of a nursing agency or midwifery on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.
- (2) A licence under subsection (1) shall—
 - (a) be subject to such conditions as the Council may generally or specially determine;
 - (b) be issued upon payment of the prescribed fee;
 - (c) be in such form as may be prescribed;
 - (d) be valid from the date of issue to 31st March next following the date of issue; and
 - (e) state whether the person so licenced may practice as a private practitioner on his own behalf or may be employed by a private practitioner.
- (3) The Council may, for good cause, refuse to issue a licence to engage in private practice to any person or may withdraw or cancel such licence issued to any person either indefinitely or until such time as the conditions, if any, imposed by the Council have been fulfilled.
- (4) For private nursing or midwifery, no premises shall be used for the purpose of private practice, unless they are authorized for such use by the Council.

- (5) Any person aggrieved by any decision of the Council under this section may appeal to the High Court, and in such appeal the High Court, may annul or vary the decision of the Council as it thinks fit.
- (6) A person who engages in private practice without a licence authorizing him so to do issued in accordance with this Act or regulations made thereunder shall be guilty of an offence and liable to a fine of K2, 000 and imprisonment for one year.

43. Issue, etc., of licences to be published in the *Gazette*

The issue, cancellation and withdrawal of any licence under [section 42](#) shall be notified in the *Gazette*.

44. No fees recoverable unless nurse licensed for private practice

No person in private practice shall be entitled to recover any charges for any nursing or midwifery advice or other service which he has rendered in the performance of an act as a nurse unless he is at the time appropriately licensed under [section 41](#) for private practice.

Part X – Education and examination

45. Education and Examination Committee

- (1) There shall be an Education and Examination Committee which shall consist of—
 - (a) one member of the Council appointed by the Council and designated by the Council as Chairman of the Committee; and
 - (b) six other persons appointed by the Council and who may or may not be members of the Council.
- (2) Subject to the general direction of the Council, the functions of the Education and Examination Committee shall be—
 - (a) to advise the Council on all matters relating to the education and training requirements of nursing and related personnel in Malawi;
 - (b) to satisfy itself and the Council that the curricula in every teaching institution in Malawi in the nursing field are such that graduates will have a sufficient basic knowledge, skills and attitudes for the practice of their profession or calling; and
 - (c) to satisfy itself and the Council in such other matters as may be vested in it by the Council in relation to the supervision of other aspects of nursing education and training.
- (3) For the purpose of carrying out its functions the Education and Examination Committee may, subject to the general direction and guidance of the Council—
 - (a) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where examinations are conducted for students who intend to apply for registration under this Act and to evaluate such instructions or examinations;
 - (b) to submit reports to the Council on the courses and curricula followed at, and examinations conducted by, any institution referred to in paragraph (a); and
 - (c) perform all such inspectorate functions for the purpose of setting and maintaining the standards of health care in relation to—
 - (i) premises, equipment and supplies;
 - (ii) qualifications and credentials of personnel employed at nursing and midwifery establishments;

- (iii) courses and curricula followed at any of the institutions referred to in paragraph (a) including the student-teacher ratio;
 - (iv) human and material resources at any of the institutions referred to in paragraph (a);
 - (v) such other matters as the Council may deem expedient, and to report its findings to the Council.
- (4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (c) of subsection (3) shall be guilty of an offence and liable to a fine of K2, 000 and imprisonment for one year.

46. Reports on training qualifications and practice of persons who are registrable

The Council may, and if so required by the Minister, consider and report to the Minister and advise him upon any matter relating to professional or technical training or other qualifications required for admission to a profession or calling in respect of which a register is kept and the conditions of practice after registration.

47. Approval of institutions, curricula and qualifications

- (1) While the Council may not institute diplomas or certificates of competence to nurses and nursing technicians, the Council shall have powers to approve of—
- (a) teaching hospitals;
 - (b) nursing schools;
 - (c) a basic nursing education curriculum;
 - (d) post basic nursing education curriculum;
 - (e) the basic qualification of persons to be registered as nurses or nursing technician; and
 - (f) such other matter of training as may be within its competence under this Act or as may be expedient for the purposes and objects of this Act.

48. Certificate of attendance of courses

- (1) The Council may issue certificates of attendance to any class of nursing personnel that attends a course instituted by the Council.
- (2) The Registrar shall keep lists of all persons to whom a certificate under this section has been issued.

49. Rules for training

- (1) The Council may, by notice in the *Gazette*, make rules as to—
- (a) the form of certificates issued by the Council;
 - (b) the issue of duplicates and certified copies of certificates issued by the Council and the fees payable to the Council therefore;
 - (c) the requirements to be fulfilled by persons as a condition of the issue of a certificate to them;
 - (d) the institutions and other places at which the courses shall be undergone, the standards of education and character required to qualify persons to undergo such courses and the supervision of persons undergoing such courses.

Part XI – Investigation provisions

50. Investigation Committee

- (1) There shall be an Investigation Committee of the Council which shall consist of five persons who shall be appointed by the Council from amongst members of the Council.
- (2) The Committee shall elect its own Chairperson and Vice-Chairperson.
- (3) At any meeting of the Committee three members shall form a quorum.
- (4) For the purposes of any investigation the Chairperson of the Council may appoint to the Investigation Committee any other person he considers reasonably qualified to assist the Committee in the conduct of the investigation.
- (5) All acts, matters or things authorized or required to be done by the Investigation Committee shall be decided by a majority vote at a meeting of the Investigation Committee at which a quorum is present.
- (6) At all meetings of the Investigation Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Investigation Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.
- (7) The Investigation Committee shall have power to regulate its own procedure.

51. Functions of Investigation Committee

- (1) The Investigation Committee shall have jurisdiction to consider and investigate any matter delegated to it by the Council.
- (2) Without prejudice to the generality of subsection (1), the Investigation Committee shall consider and investigate any matter in which a person registered under the Act—
 - (a) is alleged—
 - (i) to have procured registration or licence by misrepresentation or fraud;
 - (ii) to have been guilty of malpractice or negligence in respect of his practice;
 - (iii) to have been convicted of an offence for practice or conduct that is, in public interest, at variance with his continuity to practice under this Act;
 - (iv) to be incapable of properly discharging his practice by reason of his—
 - (a) mental or physical illness; or
 - (b) consumption of intoxicants;
 - (v) to have contravened this Act or any regulation made thereunder; or
 - (b) applies for the lifting of suspension against him.

52. Reporting of complaint

- (1) A patient, client, professional colleague or any other person who has a substantial interest in the practice and conduct of a person registered under this Act may lodge a complaint with the Investigation Committee.
- (2) The complaint shall be in writing and shall state in clear terms the specific acts or omissions complained of.

53. Duty to investigate complaint

Where a complaint is lodged with the Investigation Committee, the Investigation Committee shall cause a preliminary investigation into the complaint unless the Investigation Committee is of the opinion that the complaint—

- (a) is trivial;
- (b) is frivolous or vexatious;
- (c) mischievous, malicious or not made in good faith; or
- (d) has been too long delayed to justify present examination of its merit.

54. Powers of the Council and Investigation Committee during investigative stage

- (1) The Council shall refuse to register or to renew the registration of an accused until the complaint against him before the Investigation Committee is determined.
- (2) The Investigation Committee may interdict an accused from exercising the powers and functions of his practice pending the determination of the complaint against him by the Investigation Committee.

55. Action after preliminary investigation

- (1) Where in the opinion of the Investigation Committee such preliminary investigation discloses that the exercise of disciplinary control by the Council is not warranted, the Investigation Committee shall take no further action except reporting to the Council.
- (2) If the Investigation Committee, after the preliminary investigation, is of the opinion that the exercise of disciplinary control is necessary it shall refer the matter to the Disciplinary Committee.

Part XII – Disciplinary provisions

56. Disciplinary powers of the Council

The Council shall have the power to warn, suspend, revoke, or refuse to renew any registration or licence, or to place on probation or discipline in any manner specified under this Part a person registered under this Act, or to deny an application for registration or licence upon proof that such person has—

- (a) committed fraud or deceit in securing or attempting to secure such registration or licence;
- (b) been convicted of a crime of moral turpitude;
- (c) negligently or wilfully acted in a manner inconsistent with the health or safety of a person under the nurse's care;
- (d) has a licence to practice as a nurse or nursing technician suspended or revoked in any jurisdiction;
- (e) violated any provisions of this Act;
- (f) negligently or wilfully practised nursing in a manner that fails to meet generally accepted standards of such nursing practice;
- (g) negligently or wilfully violated any order, rule or regulation of the Council pertaining to nursing practice;
- (h) knowingly allowed the continuation of unsafe practice of anyone who assists in the practice of nursing;

- (i) falsified or, in a repeatedly negligent or wilful manner, made incorrect entries or failed to make essential entries on essential patient records;
- (j) a physical or mental disability or is addicted to or dependant on alcohol or other drugs which render the registered person or licensee unable to perform nursing services with reasonable skill and safety to the patient, and which endanger the health or safety of a person under the nurse's care;
- (k) engaged in unprofessional conduct of a nature likely to deceive, defraud, or harm the public; or
- (l) engaged in any other improper or disgraceful conduct as identified by the Council in regulations.

57. Disciplinary Committee

- (1) There shall be a Disciplinary Committee of the Council which shall consist of—
 - (a) the Chairperson of the Council who shall be the Chairperson of that Committee; and
 - (b) four other members appointed by the Council from amongst members of the Council.
- (2) In any disciplinary inquiry the Council may request the Attorney General to nominate a legally qualified person serving in the public service to assist the Disciplinary Committee in the proceedings of the inquiry.
- (3) At any meeting of the Disciplinary Committee the Chairperson and two other members shall form a quorum.
- (4) For the purposes of any inquiry the Chairperson of the Council may appoint to the Disciplinary Committee any other person he considers reasonably qualified to assist the committee in the conduct of the inquiry.
- (5) A member who is absent at any stage of a disciplinary inquiry shall cease to be a member of the Disciplinary Committee for that inquiry.
- (6) All acts, matters or things authorized or required to be done by the Disciplinary Committee shall be decided by a majority vote at a meeting of the Disciplinary Committee at which a quorum is present.
- (7) At all meetings of the Disciplinary Committee each member present, being a member by virtue of subsection (1), shall have one vote on a question before the Disciplinary Committee and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.
- (8) The Disciplinary Committee shall have power to regulate its own procedure.

58. Function of Disciplinary Committee

- (1) Subject to the provisions of subsection (2), the function of the Disciplinary Committee shall be to inquire into an allegation referred to it under [section 55](#) (2) or in a case where it is alleged that a registered person—
 - (a) has been guilty of improper or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful; or
 - (b) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner.
- (2) Before exercising its function with respect to any person, the Disciplinary Committee shall—
 - (a) cause to be served upon him a notice setting out the allegations against him; and
 - (b) afford him a reasonable opportunity of being heard either by himself or, if he so wishes, by a legal representative.

59. Taking of evidence by Disciplinary Committee

- (1) For the purposes of any inquiry, the Disciplinary Committee may take evidence and may—
 - (a) under the hand of the Chairperson of the Council or the Registrar summon witnesses and require the production of any book, record, document or thing;
 - (b) administer an oath or affirmation to any person; and
 - (c) examine any book, record, document or thing which a witness has been required to produce.
- (2) A summons for attendance before the Disciplinary Committee or for the production to it of any book, record, document or thing shall be—
 - (a) in the form prescribed; and
 - (b) signed by the Chairperson or the Registrar.
- (3) Any person who—
 - (a) has been summoned under subsection (2) and who—
 - (i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or
 - (ii) refuses to be sworn or to affirm; or
 - (iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required by that summons to produce; or
 - (b) attends as a witness before the Disciplinary Committee and refuses to answer fully and satisfactorily to the best of his knowledge and belief any question properly put to him, commits an offence and is liable to a fine of K200 and to imprisonment for three months.
- (4) Any person who gives false evidence on oath at an inquiry held under this Part, knowing such evidence to be false or not believing it to be true, shall be guilty of an offence and liable to a fine of K400 and to imprisonment for six months.
- (5) The Disciplinary Committee shall, in any inquiry held by it under this Part, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

60. Exercise of disciplinary powers on conviction for offence

- (1) A registered person who has been convicted of an offence by a court of law within or outside Malawi, whether before, on or after the date of his registration, shall be liable to disciplinary inquiry by the Disciplinary Committee in accordance with the provisions of this Part if the Disciplinary Committee is of the opinion that such offence constitutes—
 - (a) improper or disgraceful conduct; or
 - (b) conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful.
- (2) The Disciplinary Committee may, if it thinks fit on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with the provisions of this Part:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative as he may elect, an explanation to the Disciplinary Committee in extenuation of his conduct.

- (3) If, after the termination of proceedings before a court in Malawi—
 - (a) it appears to the court that there is *prima facie* evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such part of the record of the proceedings as is material to the issue shall be transmitted to the Council; or
 - (b) the Council requests that a record of the proceedings before a court in Malawi or part of such record be supplied to it on the ground that it is of direct interest to the Council in the exercise of its functions under this Act, the court shall transmit to the Council a copy of the record of the proceedings as is material.

61. Council to refer cases to Disciplinary Committee

- (1) Whenever there is brought to the notice of the Council an allegation which might be the subject of inquiry by the Disciplinary Committee, the Council shall have power to call for information, to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.
- (2) After any investigation pursuant to subsection (1), the Council—
 - (a) may refer the allegation to the Disciplinary Committee for inquiry under this Part and in that case the Registrar shall present a charge, in such form as may be prescribed, to the registered person against whom the allegation is made;
 - (b) if it considers that—
 - (i) the conduct complained of would not constitute improper or disgraceful conduct; or
 - (ii) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Committee, may dismiss the allegation or take such other action as it deems fit and may, after first allowing the person concerned to make written representation, authorize the Chairperson of the Council to admonish that person and the Chairperson shall report the fact thereof to the Council;
 - (c) if it considers that the allegation forms or is likely to form the subject of criminal proceedings already before a court, may postpone referring the matter to the Disciplinary Committee until such criminal proceedings have been determined.

62. Exercise of disciplinary powers

- (1) After due inquiry, the Disciplinary Committee shall report its findings to the Council with such recommendations as the Disciplinary Committee considers appropriate.
- (2) After considering the findings and recommendations of the Disciplinary Committee the Council—
 - (a) if it is satisfied that the registered person—
 - (i) has been guilty of improper conduct or disgraceful conduct or conduct which, when regard is had to the profession or calling of that person, is improper or disgraceful and that such conduct warrants the cancellation of his registration; or
 - (ii) is grossly incompetent or has performed any act pertaining to his profession or calling in a grossly incompetent manner, the Council shall direct the Registrar to cancel the registration of the registered person and, if it thinks fit, order that person to pay to the Council any costs or expenses incidental to the inquiry;
 - (b) if it considers that the registered person has been guilty of improper or disgraceful conduct or conduct which, when regard is had to his profession or calling, is improper or disgraceful

but that such conduct does not warrant the cancellation of the registration of that person, shall do one or more of the following—

- (i) order his suspension for a specified period from practising or performing acts specially pertaining to his profession or calling;
 - (ii) impose such conditions as it deems fit subject to which he shall carry on his profession or calling;
 - (iii) order him to pay to the Council a penalty not exceeding K1, 000;
 - (iv) order him to pay any costs or expenses of and incidental to the inquiry;
 - (v) censure him; and
 - (vi) caution him and postpone, for a specified period not exceeding three years, any further action against him on such conditions as the Council may determine as to his future conduct, including conduct or nature of his practice during that period;
- (c) if it considers that the allegations against the registered person have not been established, shall dismiss the allegations and in such case the Council may, if it is of the opinion that the allegations were frivolous or vexatious, order the complainant to pay the costs of the inquiry.
- (3) If at any time the Council is satisfied that during the period of any postponement under subsection (2) (b) (vi) a registered person has not complied with the conditions imposed under that paragraph, the Council after giving reasonable notice to the registered person concerned, may proceed to inflict further upon him more of the measures specified in that subsection.

63. Appeal to High Court

- (1) Any person who is aggrieved by the findings of the Disciplinary Committee or the decision reached, or penalty or measure imposed, by the Council under this Part may, within three months after the date of such findings or the imposition of such penalty or measure, appeal to the High Court.
- (2) On an appeal under subsection (1), the High Court may—
 - (a) confirm, vary or set aside any finding, decision or penalty appealed against; or
 - (b) refer the matter back to the Council, for further consideration,

and in either case may make such order as to the costs of the appeal or otherwise as it may deem just:

Provided that the High Court shall not set aside any finding or penalty by reason only of an informality or irregularity in the proceedings of the Council or of the Disciplinary Committee which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

- (3) For the purposes of any appeal under this section the High Court may, if it considers it expedient so to do, sit with one or more persons as assessors, being persons whom it considers specially qualified to assist it in hearing the appeal, and may hear the appeal wholly or partly with such persons, but the decision in such appeal shall be that of the presiding judge or judges.

64. Publication of result of disciplinary proceedings

- (1) The Registrar shall by notice in the *Gazette* publish the name of any person—
 - (a) whose registration has been cancelled; or
 - (b) who has been suspended from practice and shall, in such notice, specify the period of suspension.

65. Council or Disciplinary Committee or Investigation Committee not to be liable

- (1) Save as is provided in this Act, no legal proceedings whether civil or criminal shall lie against the Council or the Disciplinary Committee or the Investigation Committee or any member or officer thereof in respect of any act or duty done or performed in accordance with the provision of this Part or Part XI.
- (2) The Council shall not be responsible for any loss of earnings by a person as a result of action taken under this Part or Part XI, whether by the Council, or the Disciplinary Committee, or the Investigation Committee and whether or not a particular finding, decision or penalty is subsequently varied or set aside.

66. Improper or disgraceful conduct

- (1) The Council may in regulations made under this Act—
 - (a) define what, in the case of any class of registered persons, shall constitute improper or disgraceful conduct;
 - (b) provide for any other matter incidental to the investigation of an inquiry into a complaint or charge against a registered person.
- (2) If any registered person has counselled or knowingly been a party to the performance of any act in respect of which an unregistered person has been convicted of an offence under Part XIV the conduct of such registered person shall, for the purpose of this Part, constitute improper or disgraceful conduct.
- (3) Regulations referred to in subsection (1) shall not limit the general power conferred on the Investigation Committee, the Disciplinary Committee or on the Council to inquire into allegations of improper or disgraceful conduct not covered by such regulations and to impose any penalty under this Part on any person guilty of such conduct.

Part XIII – Professional practice**67. Professional Practice Committee**

- (1) There shall be a Professional Practice Committee which shall consist of—
 - (a) one member of the Council appointed by the Council and designated by the Council as Chairperson of the Committee; and
 - (b) four other persons appointed by the Council and who may or may not be members of the Council.
- (2) Subject to the general direction of the Council, the functions of the Professional practice Committee shall be—
 - (a) to advise the Council on all matters relating to the professional practice of nursing and related personnel in Malawi;
 - (b) to develop minimum nursing practice standards for nursing and related personnel in Malawi; and
 - (c) to monitor nursing practice standards.

- (3) For the purpose of carrying out its functions the Professional Practice Committee may, subject to the general direction and guidance of the Council—
- (a) on behalf of the Council, appoint inspectors to visit hospitals, or other institutions or premises where persons registered under this Act conduct their practice and evaluate the standard of practice of nursing and related personnel thereat; and
 - (b) perform all such inspectorate functions for the purpose of setting and maintaining professional nursing standards in relation to behaviour and conduct of nursing and related personnel towards patients, clients and guardians, and to report its findings to the Council.
- (4) A person who wilfully obstructs any person duly authorized to perform inspectorate functions pursuant to paragraph (b) of subsection (3) shall be guilty of an offence and liable to a fine of K2,000 and imprisonment for one year.

68. Prescription of drugs and other medicines

Subject to the provisions of the Pharmacy, Medicines and Poisons Act, a person registered under this Act shall be entitled to prescribe drugs and other medicines.

[Cap. 35: 01]

Part XIV – Offences and penalties

69. Unregistered persons practising as nurses or nursing technicians

- (1) Subject to any exemption granted under this Act any person who, not being registered as a nurse or nursing technician—
- (a) for gain, practises or carries on business as a nurse or nursing technician, whether or not purporting to be registered or performs or undertakes to perform any act specially pertaining to the practice of a nurse or nursing technician; or
 - (b) pretends or, by any means whatsoever, holds himself out to be a nurse or nursing technician whether or not purporting to be registered; or
 - (c) uses the title “nurse”, “nursing technician” or any name, title, description, symbol, dress or device indicating or calculated to lead any person to infer that he possesses a degree, diploma or other qualification as a nurse, nursing technician or that he is registered as a nurse or nursing technician under this Act,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

- (2) Subsection (1) (a) shall apply to a nurse and nursing technician, registered under this Act, whose right to practise is suspended or whose licence to practise has expired:

Provided that nothing in this subsection shall apply to a nurse or nursing technician rendering assistance in an emergency.

70. Falsification of registers, etc.

A person who—

- (a) makes or causes to be made an unauthorized entry or alteration or deletion in a register or a certified copy thereof or an extract thereof or on a certificate of registration or on a licence;
- (b) procures or attempts to procure for himself or another person registration or a certificate of registration or a licence by means of fraud or false representation or by the concealment of a material fact;

- (c) makes or causes to be made in connexion with an application for registration or a licence a false declaration in a document used for the purpose of establishing his identity;
- (d) wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in a register;
- (e) without the permission of the holder, wilfully destroys, defaces or renders illegible or causes to be destroyed, defaced or rendered illegible a certificate of registration or a licence; or
- (f) forges or utters or, knowing the same to be forged, possesses or holds a document purporting to be a certificate or registration or a licence,

shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for six months.

71. Persons conducting education, training, etc., without authority

- (1) Any person who, being in charge of a hospital, nursing home or institution which is not approved by the Council as an institution for the education and training of persons seeking registration under this Act—
 - (a) admits to the institution under his charge persons for education and training in any of the categories of the nursing professions in respect of which provision is made for registration in this Act;
 - (b) purports to be conducting courses of education and training or examination under this Act;
 - (c) issues any certificate, badge, seal or uniform implying that the institution under his charge is approved by the Council as an institution for the education and training of persons seeking registration under this Act; or
 - (d) issues any certificate, badge, seal or uniform implying that the holder thereof has undergone a course of instruction or passed an examination prescribed by the Council,
- (2) Any person purporting to be conducting examinations on behalf of the Council and not being authorized by the Council so to do shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

72. Employment of unregistered or unlicensed persons

Any employer who engages a nurse or nursing technician who is not registered or licensed under this Act shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

73. Unregistered substitutes

Any person who is registered under this Act who employs as his substitute a person who is not appropriately registered shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

74. Personation of registered person or misrepresentation

Any person who impersonates a registered person shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for two years.

75. Registered person using unregistered title or qualification

A registered person who takes, uses or publishes in any way whatsoever a name, title, description or symbol indicating or calculated to lead any person to infer that he possesses a qualification which relates to a profession or calling in respect of which a register is kept and which is not shown in the register in

connexion with his name shall be guilty of an offence and liable to a fine of K1,000 and to imprisonment for one year.

76. Remuneration not recoverable by unregistered persons

No remuneration shall be recoverable in respect of any act pertaining to a profession or calling in respect of which a register is kept under this Act when performed by a person who is not registered on the appropriate register.

77. Certain certificates invalid if signed by unregistered person

No certificate required by law from any member of a profession or calling in respect of which a register is kept under this Act shall be valid unless the person signing such certificate is registered on the appropriate register.

78. Proof required for issue of licence

No licence required under any law to be obtained by a registered person shall be issued to such person unless the person applying for such licence produces proof that he is registered on the appropriate register.

Part XV – Miscellaneous provisions

79. African systems of nursing and midwifery allowed

Nothing contained in this Act shall be construed to prohibit or prevent the practice of any African system of nursing or midwifery by any person in Malawi:

Provided that nothing in this section shall be construed to authorize the performance by a person practising any African system of nursing or midwifery of any act which is dangerous to life.

80. Exemptions from registration

- (1) Notwithstanding anything to the contrary contained in this Act, if, with the consent of the Chairperson of the Council—
 - (a) an establishment or a registered nurse calls in as a consultant, a medical practitioner, whether resident in Malawi or otherwise, such consultant shall not be held to require registration in Malawi, in respect of his attendance upon the patient with respect to whom he has been called;
 - (b) a nurse who is neither resident nor registered in Malawi who is called into Malawi on the *bona fide* request of a patient shall not be held to require to register in Malawi in respect of his attendance on such patient;
 - (c) a person practising a profession or calling in respect of which a register is kept who is neither resident nor registered in Malawi and who is appointed by the Council or other body approved by the Council to conduct an examination in Malawi shall not be required to register in Malawi in respect of his duties in connexion with the conduct of such examination;
 - (d) a person practising a profession or calling in respect of which a register is kept under this Act who is—
 - (i) a member of a naval, military, air or Police force of a country other than Malawi and temporarily stationed on duty in Malawi; or
 - (ii) a delegate of the International Committee of the Red Cross, International Council of Nurses or International Confederations of Midwives and has entered Malawi with the

consent, or at the invitation, of the Government shall not be required to register in Malawi in respect of his duties as a member of that force or as such delegate, as the case may be;

- (e) the Council may exempt for a period not exceeding four months from the provisions of this Act regarding registration any person not permanently resident in Malawi who is engaged solely in teaching or research work affecting any of the profession or calling in respect of which a register is kept under this Act.
- (2) Any prescription or order signed by a person exempted from registration in accordance with subsection (1) and given by him in the course of his practice under that subsection, but not otherwise, shall, for the purposes of any law relating to drugs, have same force and effect as a prescription or order signed by a registered person.

81. Registered persons becoming unfit to practise

- (1) Whenever there is brought to the notice of the Council an allegation that a registered person has
 - (a) become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow him to continue to practise; or
 - (b) become unfit to purchase, acquire, keep, use, prescribe, order, supply or possess any drug; or
 - (c) been using a drug in contravention of any law relating to the use of drugs; or
 - (d) become addicted to or dependent upon the use of drugs, the Council shall have power to call for such information and to cause such investigation to be made as it thinks necessary and to seek such legal advice or other assistance as it may require.
- (2) In consequence of an investigation under subsection (1), the Council may—
 - (a) direct that such person shall cease to practise and that his registration be cancelled; or
 - (b) suspend such person from practice for such period, and subject to such conditions, as the Council may determine; or
 - (c) impose such conditions respecting the practice of such person as it may deem necessary and in the event of failure by such person to comply with such conditions, the Council may direct that such person shall cease to practise and that his registration shall be cancelled.

82. Restoration to register

Where the name of a person has been erased from the register, the Council may, if it thinks fit, authorize the restoration to the register of the name of such person if representations are made by the person concerned after the expiration of such period as the Council may determine in that particular case.

83. Burden of proof on unregistered persons

In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person alleged to be not registered, the person charged shall be deemed to be not registered unless he proved the contrary.

84. Notification of death or change of address

- (1) A registered person who changes his address shall notify that fact to the Registrar within one month after such change.
- (2) If the Registrar of births and deaths receives notice of a death which shows that the deceased belonged to a profession or calling in respect of which a register is kept, he shall forthwith notify the Registrar of such death.

85. Regulations

The Minister may, with the advice of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may—

- (a) prescribe the fees payable—
 - (i) upon registration or renewal of registration in a register;
 - (ii) on transfer from one register to another register; or
 - (iii) for restoration to a register;
 - (iv) for registration of an additional or specialist qualification;
 - (v) for issue of a duplicate certificate of registration or a certificate extract from a register or other certificate issued by the Registrar;
 - (vi) in respect of private practice;
 - (vii) in respect of licences; or
 - (viii) for any other matter under this Act;
- (b) prescribe the forms required to be prescribed under this Act;
- (c) subject to the proviso of [section 27](#) the qualifications required for entitlement to registration;
- (d) the conditions under which training schools for persons desirous of obtaining registration under this Act shall be approved and the courses of education and training and instruction to be undergone by persons seeking such registration;
- (e) the subject matter of examinations to be conducted by Council;
- (f) the conditions of admission or entry to education and training courses and examinations to be conducted by the Council;
- (g) badges, insignia and uniforms which may be worn by persons registered under this Act;
- (h) the standard and conditions of professional practice of persons registered under this Act.

86. Repeal and savings

- (1) The Nurses and Midwives Act is repealed.
- (2) Any subsidiary legislation made under the Nurses and Midwives Act repealed by subsection (1), in force immediately before the commencement of this Act—
 - (a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and
 - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.